

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

QUARTERLY MEETING

Alexandria, Virginia

Thursday, February 11, 2021

1 PARTICIPANTS:

2 PPAC Members:

3 JULIE MAR-SPINOLA, Chair

4 STEVEN CALTRIDER, Vice Chair

5 JENNIFER CAMACHO

6 BERNARD CASSIDY

7 JEREMIAH CHAN

8 TRACY G. DURKIN

9 SUSAN G. BRADEN

10 DAN BROWN

11 JEFFREY SEARS

12 Union Representatives:

13 KATHLEEN DUDA

14 CATHERINE FAINT

15 USPTO:

16 KIMBERLEY ALTON, Acting Director, Office of  
Governmental Affairs and Oversight

17 ROBERT BAHR, Deputy Commissioner

18 SCOTT BOALICK, Chief Judge, Patent and Trial  
and Appeal Board

19 JACKIE BONILLA, Deputy Chief Judge, Patent Trial  
and Appeal Board

20 MARY CRITHARIS, Acting Chief Policy Officer and  
21 Director for International Affairs

## 1 PARTICIPANTS (CONT'D):

2 ROBIN EVANS, Deputy Commissioner for Patents

3 ANDREW FAILE, Deputy Commissioner for Patent  
4 Operations5 JANET GONGOLA, Vice Chief Judge, Patent Trial  
6 and Appeal Board

7 JAY HOFFMAN, Chief Financial Officer

8 JAMIE HOLCOMBE, Chief Information Officer

9 STEFANOS KARMIS, Director, Office of Patent  
10 Quality Assurance11 MICHAEL KIM, Vice Chief Judge, Patent and  
12 Trial Appeal Board

13 RAMAN SARNA, Portfolio Manager, PE2E

14 RICK SEIDEL, Deputy Commissioner

15 WAYNE STACY, Regional Director, USPTO Silicon  
16 Valley Regional Officer17 DEBBIE STEPHENS, Deputy Chief Information  
18 Officer19 COKE STEWART, Performing the Function and Duties  
20 of the Deputy Under Secretary of Commerce for  
21 IP and Deputy Director of the USPTO

22 MATTHEW SUCH, Director, Technology Center 2800

MICHAEL TIERNEY, Vice Chief Judge, Patent Trial  
and Appeal BoardVALENCIA MARTIN WALLACE, Deputy Commissioner  
for International Patent Cooperation

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

2 (11:07 a.m.)

3 MS. MAR-SPINOLA: Welcome, everyone, to  
4 PPAC 2021. I am Julie Mar-Spinola, Chair of PPAC,  
5 this year. I am excited to be here. And we will  
6 be hearing about the USPTO's progress in existing  
7 areas of its operation and about recently  
8 implemented innovative programs in the areas of  
9 artificial intelligence and in diversity and  
10 inclusion.

11 We will also hear how all of these  
12 activities are dedicated to the common goal of  
13 maintaining the United States Patent Office as the  
14 global leader in making its services and offering  
15 accessible to all innovators.

16 Indeed, a lot of changes have already  
17 happened since our last meeting in November, such  
18 as: A new Administration; a new Congress; and for  
19 the USPTO, Commissioner Drew Hirshfeld is now at  
20 the PTO helm bearing the substantial title of  
21 Performing the Function and Duties of the Under  
22 Secretary of Commerce for IP and Director of the

1 USPTO.

2           Before I pass the mike to Drew for his  
3 opening remarks, I'd like to summarize PPAC's main  
4 objective for this year and then introduce you to  
5 our ten members. PPAC will shift its advisory's  
6 focus from "bridging the gap," which was our focus  
7 last year, to "closing the gap," not only between  
8 the review processes at patents and PTAB, but also  
9 between the prosecution process and what is made  
10 available during litigations: Prior art  
11 references; new combinations, et cetera.

12           We will endeavor to facilitate a  
13 discussion about how the USPTO can provide more  
14 uniform and comprehensive review of the  
15 applications for patents at the front-end and  
16 issued patents at the back-end.

17           The PPAC is committed to follow the  
18 trail that former Director Andrei Iancu had blazed  
19 during his leadership, which is to provide  
20 stakeholders a reliable, predictable, and fair  
21 patent system to achieve the universally desired  
22 issue of durable patents.

1                   Now, I'd like to introduce our PPAC  
2 members: First, Steve Caltrider, Vice Chair, who  
3 is also the Chair of PTAB's Subcommittee; Jennifer  
4 Camacho, who is the Chair of the Innovation  
5 Expansion Subcommittee; Jeff Sears, who is the  
6 Chair of the Pendency and Quality Subcommittee;  
7 Barney Cassidy, Chair of Finance Subcommittee;  
8 Jeremiah Chan, Chair of AI and IT Subcommittee;  
9 Tracy Durkin is the Chair of the newly-coined  
10 Outreach, which includes international and  
11 regional subcommittee; Susan Braden, our newest  
12 member, is Co-chair of Legislative Subcommittee;  
13 as well as Dan Brown, also our newest member, who  
14 will be co-chairing with Judge Braden in the  
15 Legislative Subcommittee. In addition, we have  
16 our two union reps: Kathleen Duda and Catherine  
17 Faint.

18                   With that, let me pass the floor to  
19 Drew.

20                   MR. HIRSHFELD: Thank you very much,  
21 Julie, and good morning to everybody. It's my  
22 pleasure to be here with all of you. Let me start

1 by welcoming the two newest members of PPAC, as  
2 you just heard from Julie. So Judge Braden and  
3 Professor Brown, welcome to PPAC.

4 Thank you very much for your upcoming  
5 dedication to PPAC and your willingness to serve  
6 and help us out; we are grateful. I also want to  
7 thank Julie for her leadership and Steve  
8 Caltrider, who will be in his second term, and  
9 will be the vice-chair of the committee. So,  
10 thank you, to you, as well.

11 I wanted to start today by going over  
12 first just some personnel updates for USPTO. So,  
13 obviously, as you heard from Julie, with Andrei's  
14 departure and Laura's departure, I will be  
15 performing the functions of the Under Secretary  
16 and Director, very honored to be in this role.  
17 And I assure you all that I will give it my best  
18 to make sure that I am putting this agency in the  
19 best position for when we do have political  
20 leadership come in.

21 With me taking on this role, there also  
22 are a number of other updates, so Coke Stewart

1 will be performing the function. There is  
2 performing the function of the deputy director and  
3 deputy undersecretary, Andy Faile, who is, of  
4 course, one of my deputy commissioners, will be  
5 Acting Commissioner.

6 And a couple of other updates that I  
7 wanted to mention, that I don't think we have  
8 mentioned, had the opportunity to mention before,  
9 but Mary Critharis, who I know most of you --  
10 probably all of you -- know well is permanently in  
11 the role of our Chief Policy Officer and Director  
12 for International Affairs. So that is a new  
13 updated role for her, so congratulations to Mary.

14 And Cara Duckworth, who is new to PTO,  
15 was hired as our Chief Corporate Communications  
16 Officer. And I think within days of coming into  
17 that role has now started acting as our Chief  
18 Communications Officer which typically is a role  
19 filled by political appointees. So as that will  
20 likely change back to her other role at some  
21 point, but I wanted to introduce you to Cara and  
22 we're very happy to have her on the team.



1                   By way of background, she is a former VP  
2 of Communications at the Association of American  
3 Publishers, and prior to that she was the Senior  
4 Vice President for Communications at the Recording  
5 Industry of America and Director of Communications  
6 at the Motion Picture Association of America. So,  
7 welcome, Cara, and thank you for everything you  
8 have done.

9                   I also wanted to make a quick note about  
10 the staff and PTO in general, so a couple of  
11 points I wanted to make. First, I wanted to  
12 mention a quick note about the Executive  
13 Committee. And this is especially important to  
14 me, as I am transitioning into this performing the  
15 functions rule. The Executive Committee is all of  
16 the business unit heads at the PTO.

17                   I have been involved with the Executive  
18 Committee -- I hate to date myself -- but going  
19 back over a decade, if you include my time as  
20 Chief of Staff to the agency. And I will tell you  
21 that over those years, thanks to the great leaders  
22 of the PTO, we have continued to improve the

1 functioning of that Executive Committee.

2 And I just wanted to share with all of  
3 you that we have an absolute wonderful group of  
4 leaders throughout the USPTO for all of the  
5 business units. I am very honored to be a part of  
6 that team.

7 And I wanted to assure all of you that  
8 we are committed to two main principles; and that  
9 is, we will continue to always be transparent with  
10 everybody and collaborative as we move forward.

11 But I felt remiss if I didn't mention  
12 what a wonderful team we have across the board. I  
13 know you will hear from many of them today. Some  
14 of them you won't have the opportunity here today,  
15 but again they're a wonderful group.

16 I also wanted to mention about the PTO  
17 employees as a whole, and particularly their  
18 dedication to their job. First, as you all well  
19 know, and you can see from background, we are  
20 still in a maximum telework situation.

21 Ironically, shortly, and in about a  
22 month, we will be in this situation for a year.

1 And it's hard to believe it has been year, but we  
2 are coming up to that years' time of being in  
3 this.

4 PTO, basically, has rarely missed a  
5 beat. Our productivity is doing very well and is  
6 even higher in some areas. We were able to hire  
7 new examiners, some new patent examiners. So we  
8 hired over 500 new examiners entirely remotely.

9 We have taken steps for the first time,  
10 like, hiring managers from non-management  
11 positions into new management positions while  
12 they're entirely remote. And we really have kept  
13 the agency going. And I do believe that that is a  
14 testament to the strong dedication of the  
15 employees across the agency and wanted to thank  
16 all of them for that.

17 I would also be remiss if I didn't  
18 mention a shoutout to our CIO, who has done a  
19 great job, Jamie Holcombe, who is part of that  
20 Executive Committee that I mentioned, to make sure  
21 that we have the ability to work from home and  
22 remotely and he has done a wonderful job.

1           I also wanted to mention something that  
2           I don't think we have spoken about publicly too  
3           often. But I think that it really should be  
4           shared and that does go to the hearts and  
5           generosity of USPTO employees across the board.

6           Every year we have a combined federal  
7           campaign where employees have the opportunity to  
8           donate either time or money to charities  
9           throughout the country and the world. And this  
10          year we raised an astonishing \$1.2 million for  
11          charities, which I just think is a staggering  
12          number -- again, \$1.2 million across the agency,  
13          just phenomenal.

14          That was actually 114 percent of our  
15          goal. And to put that into perspective across the  
16          entire Department of Commerce, we represented just  
17          about 41 to 42 percent of the total contributions  
18          across the Department of Commerce.

19          And while this year was phenomenal, and  
20          in terms of our donations and I know people  
21          stepped up, given the need that we all are well  
22          aware of around the world and the country, we

1 actually are doing this every year and it really  
2 is a testament to our employees.

3 I'll now turn to "State of the USPTO."  
4 I chose a variety of topics to highlight to you  
5 some of our areas of focus and also topics I  
6 thought you would want to hear about. So let me  
7 start with one topic that I believe is very  
8 critical to us moving forward in the most  
9 effective and productive way. And that's our  
10 National Council for Expanding American  
11 Innovation.

12 I hope you all are well aware of this  
13 new Council, relatively new council. Its mission  
14 is to help the USPTO develop a comprehensive  
15 national strategy to increase participation in our  
16 innovation ecosystem.

17 Our goal is to encourage, and empower,  
18 and support all future innovators and that  
19 includes increasing the involvement of women and  
20 other underrepresented groups. This remains a top  
21 focus and it is no mistake that it's one of the  
22 first topics I wanted to talk about because I want

1 you all to know that this will remain a focus of  
2 the USPTO and is very important to us as we move  
3 forward.

4 We have recently extended the comment  
5 period. We have asked for the public comments  
6 from people. We have received a number of  
7 comments. I believe so far we are over 50  
8 comments. However, we have extended the deadline  
9 from February 8th February 23rd.

10 Thank you to those of you who have  
11 commented, and those of you who haven't comments I  
12 hope you will consider commenting. You will hear  
13 more about this later on in this program.

14 Also, and continued area of focus --  
15 and, quite frankly, always an area of focus -- is  
16 patent quality. You heard Julie mention in her  
17 remarks aspects, like, closing the gap in  
18 improving and we want to continue to do a better  
19 job at all times.

20 I'll take a quick step back because I  
21 know this was discussed in the last Patent Public  
22 Advisory Committee meeting. But I did want to

1 mention the most recent public survey that we  
2 have. This is a perception survey. It goes out  
3 to 3,000 randomly selected customers. I won't go  
4 too much into the details.

5           But, suffice it to say, that that  
6 feedback that we are getting in that randomly  
7 selected survey continues to be very positive.  
8 And a couple of highlights that I wanted to  
9 mention today. Roughly two-thirds of the people  
10 who responded report that the quality of prior art  
11 cited by the examiners is good or excellent  
12 compared with less than five percent that reported  
13 it as poor.

14           And, additionally, customers were two  
15 times more likely to say that the quality overall  
16 was improving rather than declining. So quality  
17 will continue to be always an area of focus.

18           On the patents area, I wanted to  
19 mention, on October 1st -- and I know we have  
20 discussed these in prior PPAC meetings -- but on  
21 October 1st, we implemented a number of changes,  
22 probably the most sweeping changes potentially

1 ever for the patents organization.

2           These changes relate to three main  
3 areas. We did adjust time for many examiners to  
4 increase time that some of them have to do their  
5 production requirements for their job. That's a  
6 critically important step. I think it's something  
7 that we should continue to evaluate. And I do  
8 believe that that is very important for us to  
9 continue to keep up-to-date as we move forward.

10           We have a whole new routing process for  
11 applications. We have now completely transitioned  
12 to the CPC routing and we have a much more refined  
13 system for routing. We are certainly working  
14 things out; this is a massive change.

15           And so I'm well aware this is working  
16 well in many areas and still needs to be improved  
17 in some areas. But there is a whole new routing  
18 process where we will match very refined profile  
19 of every application to the actual cases that  
20 examiners work on so that we are matching the  
21 profile of the application to the examiner to get  
22 the best match.



1           And we have also changed the performance  
2 appraisal plan for all examiners, again, starting  
3 this last October. And that appraisal plan will  
4 emphasize such aspects as, a complete search and a  
5 clear prosecution record.

6           We are also concurrently in the midst of  
7 rolling out a new search tool, which I know has  
8 also been mentioned here. We have trained about  
9 1500 examiners on that search tool. Some key  
10 points to this search tool are that it currently  
11 has 34 million foreign references ingested, which  
12 is all new. Right?

13           So these are complete amounts of  
14 complete translations of the references rather  
15 than either not being existent in some instances  
16 or just having small abstracts, so this is a big  
17 change. By the end of 2021, we expect that number  
18 to be over 70 million foreign references, so  
19 really quite amazing that the tool gives us that  
20 ability to move forward.

21           I'll now switch a little bit to patent  
22 pendency, which, of course, always will remain a

1 focus. You will hear me talk a little bit  
2 differently than in the past about patent  
3 pendency. We have been in a multi-year process of  
4 transitioning away from the traditional measures  
5 of average pendency over to measures of our patent  
6 term adjustment compliance with the statute.

7 It is my opinion, and many others, and I  
8 know we have actually received some public  
9 comments on this as well, that the measures of the  
10 patent term adjustment are better indicators of  
11 pendency across the board.

12 So, in other words, if an average is  
13 really not helpful, if there is a wide disparity  
14 among the average, and if you are not at that  
15 average, if you're an Applicant who is not at that  
16 average this isn't very helpful to you. So we are  
17 focusing on trying to increase the percentage of  
18 applications that we work on that is within the  
19 timeframe set forth by statute.

20 And our long-term goal here is to have  
21 all of our Actions and, that is, mailed Actions  
22 and even what's in inventory to be 90 percent

1 compliant with the patent term adjustment statutes  
2 by the end of 2025. And that is something you'll  
3 continue to hear more about.

4 Currently, we are in the mid- to  
5 slightly high-80s. When you go across the board  
6 and look at all of those, the biggest area where  
7 we need to improve would be the first Office  
8 Action, which by the statute we would issue patent  
9 term adjustment if we're not within 14 months.

10 And so that is the biggest area of  
11 focus. But, overall, for all of the Actions,  
12 we're in the mid- to high-80s -- it's 86 or 87,  
13 so much improvement to be made there but that will  
14 continue to be an area of focus.

15 I also wanted to mention patent  
16 application filing rates. Certainly, with the  
17 pandemic, I get asked a great deal about our  
18 filing rates and even our revenues. So let me  
19 give you a quick update.

20 Filings for the first four months of  
21 2021 are down just under seven percent, as  
22 compared to the same time last year. This was

1 expected and quite frankly our numbers are  
2 tracking very close to what our projections were.

3 We do believe that we will end this  
4 fiscal year at about a three percent decline, as  
5 compared to last year, and that decline is based  
6 on the pandemic. So we do believe the numbers  
7 will get a little bit better compared to the  
8 amount decrease that we have had. But we still  
9 are projecting a slight decrease, about three  
10 percent, compared to last year.

11 If you're curious, just an important  
12 point is, we have done an analysis to date to try  
13 to see if there is any particular technologies  
14 where there have been drop-offs or decreases that  
15 were larger than others. In other words, is the  
16 pandemic impacting certain areas greater than  
17 others?

18 Based on our statistical analysis --  
19 and, obviously, this can change as there is  
20 unknowns in front of us -- but we are seeing that  
21 any particular area was impacted differently from  
22 others; rather, it seems that the decrease is

1 somewhat across the board, rather than localized  
2 in any particular area.

3 I mentioned our finances. You'll hear  
4 more from this from Jay Hoffman later on, but our  
5 finances still are tracking according to plan.  
6 And, again, I'll highlight that one of the  
7 challenges here with filing rates and finances, in  
8 general, is that this pandemic is obviously a very  
9 unique situation.

10 Patents tends to be a lagging indicator  
11 -- or the impacts to patents, rather, tends to lag  
12 the economy. So it's very hard to know what's in  
13 front of us, so we're actively watching and  
14 monitoring. But we are, both with filings and  
15 finances, tracking according to plan.

16 A quick couple of other updates that I  
17 wanted to mention, I did want to mention some  
18 significant PTAB updates. You are all probably  
19 well aware that the Supreme Court case is upcoming  
20 for Arthrex. That is the oral arguments scheduled  
21 for March 1st. So we're obviously, actively  
22 waiting for that to occur.

1                   And then, last October, we issued a  
2                   Request for Comments about exercising discretion  
3                   to institute NIA trials. We thank all of you who  
4                   have commented. We received 822 comments from a  
5                   wide range of stakeholders. Again, thank you for  
6                   your comments there.

7                   We, of course, are still considering  
8                   next steps and looking at those comments. And we  
9                   do have an Executive Summary of those comments on  
10                  the PTAB website, which you can certainly take a  
11                  look at. Scott Boalick will discuss PTAB later  
12                  on, these issues and others.

13                  A quick few points on the legislative  
14                  front. We did have the passage of Patents for  
15                  Humanities Act. So this recognizes patent  
16                  Applicants, owners, and licensee, who use their  
17                  inventions to address humanitarian challenges.  
18                  This has been a wonderful program.

19                  It's an awards competition and which we,  
20                  at the PTO, will issue certificates that can be  
21                  used to accelerate examination of an application  
22                  or a reexamination. And those certificates can be

1 transferred to other parties, as a way to speed  
2 the adoption of beneficial technologies. So we  
3 are happy to see that move forward.

4           Additionally, Congress elevated the rank  
5 of our four intellectual property attaches, which  
6 we think is a wonderful step in intellectual  
7 property issues now having even higher standing in  
8 our global missions. And that's, of course, a  
9 reflection of the growing importance of IP in  
10 international trade and commerce.

11           Another quick note on the international  
12 front, we recently through the Office of Policy  
13 and International Affairs, issued a report on  
14 patent and trademark filings in China. And the  
15 report looked at the factors that have an  
16 influence to the high rate of Chinese Patent and  
17 Trademark filings -- and, basically, you'll hear  
18 more about this later.

19           But to give you a quick teaser of the  
20 discussion, the report basically looked at the  
21 factors which impact the filings and beyond the  
22 market factors found such other indicators were

1 important such as the subsidies from the Chinese  
2 government as well.

3 And you'll hear more about this later on  
4 in the program. So I know I'm going over a fair  
5 amount. I thought it would be good to give you a  
6 state of the PTO during this time of transition  
7 and me being new to the role.

8 I have just two more areas that I wanted  
9 to point out of key to our efforts to outreach.  
10 Julie mentioned some of this earlier about  
11 ensuring our outreach to a diverse community;  
12 you're going to hear more about our efforts there.  
13 And we have taken some great steps to ensure that  
14 we are reaching, not the same people we have  
15 always reached, and trying to reach a broader and  
16 a more diverse community of people.

17 And I also wanted to point out that  
18 we're progressing IT remains very, very impressive  
19 to me. I have been, as you know, a long time PTO  
20 person and I am seeing wonderful progress in  
21 recent times. Thank you to Jamie, again, for the  
22 great work that he is doing.



1                   We will continue to work on stabilizing  
2                   our systems, ensuring that they are up-to-date,  
3                   ensuring that we have the right redundancies and  
4                   systems for continuity of operations and there has  
5                   been wonderful progress there.

6                   And, additionally, you will see a  
7                   continued focus on artificial intelligence and the  
8                   creation of and use of artificial intelligence in  
9                   such areas as, improving the examiners' search and  
10                  the classification of new application.

11                  I know that was a whirlwind and a lot of  
12                  information. I did think, especially, in my  
13                  inaugural PPAC, in this role I wanted to go over  
14                  the state of PTO so that you all are very clear on  
15                  areas that we are focused.

16                  So, with that, I will end my remarks and  
17                  I will pass it back to Julie. And thank you very  
18                  much, everybody.

19                  MS. MAR-SPINOLA: So thank you very  
20                  much, Drew. It was more than a whirlwind, but it  
21                  was very informative and it was a great summary of  
22                  all of the exciting things that are coming.

1 Right?

2           So I have to agree with you, while I  
3 haven't served the Patent Office as long as you,  
4 and in this role, but even within the six-plus  
5 years that I have been here with PPAC there has  
6 been a significant and impressive improvement in  
7 all areas, so very much appreciate that.

8           So in our effort to try to stay on time,  
9 let me just move us over to Jeff Sears, our  
10 Subcommittee Chair for Pendency and Quality.  
11 Steve -- sorry, Jeff.

12           MR. SEARS: Thanks very much, Julie,  
13 very happy to be here today and to start off the  
14 Pendency and Quality presentation.

15           We have had a number of excellent  
16 meetings in the subcommittee with the office and  
17 PPAC. And what we have learned is that we are  
18 going to take some steps from bridging the gap to  
19 closing the gap. Closing the gap, meaning, how do  
20 we implement some of the tools we already have in  
21 place to help improve the quality of patents and  
22 to help ensure that they survive review whether by

1 the PTAB in appeal, or whether by the PTAB in  
2 post-grant proceedings?

3 The stuff that we have learned in  
4 subcommittee is that we have to take a holistic  
5 view. Part of the initiative can be implemented  
6 by the office, but also some of the burden needs  
7 to be shared by the Applicants. If we want higher  
8 quality applications out, sometimes we need higher  
9 quality applications in.

10 I'm going to turn it over, at this  
11 point, to the Patent Office, my counterpart, for a  
12 short presentation.

13 MR. FAILE: Okay. So, thanks, Jeff. So  
14 we have a presentation this morning. I'm going to  
15 turn it over to Robin and Bob to see if they want  
16 to do any introductory remarks, then we'll pass it  
17 over to Stefano.

18 MS. EVANS: All right. So I will start  
19 and turn it over to Bob. Thank you, Jeff. That  
20 was a great summary of where we have been and  
21 where we are going. As Jeff said, we have already  
22 done a lot of collaborating with PTAB.

1                   Some of that you will see and hear in  
2                   the presentation and going forward those things  
3                   that we are looking at, not only within the Patent  
4                   Office but without, as Jeff said, in terms of what  
5                   is coming into the office. And it's just a look  
6                   at quality on a whole. Because, you know, we're  
7                   always in the improving stage and quality will  
8                   forever remain important to us.

9                   So, I'll turn it over to Bob for now.

10                  MR. BAHR: Thank you, Robin. I just  
11                  wanted to reiterate what Robin has said, and also  
12                  introduce the person who will be going through the  
13                  presentation, Stefano Karmis. He is the Director  
14                  of the Office of Patent Quality Assurance. And he  
15                  has been instrumental in working on many of these  
16                  initiatives to help improve patent quality.

17                  With that, I will turn it over to  
18                  Stefano.

19                  MR. KARMIS: Thank you, Bob. All right.  
20                  So I am going to begin by talking about some of  
21                  the efforts that we have done recently. A lot of  
22                  these happened in fiscal year '20, really going

1       toward that bridging the quality efforts, if you  
2       will, and then talk about some of the initiatives  
3       that we have coming up in 2021, going more towards  
4       closing that, the qual (phonetic) initiative, if  
5       you will.

6                 You can go ahead, in fact, forward to  
7       the first slide. (Slide) We're going to talk a  
8       lot about art collaborations with PTAB on these  
9       first few slides here. I know one of the things  
10      that we made a focus of last year was to try to  
11      get better and more actionable data out of the  
12      decisions that come from PTAB for our own learning  
13      loop.

14                As a first step last year, PTAB did a  
15      great job by starting to document in their  
16      decisions in both ex parte and ion post-grant  
17      trials their decision through what is called a  
18      Final Decision Table that summarizes their ruling  
19      on each individual rejection and claim in their  
20      document.

21                This is important to us in patent for  
22      several reasons. One, it provides data to us on a

1 much more statute-based level which is how we  
2 collect data within the Office of Patent Quality  
3 Assurance also.

4           So this gives us data that's more in  
5 line with our data for purposes of validation and  
6 ultimately for examiner training which we'll touch  
7 on a little bit more coming up. But it's also  
8 useful information for the public. We know the  
9 public is also interested in this sort of  
10 information.

11           The goal for these decision tables, why  
12 you see them now, is to be able to automatically  
13 create this and get the data out faster. Right  
14 now, we're collecting this data manually to  
15 reviewers in the Office of Patent Quality  
16 Assurance.

17           We probably have a sample of about five  
18 months' or six months' worth of data -- not going  
19 to show it -- but I will just say something that  
20 we would expect to see, we do see a lot of 103  
21 rejections being the focus of decisions at PTAB  
22 that's very similar to what we see in our review

1 sample. Most of our reviews tend to have 103  
2 rejections around that 75 percent mark.

3 We did also see some 101 decisions  
4 obviously at PTAB. That number may go down as we  
5 are starting to see less and less of those on our  
6 rejections that go out the door. Those are things  
7 that we'll monitor. But it's a great first step  
8 in the data collection.

9 We have always traditionally  
10 collaborated with PTAB on various efforts to  
11 improve quality. One of the things that we're  
12 trying to do more often is take a pulse of PTAB  
13 judges to get a pulse of how they feel our quality  
14 is in our write-up and whether it's helping them  
15 make their decisions, if you will.

16 That is also something that we focused  
17 on last year in getting some feedback. Always  
18 great to have information from the judges on how  
19 well we are doing things like: Responding to  
20 arguments: documenting our opinion; and help the  
21 above areas how to focus on. That was a large  
22 focus for fiscal year '20, moving into fiscal year

1 '21.

2 If you want to go to the next slide.

3 (Slide) We actually want to get  
4 more granular with what we're  
5 collecting. While that first  
6 initial data collection from the  
7 tables is a great first step, we  
8 want to get more actionable  
9 information for our learning loop  
10 to provide training/

11 As I mentioned, we're really going to  
12 focus on three things this year. Number one, is  
13 to go a step deeper in the PTAB decisions, not  
14 only do we want to know that, you know, there is X  
15 number of 103s at the Board and maybe they're  
16 getting reversed. But we want to get into why  
17 they are getting reversed.

18 A lot of data is already maybe being  
19 done on the TP level, but we want to get it a  
20 little bit more granular, as a whole, for the  
21 office then we can start to figure out is this,  
22 you know, motivational statements that are the



1 reason for being reversed, or are we just missing  
2 arguments. Again, we want to get better data that  
3 we can use in our training, if you will.

4           Second, we also want to evaluate the  
5 work product that we're sending to the Board.  
6 This is an area where maybe we have not spent many  
7 of our reviews before, but we do want to focus on  
8 that more now, look at how well we are responding  
9 to arguments, how well we are citing evidence up  
10 to the Board. The surveys that we did with PTAB  
11 judges has helped us create sort of a review form,  
12 if you will, to evaluate our work products that  
13 are going up to the Board.

14           And then, finally, we know post-grant  
15 decisions is sort of a unique set of cases. We do  
16 want to collect data out of there also. There are  
17 final decision tables on those decisions also.

18           So we will be pulling some of that  
19 information. We will also be looking at the prior  
20 art that has been used. We have take some early  
21 looks at this in the past in just demographic data  
22 of the prior art whether it's patent, or

1 non-patent literature, or foreign art.

2 But we want to take that a step further  
3 this year and start to identify maybe some quality  
4 trends that we could use for training in the  
5 future, maybe whether we could have found this art  
6 or should have found this art.

7 We're trying to explore whether we can  
8 make those determinations by analyzing some of  
9 these decisions, if you will. So those are three  
10 areas that we're really going to focus our data in  
11 an effort to help close that quality gap that was  
12 mentioned.

13 MR. SEARS: Stefano, before you go on --

14 MR. KARMIS: Sure.

15 MR. SEARS: -- I had a question for you.  
16 The first bullet point, more specific data on  
17 reasons why a rejection is reversed at the PTAB.  
18 Here is my question: Does the office have a view  
19 on what the right affirmance or rejection rate is  
20 at the PTAB on ex parte appeal?

21 I mean, certainly, it shouldn't be a  
22 hundred and it shouldn't be zero. But I'm just

1       curious, is the right number 35, is it 65, like,  
2       how do we approach the answer to that question?

3               MR. KARMIS: Sure, so happy to address  
4       that. Yes, you are correct. We definitely don't  
5       want it to be a 100 percent; we definitely don't  
6       want it to be zero percent. If that's the case,  
7       we're probably not drawing the appropriate line;  
8       we have never set a target.

9               Right now, I think it's in the upper 50  
10       percentile range. And I think, you know, for the  
11       most part, we monitor it. But we have never  
12       really set a target. I think it's kind of what we  
13       would expect to see from maybe the more difficult  
14       and close call cases that we try to send up to the  
15       Board.

16               But, again, we have never set a goal.  
17       And I think we're sort of in an area where we're  
18       comfortable with it but always monitoring it.

19               MR. SEARS: Great. I have one more for  
20       you. Last bullet, collecting data on the use of  
21       prior art in post-grant trial. I think it would  
22       be worthwhile to see whether the art in post-grant

1 trials is primarily patents or primarily  
2 non-patent literature, NPLs.

3 Because patents, if they're U.S.  
4 Patents presumably are already in the database.  
5 But if they're non-patent literatures that could  
6 be a bigger challenge. It could suggest a place  
7 to really focus AI research.

8 MR. KARMIS: Yeah, absolutely. We will  
9 definitely want to have some of that demographic  
10 data, and ultimately think about some of the  
11 recent impacts of things like the EPC and how that  
12 might impact searches today that maybe, for some  
13 of these cases that didn't have the benefit of  
14 that -- you know, maybe it wasn't the help that it  
15 would be today with library (phonetic) examiner  
16 searches. So those are definitely questions that  
17 we are going to keep in mind as we start to do  
18 that sort of analysis.

19 MR. HIRSHFELD: Jeff and Stefano, if I  
20 can jump in a little bit there. Jeff, our endgame  
21 here, at least part of our endgame, is to make  
22 sure that we have a much better understanding and

1 accounting for any time there is a reversal, or  
2 even the trials if a patent is held to be  
3 non-valid or a person of a patent is held to be  
4 non-valid.

5 So our goal is to really understand if  
6 there is art in a case that was used, was that art  
7 available to the examiner? Was it in the case  
8 that the examiner had? If it was not in the case  
9 that the examiner had in front of them and is sent  
10 to the Board, should it have been, right?

11 You're right. Was it a U.S. reference  
12 that was available? Was it some reference that  
13 was in a very remote area that the examiner  
14 couldn't possibly be expected to have access to in  
15 their time that they have to do the case?

16 We believe that this is very important  
17 information for helping us move forward in the  
18 right direction and we'll be certainly focusing  
19 exactly on what the premise of your questioning  
20 was.

21 MS. MAR-SPINOLA: Thanks, Drew. This is  
22 Julie. I also have a question with respect to the

1 last bullet point. Sorry, Stefano --

2 MR. KARMIS: Okay.

3 MS. MAR-SPINOLA: -- that we're  
4 bombarding you with questions. But this is a good  
5 way of clarifying issues, right? So, you know, I  
6 mentioned about closing the gap, not only between  
7 patents and the PTAB, but also between prosecution  
8 and external citations to new prior art such as in  
9 litigation.

10 So will there be a way to also assess  
11 maybe at the post-grant? You know when you  
12 collect data for the post-grant decision is to be  
13 able to identify what prior art was found by a  
14 litigant and was not found by the Patent Officer,  
15 right? Because maybe they're using different  
16 sources that the Patent Office isn't aware of or  
17 using. And so it seems to me that we can also  
18 close -- potentially use that data in a way to  
19 execute on this.

20 MR. KARMIS: It's definitely one of the  
21 things we will keep an eye on, for sure, is new  
22 art that came in during the trial, if you will.

1 One of the difficulties will be maybe ascertaining  
2 how Applicant, you know, necessarily found that  
3 art.

4 But I do think we can do some things in  
5 looking at it; especially, if it's something like  
6 non-patent literature, we can sort of check to see  
7 if this non-patent literature wouldn't be  
8 available in sort of our traditional databases  
9 that we have, and things like that. And,  
10 obviously, U.S. Patents would be and that's  
11 obviously available.

12 But that is a good point and something  
13 that we will definitely take a note of, as we sort  
14 of look at the prior art.

15 MR. CHAN: Hi, this is Jeremiah,  
16 Stefano.

17 MR. KARMIS: Sure.

18 MR. CHAN: I just wanted to follow up on  
19 Julie's comment, which I think is a good one. You  
20 know I think most of us could probably suspect  
21 that litigants may often find more obscure  
22 references because they're often more willing to

1 spend a lot more money in investment and scour the  
2 earth.

3 But I think one thing to consider is to  
4 try to take those references that they expose and  
5 be able to log them or keep a record of them so  
6 that you have got those obscure references now  
7 kind of in your database, you know, to be able to  
8 consider for certain technology areas. That may  
9 already be done, but it's something to consider.

10 MR. KARMIS: That's a great point.

11 MR. FAILE: Maybe also, Julie, to put it  
12 a little bit into this conversation that Julie and  
13 Jeremiah started, there is a piece of this that we  
14 have a program for today, our Post-Grant Outcomes  
15 Program.

16 So if we have a trial on a certain  
17 patent and then there is a related patent in  
18 prosecution, you know, Section 120, related patent  
19 in prosecution or application in prosecution, we  
20 do flow the material from that particular trial  
21 into that case that's in prosecution for the  
22 examiner to consider.



1                   So when we have a direct linkage between  
2                   the two, there is a subset of these cases where  
3                   we're ensuring that the prior art or any of the  
4                   material from an IPR goes back to the examiner  
5                   working on that continuing case. Just to add that  
6                   in as a part of what we're doing to address some  
7                   of these issues.

8                   MS. MAR-SPINOLA: Thanks, Andy. It  
9                   actually occurred to me while you were speaking  
10                  about that that are we also collecting data in the  
11                  ex parte realm? Because, oftentimes, ex parte  
12                  reexams are running parallel with IPRs. But,  
13                  obviously, IPR decisions are made much more  
14                  quickly than ex parte. But they also have  
15                  references and I think to avoid collateral  
16                  estoppel, or whatever, you know, there could be  
17                  different references.

18                  So is there also an effort to collect  
19                  from ex parte proceedings? I think we might have  
20                  lost Stefano.

21                  MR. KARMIS: I'm still here I think.  
22                  Can you hear me?

1 MS. MAR-SPINOLA: Oh, okay. Now we have  
2 got you back, okay. But that's a question. I  
3 don't know if you have an answer.

4 MR. KARMIS: Yeah.

5 MS. MAR-SPINOLA: But I think, you know,  
6 there could be -- that could be a rich source as  
7 well.

8 MR. KARMIS: Yeah, that's definitely  
9 something we will look into. I don't have the  
10 information on it right now, but a great point,  
11 something that we can be looking into also as part  
12 of this.

13 MS. MAR-SPINOLA: Thank you.

14 MR. KARMIS: Mm-hmm. Okay. I've got a  
15 couple of more slides to run through. I'll get  
16 through this hopefully relatively quick and take  
17 some more time for questions here. I just want to  
18 highlight a few additional things that were done  
19 in fiscal year '20, this sort of the training gap,  
20 if you will.

21 One of the things that was relatively  
22 new at the end of fiscal year '19 and into '20 was

1 that we started conducting quarterly webinars for  
2 all of our examiners with PTAB judges on select  
3 topics. These are generally like live sessions  
4 held to about 700 examiners and then recorded for  
5 additional examiners to go watch at their  
6 convenience if they can't make the live session.

7 In fiscal year '19, however, we focused  
8 on appeal practice, writing up tips and things for  
9 what judges consider when they are looking at ex  
10 parte appeals; and then in fiscal year '20, we  
11 provided some information on AIA trials,  
12 precedential opinions, what judges are looking at  
13 when they are in trial for making those decisions.

14 In addition, we have done this for a  
15 while, we continue to do it to this day. We can  
16 detail assignments, so examiners over to PTAB, to  
17 work for four months under a judge, if you will,  
18 where they get a hearing helping to conference  
19 cases, prepare the judges for hearings, help  
20 ghostwrite some decisions and then hopefully bring  
21 that knowledge that they gained while on PTAB back  
22 to their area to share with their peers.

1                   And then an additional item that was  
2                   relatively new last year was providing a way for  
3                   examiners to attend hearing virtually as attendees  
4                   and watch how hearings go, watch how judges make  
5                   the decisions that they make. Last year, we did  
6                   58 hearings where examiners were able to attend.  
7                   Somewhere in the neighborhood of 2500 examiners  
8                   attended those hearings to get a flavor for how  
9                   judges make their decisions, if you will.

10                   Moving into this year, if you can go to  
11                   the next slide. (Slide) We are going to continue  
12                   those trainings, if you will. We're working out  
13                   the schedule right now. In addition, all of the  
14                   technology centers conduct sort of their own  
15                   training, if you will, based on the feedback that  
16                   they get, not only from PTAB decisions, but also  
17                   from data from my office, OPQA, as well as the  
18                   data that they collect themselves. So there will  
19                   also be a big emphasis on training within each  
20                   group.

21                   Andy mentioned earlier the post-grant  
22                   outcomes. I won't repeat what it is. He did a

1 great job in setting it up. I'll just say that,  
2 in addition to that, one of the ways we're closing  
3 the gap is there is a mandatory aspect to this now  
4 when examiners have a case. So thank you for  
5 setting that up, Andy.

6 So those are some of the things we have  
7 on the training front, and then just one more  
8 slide. (Slide) I know the discussion has been  
9 heavily about the way we are collaborating with  
10 PTAB but there a lot of other areas of focus.

11 We will continue to monitor our  
12 compliance data which is the data that OPQA  
13 generates. That data has been trending higher  
14 this year than it was last year. We'll also  
15 monitor that perception data, which Drew mentioned  
16 earlier, is also really high right now.

17 So we'll continue to monitor those, and  
18 then I know you will hear about other things  
19 throughout the day or have heard recently. There  
20 is a new examiner performance appraisal plan that  
21 went into effect, a new search tool that does a  
22 better job with customizable interfaces and giving

1 foreign prior art or making it available for our  
2 examiners to search; and then also BTC (phonetic)  
3 and auto-routing of cases to the examiner most  
4 suited to examine it.

5 Those are all things that are very much  
6 quality initiatives even though that it may be  
7 talked about in other parts of the meeting today.  
8 And these are things that we're going to kind of  
9 keep an eye on to see how does it impact our  
10 compliance numbers, how does it impact our  
11 perception, our quality with our external  
12 stakeholders.

13 MR. SEARS: Stefano, I've got a question  
14 for you about the examiner performance appraisal  
15 plan. One of the things I think about in terms of  
16 improving quality is, as I mentioned earlier,  
17 which is trafficking higher quality applications.  
18 And one way to do that is to submit better, more  
19 complete -- whatever the adjective is -- better  
20 IDSs to bring more pertinent art in front of the  
21 examiners.

22 But the examiners have only limited time

1 to review a cases. Does the new appraisal plan  
2 give examiners more time to review more  
3 references, potentially, leading to higher  
4 quality?

5 MR. KARMIS: So happy to answer that,  
6 and I would invite Andy or anybody else that's  
7 maybe more familiar with it. But, yes, the new,  
8 again, performance appraisal plan does consider  
9 things like: How long the application is, and  
10 also number of references, and things like that,  
11 and does allow for additional time for examiners  
12 when it's warranted.

13 In addition, examiners are always  
14 encourage to talk to their supervisors that they  
15 have some, you know, perhaps, one-off issues where  
16 they feel like additional time is warranted.

17 MR. FAILE: Yeah. I'm just happy to add  
18 some color in to what Stefano said. Jeff, it's a  
19 great question. So, as part of it, it's in the  
20 performance appraisal plan, but it's really more  
21 part of the new timing system that we launched in  
22 October.

1           We're looking at applications coming  
2           into the office, not as all the same shape and  
3           size, so to speak. But we're trying to compensate  
4           for the different changes that an application  
5           might have.

6           For instance, some applications have a  
7           lot of claims; some have a smaller number of  
8           claims; some have a lot of pages in the  
9           specification for an examiner to read through and  
10          understand; some are less; some have a lot of  
11          references that come in in the IDSs, some have  
12          less, et cetera. So what we have done is what I  
13          would consider a first attempt in trying to  
14          standardize some of those differences and provide  
15          time for examiners based on those thresholds being  
16          exceeded.

17          For instance, if there is more than X  
18          number of claims, the examiner gets additional  
19          time for that. If there is more than X pages of  
20          references, then examiner gets additional time for  
21          that.

22          These are standardized into kind of



1 one-hour increments; we have called them  
2 attributes. So while we're calculating the amount  
3 of time any given page has, one of the things we  
4 look at, in addition to the technical complexities  
5 of the case, is we look at these prosecution or  
6 application attributes and then we affix different  
7 levels of time per case based on that.

8 I consider this as a first starting  
9 point in being able to customize the workload as  
10 it comes in and set those standards for  
11 examination time. Based on that, I can see us  
12 iterating from there in the future.

13 One of the issues we have now is we're  
14 grabbing the available data sources for each one  
15 of these that we have. As those continue to  
16 improve over time, we'll be able to be more  
17 granular. Instead of just given time based on X  
18 number of references that come in in an IDS, for  
19 instance, we may be able to get into those  
20 reference, maybe more time for NPL to the extent  
21 of less time for U.S. patents listed, et cetera.

22 So the better data sources we get in the

1 future, the more permutations, the more granular  
2 we'll be able to (inaudible). So I'd consider  
3 this the first part and kind of a right sizing the  
4 time based on the application attributes that come  
5 into the office.

6 MR. KARMIS: Great, thank you very much.

7 MS. MAR-SPINOLA: Thank you, Faile, and  
8 thanks for that, Andy. Is there, or will you be  
9 tracking how many, or how much time is being --  
10 well, additional time is being requested to a  
11 supervisor so that we can see whether or not --  
12 whether it's really a time issue or not, right?

13 It seems to me that if we can track how  
14 often the examiners, either individually or  
15 collectively, seek that added time that might be  
16 valuable information.

17 The other thing I think is: Has the  
18 Patent Office considered -- and I think I know the  
19 answer to this -- but has the Patent Office  
20 considered additional workshops or training for  
21 practitioners on quality IDSs and quality  
22 responses to Office Actions with respect to the

1 cited references?

2 MR. FAILE: Okay, yeah, great questions.  
3 So, on the first one, yes, we're going to be  
4 tracking that. The time comes in kind of two  
5 different ways. One is to standardize, what we're  
6 calling the attributes time, you know, a threshold  
7 is exceeded, time is automatically added to the  
8 case. And, clearly, we can run those numbers and  
9 see how many applications on which one of the  
10 attributes exceed thresholds and what we're  
11 spending in time there.

12 The second is the speeds (phonetic) can  
13 authorize time in addition to that for cases that  
14 far exceed those particular thresholds. So just  
15 kind of two different data sources there.

16 It's a good point, Julie. That would  
17 bear a good analysis to go through and see kind of  
18 exactly what we're spending on that.

19 To the idea of practitioners or  
20 Applicants on the front-end, I'm going to ask  
21 Robin if she wouldn't mind jumping in. I know we  
22 have a program where we are training practitioners

1 on the outside, our STEPP program.

2 I don't think they necessarily talk  
3 about this subject, but that might be something  
4 for thinking about including in future programs  
5 like our STEPP program, robin might be able to  
6 give a little more flavor of that.

7 MS. EVANS: Yep, you're absolutely  
8 right, Andy. And not only do we have the STEPP  
9 program, but we also have the VILT program, which  
10 is Virtual Instructor-Led Training, and it would  
11 probably be more adaptable to talk about it there  
12 -- but great comment.

13 MS. MAR-SPINOLA: You know, I mean, I  
14 think this issue goes to the component of  
15 predictability, right, in the patent process. So  
16 I do think it's not all on the Patent Office and  
17 I'm not suggesting that. It really is both sides.  
18 Right?

19 The Applicant, through their  
20 practitioner, their patent prosecution counsel,  
21 really need to know that it's not just a matter of  
22 listing a bunch of prior art references. It's

1 going to have to be -- in order to be considered,  
2 it's going to have to be substantively discussed.

3 And if it is, and if the record is  
4 comprehensive where it tracks into any kind of  
5 post-grant proceeding, then we can see whether or  
6 not that reference is actually -- you know, that  
7 was cited before was considered and that these are  
8 not new arguments. But that's just my thinking on  
9 that and suggestion.

10 So I think we have about 15 minutes --  
11 or no -- another -- till another 30 minutes for  
12 pendency quality, Jeff?

13 MR. SEARS: I guess a question I would  
14 ask is about application readiness, things the  
15 Applicants can do to lean to higher quality  
16 application. The office is undertaking and  
17 continuing to work on great initiatives to, for  
18 example, expand the field of search to get more  
19 art before the examiners.

20 So a question to Stefano and to Andy,  
21 what sorts of things can Applicants do to improve  
22 the quality of their own application? Maybe one

1 way to think about the answer is: What is it that  
2 examiners think are missing? What is it that  
3 examiners think Applicants can do better?

4 MR. KARMIS: Sure, I can address this.  
5 So one of the things we do with our examiners is  
6 we do do a semi-annual survey with them, a quality  
7 survey. And, of course, you know, that survey  
8 does ask a lot of questions about their  
9 interactions with practitioners and the quality of  
10 the applications that they receive.

11 Definitely to highlight some areas where  
12 our examiners -- and to get sort of the lower  
13 scores and maybe where there are some  
14 opportunities for improvement -- definitely go to  
15 things like the clarity of the claims in the spec,  
16 the applicability of references that are cited on  
17 the IDS, the quality of translation, providing  
18 support for amendments, all of those things that  
19 really help them, you know, examine the  
20 application, if you will.

21 So that is some stuff that in the past  
22 we have wanted to share with the Applicants and

1 sort of put them on notice of where our examiners  
2 think that there are some opportunities for  
3 improvement.

4 In addition, as part of that engagement,  
5 one of the things that we did do last year was put  
6 out a Request for Information to try to gather  
7 some feedback from external stakeholders on tools  
8 they use to sort of improve the quality of the  
9 application before the submission.

10 Got some good, some good feedback  
11 through that RFI that were interested in exploring  
12 and really trying to determine whether there are  
13 some options, maybe IT options, for whether the  
14 office could explore to help maybe with the  
15 quality of incoming applications also, but  
16 definitely something that we get feedback from  
17 from our examiners, if you will.

18 MR. BROWN: Dan Brown. In terms of  
19 quality, do you think the quality bar is moving?  
20 Do you think that maybe the PTAB has changed or  
21 there's a difference between the obviousness of,  
22 you know, what's not obvious that a patent

1 application and maybe hindsight bias when you go  
2 back and look at it. Is there a way to  
3 objectively measure this?

4 MR. KARMIS: So are you talking about  
5 sort of, like, a different threshold for  
6 obviousness in examination than in PTAB?

7 MR. BROWN: Yeah, I mean, that's the gap  
8 there, right, where we're looking at the question?  
9 And I'm just throwing it out there for discussion  
10 not just to throw it. It just seemed to me, you  
11 know, you're in a challenging situation of  
12 measuring the effectiveness and quality.

13 But, you know, I'm a long-time inventor.  
14 I think from an investors community, they believe  
15 that bar is moving now with PTAB judges looking  
16 at, say, prior art and how that prior art effects  
17 patentability and in validating, you know,  
18 patents. Does that gap -- maybe I guess -- what  
19 is your opinion on that gap? How do you see that?

20 MR. KARMIS: So, I mean, I'll jump in  
21 first and then anybody from the USPTO is welcome  
22 to jump in also. I think finding that line for



1 obviousness, if you will, is something we strive  
2 to achieve within patents, within the different  
3 technologies within patents, within our  
4 workgroups, as well as with PTAB.

5 But, you know, we obviously read PTAB  
6 decisions, try to figure out where their line is,  
7 try to figure out where our line is. Our hope is  
8 those lines are always, you know, as aligned as  
9 possible.

10 I'm not sure if it's necessarily moving  
11 one way or another, but it's always something that  
12 we're, you know, monitoring and trying to improve  
13 on, not just with PTAB, but also within our own  
14 organization, if you will.

15 MR. HIRSHFELD: Stefano?

16 MR. FAILE: Yeah, also --

17 MR. HIRSHFELD: Yeah, I'd like to -- go  
18 ahead, Andy.

19 MR. FAILE: Okay.

20 MR. HIRSHFELD: You'll start and I'll  
21 jump in, Okay, you're good.

22 MR. FAILE: This is a great

1 conversation. Thanks, Dan. So I do think that  
2 the gap is -- I do think it's closing in closer.  
3 I do think quality is moving in the right  
4 direction. The one thing that's difficult is it  
5 can be a slow move and it's very iterate.

6 We're in a subjective area and trying to  
7 analyzer, you know, where quality is and how, what  
8 direction it is moving in, in general. And I do  
9 think a lot of the issues, a lot of the  
10 initiatives that we're putting in place is moving  
11 the quality in the right direction.

12 Stefano talks, I really like the phrase  
13 he uses, "learning loop." This learning loop is  
14 pretty big and it's pretty iterative and you're  
15 seeing some inching up over time. I don't think  
16 we're going to see giant breakthroughs, one way or  
17 the other.

18 Personally, I think we're going to  
19 continue to iterate discussing things, like, how  
20 do we make art available in front of the PTAB  
21 available for examiners? You know, we're doing a  
22 piece of that now in our continuation program. If

1       there is other ways to do studies, what Jeff is  
2       advocating for, I think it's a great idea.

3                 Let's study if art was found; how was it  
4       was found; should we have found it; under what  
5       conditions can we kind of tighten that loop up;  
6       providing search systems that have a different  
7       array of prior art available to examiners in a  
8       more targeted way, as another way that we're  
9       moving through that; having more interactive  
10      prosecution.

11                We get a lot of good feedback on our  
12      interviews, continuing to look at interviews and  
13      have interactivity between examiners,  
14      practitioners, and Applicants, to better  
15      understand the positions in an Action so we make  
16      more efficient use of that prosecution moving  
17      forward.

18                All of these I think we're gaining steam  
19      on within the last few years. The thing I would  
20      caution is that it could look to be a pretty slow  
21      loop from the outside, but I think we are making  
22      progress and going in the right directions.

1           We also, kind of as a check on that, we  
2           look at our customer survey that we do two times a  
3           year and we can see those responses coming in and  
4           the progress at least from a point of view of  
5           practitioners and Applicants that use the system,  
6           how we're moving in the right direction from  
7           there, too.

8           So I think we're going in the right  
9           direction. I think there is plenty of work to be  
10          done, and I think it's going to be an iterative  
11          kind of slow march as we kind of move forward --  
12          anyway, my take it.

13          Drew, I didn't mean to jump in in front  
14          of you. (Laughter)

15          MR. HIRSHFELD: No. No, you're great.  
16          I think that's a wonderful conversation.

17          MR. FAILE: Yeah.

18          MR. HIRSHFELD: And, Dan, I really  
19          appreciate your question. I think that we should  
20          spend a lot of time discussing what do we mean by  
21          a gap here, right? So, you know, I know Andrei,  
22          you know, Iancu, talked often about bridging the

1 gap and that was one of his principles.

2           What I believe he was talking about was  
3 really the -- as a former litigator, that he sees  
4 that there are instances where somebody in  
5 litigation can spend much more resources, time and  
6 money than the examiner has to be -- to find a  
7 reference so that the gap that he was referring to  
8 was one of prior art; that an examiner who is very  
9 limited in time, who would probably have an  
10 average of 20-something hours to do their case  
11 from start to finish, are they able to -- you  
12 know, why are they not able to find the same  
13 thing, or are they not able to find the same prior  
14 art and where somebody who can spend, you know,  
15 thousands, millions of dollars, whatever it is,  
16 depending on the case?

17           So I think there is many different areas  
18 where there could be this so-called gap, so to  
19 speak. And I think it behooves us if we're going  
20 to really move forward to really understand: 1)  
21 what we're talking about when we're referring to a  
22 gap; 2) what are the shortcomings that we're

1       seeing?

2                       So, in my opinion, every time an  
3       examiner gets reversed or a patent gets  
4       invalidated, we should be understanding exactly  
5       why. Is that a prior art issue, as we discussed?  
6       If it is a prior art issue, you know, why was it a  
7       prior art issue?

8                       You know, referring to my comments  
9       before, was it something that was in the case that  
10      the examiner didn't think was applicable and a  
11      judge does? Was it something that was not in the  
12      case that should have been in the case? Was it a  
13      reference that the examiner couldn't have possibly  
14      been expected to find? These are all different  
15      reasons which I think we need to understand.

16                      And then, switching to the art area,  
17      once you have the art, switching to the statutes,  
18      rather, for example, under 109, the cases that are  
19      at the PTAB are hopefully those ones that are  
20      truly those challenging cases, the ones where  
21      there is a legitimate disagreement between the  
22      examiner and the Applicant for ex parte appeals,

1 for example.

2 We need to know in situations like that  
3 are, where there is a difference of opinion on,  
4 say, 102 or 103, is it a legitimate gray area  
5 case, or was it something that was missed by  
6 somebody, you know, or they just didn't read a  
7 reference properly, didn't understand the prior  
8 art?

9 So my point of all of this is I think  
10 it's very important for us to understand exactly  
11 what we're talking about. We, at PTO, recognize  
12 we need to do a better job of data capture of all  
13 of these elements so we can have more educated  
14 discussions about this.

15 And, really, if we're going to move us  
16 forward, I think we have to be careful not to just  
17 have a blanket statement that, okay, there is a  
18 gap and therefore there is a problem. I think we  
19 need to understand what the differences are and  
20 that way we'll be able to really understand how  
21 best to address them.

22 So, anyway, I think this is a great

1 conversation and I think it should evolve into  
2 discussions subsequently about where there is  
3 prior art differences, in terms of what's being  
4 found, whether that's statutory differences, how  
5 they're applied, et cetera.

6 So, a great question, Dan. I'm glad you  
7 brought that up. Because, as I'm sitting here,  
8 I'm thinking I'm hearing people talking about a  
9 gap and I was having this thought exactly that. I  
10 think this isn't as precise the discussion as what  
11 I believe is most helpful to us.

12 MR. BROWN: Thank you, and I really  
13 appreciate your feedback. I guess looking at it  
14 from a professorial perspective and trying to  
15 reframe the problem we have here is that, you  
16 know, when something is non-obvious or obvious,  
17 it's very subjective at times.

18 And you're in the process of collecting  
19 a lot of data and you're going to use that data.  
20 I think there should be some focus brought into,  
21 what is that prior art? Is that prior art the  
22 same across the office in order to try to do it?



1                   Now I know it's hard to make that  
2                   objectively because it's a subjective argument.  
3                   And, you know, we have a lot of different biases  
4                   in there. But, you know, I just think the courts  
5                   and the grading (phonetic) factors, or whatever,  
6                   there is ways of looking at that and trying to  
7                   understand it.

8                   So I'm really happy that you're open to  
9                   it and happy from what I have heard about getting  
10                  this hard data and try to look at it objectively.  
11                  As we go into this, I think there is a way of  
12                  collecting qualitative data and hoping to make it  
13                  as quantitative as possible.

14                  MR. HIRSHFELD: No, I agree, and that is  
15                  our goal.

16                  MS. MAR-SPINOLA: Yeah. I am very happy  
17                  about the discussion here. I think it's very  
18                  important to have. But we do have time  
19                  limitations. I do want to say though that on the  
20                  quality issue, we do acknowledge and respect,  
21                  Drew, what you're concerned about.

22                  Also, I think that after our break at

1       around 1:10 p.m. Easter, we're going to hear from  
2       AI and IT. And I think quality will not only be  
3       enhanced, but I think that moving the needle may  
4       actually be -- it may still be incremental, but  
5       may be a little more efficient and therefore  
6       time-saving.

7                 So, hopefully, we'll hear a little bit  
8       about that during AIIP. But, you know, this is  
9       great because the conversation or the focus needs  
10      to be on the entire ecosystem, right, inside and  
11      outside of the Patent Office. Everyone is  
12      responsible. It's not all on the Patent Office,  
13      but there are a lot of moving parts. And,  
14      hopefully, data collection, having the right  
15      tools, which we'll hear later on, is going to  
16      enhance that. So that's just my comment there,  
17      yep.

18                Okay. Jeff, I'll hand it back to you.

19                MR. SEARS: Okay, Julie. I don't have  
20      anything further on the agenda for today. I know  
21      we're a few minutes ahead of time. But maybe I  
22      would suggest we maybe move on to the next

1 presentation, so perhaps we won't be so far  
2 behind, as we usually are in the afternoon. But I  
3 defer to you as Chair.

4 MS. MAR-SPINOLA: Actually, thank you so  
5 much for that. I really appreciate it given how  
6 much and how important to your particular  
7 subcommittee topic is. But I do want to say that  
8 our next topic, which is innovation expansion,  
9 which I think it's a great opportunity.

10 And thank you for your generosity of  
11 time that we can hand over to Jennifer Camacho and  
12 Valencia because we often have to have enough time  
13 to speak about those equally important issues.  
14 Jennifer.

15 MS. CAMACHO: Thank you, Julie. I  
16 appreciate that. It is an incredibly important  
17 issue. And I can't tell you how happy I am to be  
18 working with the Innovation Expansion Subcommittee  
19 again this year.

20 The dedication and engagement from  
21 Valencia and all of the subcommittee members is  
22 just truly remarkable. It is really an all-in

1 team. And that's what this effort needs. So I am  
2 so glad to be a part of it.

3 So, at our last meeting, I remember --  
4 PPAC meeting -- we talked about the newly  
5 established National Council for Expanding  
6 American Innovation, which is called NCEAI for  
7 short, but I'm not pretty sure it's really that  
8 short.

9 But, at any event, we talked about that.  
10 And since their inaugural meeting in September,  
11 the NCEAI and its working group have been very  
12 busy on crafting a national strategy.

13 And as part of that effort, and as Drew  
14 mentioned in his opening remarks, a Request for  
15 Comment on the National Strategy for Expanding  
16 American Innovation was published in the Federal  
17 Register on December 23rd. And the request  
18 included 17 questions covering a wide range of  
19 considerations.

20 It's actually quite thought-provoking,  
21 and all of these considerations are important for  
22 a national discussion on this topic. I really do

1 encourage, even if you have no intent of sharing  
2 your comments, I do encourage you to read it  
3 because I find that it was quite  
4 thought-provoking.

5 But, at the end of the day, we do need  
6 your input, so please do take a look at the notice  
7 and share whatever comments you feel you would  
8 like to share with us. The due date again is  
9 February 23rd, so you have a little bit of time.  
10 But, please, we do need your input.

11 So, today, going to (inaudible) I  
12 brought our update on the NCEAI and what's on our  
13 horizon for 2020. And I think that you may pick  
14 up -- and I really do hope that -- but, you know,  
15 pick that up is collaboration and partnership.

16 This initiative, the initiative of  
17 (inaudible) innovation, competitiveness, economic  
18 growth, and promoting and increasing the  
19 participation of underrepresented groups. And so  
20 inventors and entrepreneurs really requires  
21 collaboration and partnership across all sectors.

22 To succeed, this initiative must be a

1 shared initiative across their entire innovation  
2 ecosystem. And the good news, from my  
3 perspective, is that this initiative has already  
4 generated shown interests from academia, and  
5 non-profit organizations, businesses, both big and  
6 small, and just the general public.

7 And, as you'll hear a little bit more  
8 today, they already have several collaborative  
9 efforts in this initiative underway. So, with  
10 that, I'll hand it off to Valencia.

11 MR. MARTIN-WALLCE: Thank you, Jennifer.  
12 And you said it beautifully, NCEAI, exactly. Good  
13 afternoon to everyone. Thank you so much for  
14 having it here again. Julie and Jennifer -- I'm  
15 sorry -- Jennifer's comments go exactly to what  
16 we're going to talk about today.

17 It's the collaboration together. This  
18 is not an initiative, an issue, a mission. I love  
19 calling it "a mission" that is in one corner of  
20 our community. It is all of us working together  
21 keeping -- keep going with the amazing work that's  
22 already been done by individual organizations and

1 collaborating, as well, to make it even stronger.

2           So I'll go over what we have been doing  
3 and where we will be going for this year. So next  
4 slide please. (Slide) So quick update, and  
5 Jennifer already mentioned it, that the Federal  
6 Register Notice, the Request for Comment, has been  
7 extended to February 23rd.

8           And the reason we did that was because  
9 it did come out around the holiday timeframe and  
10 we wanted to make sure that everyone had an ample  
11 opportunity to get their comments in, so extended  
12 a little bit, I'm happy to say at this point; and  
13 Drew had mentioned earlier that we were in the  
14 50s.

15           We're actually at 59 comments, as of  
16 today. I mean that's an impressive number for an  
17 RFN regardless. But, really, when you go and take  
18 a look at the RFC you see that there is 17  
19 questions there that we're asking because we  
20 really break it down into each of the aspects of  
21 an inventor becoming an inventor and becoming an  
22 innovator.

1           So we asked a lot of questions. So what  
2           that means is, while it might be 59 sets of  
3           comments, it's all or are a large part of those  
4           questions in each set of those comments, so quite  
5           a few comments coming in, ideas, suggestions, that  
6           the team, the strategy team is working to consider  
7           and incorporate as we're working on a strategy.

8           We'll show you our new webpage in a  
9           second. But just you know if you have not  
10          commented yet and you would like to, please go to  
11          the "How to Get Involved," link on the NCEAI  
12          webpage. That will link you directly to the  
13          Request for Comment and how to submit that.

14          We can move on. (Slide) Also what we  
15          have done, starting this year, one of the  
16          activities for 2021 is -- if we can move back to  
17          where we were -- yes, thank you. One of the other  
18          initiatives that the NCEAI and USPTO has going on  
19          is a series of Innovation Chats.

20          We kicked off that series in January;  
21          then Director Iancu, sat with myself, as well as  
22          with the Deputy Director General of WIPO for



1 Technology and Patents, Lisa Jorgenson, which I'm  
2 happy to say this was actually -- she's newly  
3 appointed there, the first woman to sit in that  
4 position. And we were her first event in this new  
5 position, so very proud and honored that she would  
6 sit with us.

7           It was a great conversation between the  
8 two of them and it can also be found on that same  
9 NCEAI webpage. I would encourage everyone to go  
10 on and take a look. It was the beginning of our  
11 story of Innovation Chats.

12           The topic was the importance of  
13 Expanding American Innovation. And it was a  
14 series of topics, conversations between Director  
15 Iancu and Deputy Director General Jorgenson that  
16 not only spoke to them being leaders in  
17 intellectual property and in this field of  
18 expanding innovation, but also they spoke  
19 personally as well as to why this is important to  
20 them and how and what influenced them on their  
21 career journey.

22           So, please, take a look. We are going

1 to have a series of topics about every six weeks  
2 or so that we will be -- we will add a new  
3 innovation chat and it will discuss along the line  
4 of the strategy that we're developing, so creating  
5 innovators, practicing innovation, realizing  
6 innovation.

7 We'll also have a chat about the  
8 practitioner's role in what we're doing and their  
9 responsibility, as well as, we'll talk about  
10 measures and metrics of success. And if we can  
11 move on to the next one now. (Slide)

12 And as I mentioned, we have the updated  
13 webpage of the NCEAI, which can be found, if you  
14 first go to the [uspto.gov](http://uspto.gov) webpage, there is a link  
15 for Expanding Innovation; under that link, you can  
16 find a Director's initiative, where we will be a  
17 webpage.

18 So you can see that we have added a few  
19 areas, one being past events, so we will make sure  
20 that all of the events that we had recorded, all  
21 of the awareness and education events, will be  
22 linked to this site. So anyone who is not able to

1 attend as we're having them will always be able to  
2 go back and see what we have done, where we're  
3 going, and get even more educated on how to  
4 contribute to what we're doing.

5 We also added the Innovation Chats link.  
6 So this is where you can go in order to see the  
7 first chat that we had and we will have the whole  
8 series that will be on this webpage as we go  
9 through them.

10 And just to let everyone know, with the  
11 Innovation Chats, they will be open to the public.  
12 We will have a series of guests to talk about all  
13 of the topics. But we will have a line open for  
14 the public to not only hear what's being said, but  
15 also to be able to ask questions and provide  
16 suggestions as well. Okay, we can move to the  
17 next. (Slide)

18 And just to go over a little bit more on  
19 what I was saying. So we're continuing our work  
20 with the working group. And just to remind  
21 everyone, the NCEAI members all have working group  
22 representatives that are working with the National

1 Strategy team that are developing the strategy.

2 We have also, our networking group, has  
3 invited in other groups and organizations that  
4 aren't necessarily on the Council to also  
5 contribute as we're developing the strategy. As  
6 Jennifer had mentioned, February 23rd, we do have  
7 the public comments closing.

8 Please share that link with everyone  
9 that you know. We want to get as many comments  
10 and be able to incorporate them as possible. We  
11 are looking to the summer of 2021 to publish a  
12 strategy and we will have an event surrounding  
13 that publication when we are able to have it. And  
14 we're also going to continue on our NCEAI  
15 Awareness and Education campaign.

16 So the Innovation Chats is part of that,  
17 but that also includes events that members of our  
18 Council are having, events that we're partnering  
19 with other organizations across the nation to  
20 bring not only awareness of the NCEAI and the  
21 strategy, so when we'll wrap up to a huge campaign  
22 moving forward when the strategy is published, but

1 also educating every corner of our nation on this  
2 strategy.

3 Because putting the strategy in writing  
4 and publishing it, while it is a huge tasks for  
5 that team, it is only the beginning. The really  
6 hard part is making sure that we're educating  
7 people on how to use the strategy in order to  
8 expand innovation and have all areas of our  
9 communities to adopt it and move forward.

10 And the best we can do to do that is to  
11 educate, to go to every corner and educate on the  
12 strategy and how to use the strategy, and how to  
13 measure whether the efforts are successful.

14 So that will be a huge campaign for us,  
15 and I am delighted to be able to support any  
16 efforts towards that. Please go on to our link,  
17 [uspto.gov/ExpandingAmericanInnovation](https://uspto.gov/ExpandingAmericanInnovation), with any of  
18 your comments. If you would like us to share any  
19 events that are going on surrounding expanding  
20 innovation, we do have that area on our webpage of  
21 events going on.

22 So, please, looking forward to sharing

1       it all and our email address to give us any  
2       comments, or any ideas, or any events that you  
3       would like us to share. Looking forward to  
4       another amazing year. Last year, threw us for a  
5       loop a little and put us a little bit off of our  
6       target timeframes but did not keep us down.

7                 We are moving forward. We are moving  
8       stronger than ever with the support of this agency  
9       as a whole, the community around us, and  
10       especially this Council, who has been invaluable  
11       in all of the efforts in the successes we have had  
12       so far. But we are not slowing down at all.

13                So I believe that is the last of my  
14       slides, or do we have -- yes, this is just how to  
15       join the conversation. This is our social site,  
16       the website, as well as the social media  
17       #ExpandingAmericanInnovation. I happy to take any  
18       comments, questions, that you might have for me.

19                MS. MAR-SPINOLA: So this is Julie. You  
20       know, this is an issue close to my heart,  
21       actually, as you know. And so, thank you for all  
22       of your efforts. I think you have been graciously

1 sometimes a little bit in the background. But,  
2 really, you're taking charge of this and we  
3 appreciate that.

4 So, Valencia, one of the things that I'd  
5 like to ask is, you know, if there are some  
6 preliminary strategies, can you talk about it now?

7 Also, what other efforts -- and you did  
8 talk about some -- but to market though, right?  
9 Because, you know, to get the requests maybe the  
10 requests only come if folks are signed on for a  
11 Patent Office alert, for example, right?

12 And, you know, I would say most people  
13 don't know about signing for -- or, yeah, there is  
14 probably a huge chunk of people who don't know to  
15 sign up for patent alerts. So is there an  
16 additional form of marketing this issue?

17 MS. MARTIN-WALLACE: You know that's a  
18 great comment, Julie. So we have been working  
19 very closely with our communications office, both  
20 in assisting us in really spreading the word, in  
21 putting out blogs, in putting out all of the  
22 information every time we have an event, or we

1       have something going on, it goes out on a patent  
2       alert.

3                 We can absolutely direct people to how  
4       to sign up for a patent alert, so as many as  
5       possible can sign up and know exactly what we're  
6       doing when we're doing it. You mentioned  
7       background, I like it in the background. I like  
8       rolling my sleeves up and doing the work.

9                 But I do appreciate every time all of  
10       you mention NCEAO, and because you said that I am  
11       actually going to mention Drew. Because talk  
12       about background, he has been on the background  
13       this entire time supporting everything we're  
14       doing, not only the NCEAI, but also internal to  
15       the agency, he's done a great deal of work in  
16       supporting and bringing together some of our  
17       affinity groups, who have been putting some  
18       programs together.

19                There is a working group that Coke is  
20       leading now that's also looking at moving the --  
21       developing new initiatives and programs that will  
22       not only spare our economy, but that are



1 overlapping and related and complementary to what  
2 we're doing with Expanding American Innovation.

3 So while what we're doing now with the  
4 strategy, as well as the programs that we are  
5 building, go through what I had mentioned before  
6 about creating. So at every point in an inventors  
7 lifespan, how do we make them more aware, given  
8 them more education?

9 That's what our programs and our  
10 initiatives are moving forward to do at the age of  
11 four-years-old, you know, bringing the enlightenment  
12 of STEM and moving on through grade school,  
13 through high school, college, post-graduate school  
14 into the working world and beyond.

15 What is the information that is needed  
16 in order to build a better ecosystem here,  
17 innovation and ecosystem? So that's what our  
18 programs and our initiatives are moving forward to  
19 do.

20 I am happy to say that, as part of his  
21 duties in this role, Drew is the Vice Chair now of  
22 our NCEAI. So, you know, now he gets to say more

1 of all that he has been doing. And, you know,  
2 I'll just mention really quickly, when we asked  
3 him about that role, he jumped at it, he said,  
4 absolutely.

5 But he's been going around to speaking  
6 engagements. And I'll say that for all of my  
7 coworkers, whenever they have an opportunity. So  
8 it hasn't just been me really beating the drums on  
9 this. It's been all of our coworkers. It's been  
10 everyone in this agency. And the interests in it  
11 and want to contribute has been amazing.

12 So we will have in the future some more  
13 information about the programs that we are  
14 developing and partnering with other  
15 organizations, other agencies, other groups.  
16 Right now, it really is not at the phase where  
17 we're going to publish those programs, but they  
18 will be coming soon.

19 MS. MAR-SPINOLA: Thank you for that.  
20 Can you expand on what the affinity group is?

21 MS. MARTIN-WALLACE: Oh, I'm very sorry.  
22 Yes, affinity groups are different voluntary

1 organizations within our agency that while they  
2 might have a particular focus within a cultural  
3 area, they really do assist and work with all  
4 areas. And another kudos to all of my deputy  
5 commissioner coworkers, they are all executive  
6 advisors to several of the groups.

7 I'm an Executive Advisor to the National  
8 Society for Black Engineers and I can speak to  
9 what they are doing. They are working with the  
10 agency and they have been led by myself and Drew  
11 to develop further mentoring programs; to develop  
12 outreach programs to universities; to teach about  
13 not only STEM, but also the patent system and  
14 bring awareness to it going into universities;  
15 going into grade school.

16 So their work and their programs are not  
17 only focused on our patent examiners and within  
18 the agency, but they actually go out into our  
19 communities as well and speak on STEM, on patents,  
20 on innovation.

21 MR. HIRSHFELD: Julie, I'd like to add a  
22 few thoughts here. I would love to have in a

1 future PPAC meeting, have Bismarck Myrick, who, as  
2 our EEOD Director, come in and discuss the  
3 affinity groups. He is the person who is in  
4 charge of them.

5 And I mentioned the combined federal  
6 campaign about the generosity of employees before  
7 because I wanted to share that, you know, great  
8 event and occurrence with everybody. But I also  
9 have to say, as I'm sitting here, I think this is  
10 another internal USPTO aspect that many people  
11 don't recognize.

12 And we have these fantastic affinity  
13 groups throughout the agency which do a wonder in  
14 helping improve the USPTO community and they work  
15 together. It's educational at times; it's social  
16 at times. And when I say educational, as Valencia  
17 mentioned, sometimes educational internal of the  
18 PTO, and other times external to PTO. And it is  
19 just absolutely fantastic.

20 And, as Valencia mentioned, some of them  
21 are working on new reviewing expanding our  
22 mentoring program that we have existing already,

1 just a great group. I'd love to have Bismarck  
2 come in and give everybody an overview, sort of an  
3 insight into what we're doing at PTO.

4 And I also wanted to mention a quick  
5 word on the NCEAI. And I appreciate your very  
6 kind words, Valencia. But I will also say that,  
7 as I am transitioning into this role, and people  
8 are asking me about what's going to continue at  
9 PTO and, you know, what are the focuses, et  
10 cetera?

11 I, without hesitation, will say the  
12 number one topic that people are asking me about  
13 is the NCEAI and there seems to be a great deal of  
14 excitement at all levels. U have not yet had  
15 anybody, you know, not be excited about this.  
16 There seems to be wonderful level and, you know, I  
17 think people recognize the importance and the  
18 significant improvement that this can make to our  
19 whole patent ecosystem.

20 MS. EVANS: And I would just like to  
21 chime in. You saw it on Valencia's slide, on the  
22 left side, but it does shoutout both to the

1 Council and NSBE, they had a wonderful  
2 presentation yesterday, as their flagship  
3 presentations for Black History month.

4 And it was about three inventors, and  
5 they were three great women inventors, black women  
6 inventors, that talked about their journey into  
7 inventorship. And a lot of them said they  
8 wouldn't even have thought about themselves as  
9 inventors, right, but each of them hold patents.

10 And they talked about what it looks like  
11 to see someone who looks like you in that space.  
12 And so they talked about the importance of  
13 expanding innovation, right, and expanding it  
14 beyond what you know.

15 One of them even said, "If I were to  
16 draw a picture of an inventor, I probably would  
17 have drawn somebody like Albert Einstein. I would  
18 not have drawn a black woman or somebody that  
19 looks like me."

20 So I thought it was powerful. I thought  
21 it was a great kudos to the Council and what  
22 they're doing, and I thought it was a huge win for

1       our agency. There were a lot of people who chimed  
2       in that said, not only am I watching, but I have  
3       my daughter sitting here watching as well.

4                       So it was a great event and I look  
5       forward to having more of those like that here.

6                       MS. MAR-SPINOLA: I think that as an  
7       Asian-American, I can say that it's always  
8       important to be able to see someone that is  
9       familiar. Right? So, to Drew, Bismarck is always  
10      welcome. We will build him into the agenda. I  
11      would love to hear about whether we have affinity  
12      groups for a better focus on each of the  
13      underrepresented groups that the Patent Office is  
14      focused on to helping.

15                      And also, in terms of the focus on the  
16      smaller innovators, the smaller entity,  
17      innovators, the individual inventors, I love the  
18      idea of going all of the way to grade school and  
19      up in higher education to get them not only  
20      familiar with the concept of innovation, but also  
21      to let them see their role models, if you will.

22                      And so, so this great. I love it. I

1 love to hear all about this. Thank you.

2 Jennifer, thank you.

3 MS. CAMACHO: Thank you. Personally, I  
4 want to say thank you to Drew. And, Robin, I am  
5 thrilled to hear the comment that -- just it's  
6 wonderful. And, Valencia, I love you changing  
7 initiatives initially because I feel the same way.

8 I do have a question. So we have heard  
9 a lot about the outreach to the underrepresented  
10 groups and getting them the information that they  
11 need and supporting and promoting this. I am  
12 wondering what the national strategy has in mind  
13 with respect to reaching the other individuals in  
14 the ecosystem, who have an impact on  
15 underrepresented groups and innovation.

16 And I'm speaking about, for example, the  
17 corporate teams that are in charge of  
18 decision-making on IP, or the business side of  
19 scientists who are in charge of putting together  
20 the innovation team for their group, and certainly  
21 the venture capitalists.

22 So we have any plans for educating them



1 on the benefits and the potential a diverse group  
2 has to offer? And also highlighting or making  
3 aware of potential unconscious biases that might  
4 interfere with their decision-making or impact the  
5 trajectory for their teams?

6 MS. MARTIN-WALLACE: Absolutely, thank  
7 you, Jennifer, that's exactly -- you should  
8 definitely come to all of our workgroup meetings  
9 because that's exactly the direction we're going  
10 in.

11 You're right on in line with what we're  
12 doing in the chapter of practicing innovation, as  
13 well as the chapter of realizing innovation that  
14 we're capturing not only strategies for, you know,  
15 the universities and communities, local  
16 communities, but also strategies for corporations,  
17 large and small.

18 And that is, unconscious bias, is one  
19 that we're going to be addressing as well, as to  
20 why it is a good plan; it's a profitable plan to  
21 have diverse groups and what that brings. So, you  
22 know, it's not asking people to just, you know, be

1 these martyrs to help us.

2           This is what helps our society to grow.  
3 It's what helps the organizations, the companies  
4 to grow, is to bring in this diverse group of  
5 inventors of innovators. And our strategy is  
6 going to also incorporate that as to how to do it,  
7 what you should be looking for, but why it's  
8 profitable to you as well.

9           And, as I mentioned, the measuring and  
10 the metrics for success at each level, and part of  
11 that is the maturity assessment of not every  
12 organization starts at the same level. So we will  
13 have an assessment for any organization, be it a  
14 large university, or you know, independent  
15 inventor, or a large corporation, as to where are  
16 you on the spectrum of being inclusive?

17           Give them that as their start, as to  
18 where they are to know how to go and not be  
19 discouraged, you know. They feel like they  
20 haven't taken the same steps as, you know, a  
21 different organization but go at their own speed,  
22 as opposed to having this blanket measure that a

1 lot of organizations would not be able to be  
2 successful using; go at their own speed, every  
3 improvement counts and will get us to the spot  
4 where underrepresented is not a term to be used in  
5 the IP community and the innovation ecosystem.

6 MR. CHAN: Yeah. I have a question and  
7 some comments as well. So thanks for that,  
8 Valencia. It was a great update. I'm also really  
9 excited about all of this as well. So one thought  
10 is I know last year we had the bid kind of launch  
11 and the unveiling of the council member.

12 Just thinking about the significant  
13 changes in not only the Administration but also  
14 the office leadership, I wonder whether or not it  
15 would make sense to have kind of a renewed  
16 invitation for different entities to partner. My  
17 suspicion is that you may get a different response  
18 given all of the changes that happened.

19 So that was one thought, whether or not  
20 we have kind of thought about, maybe kind of  
21 reengaging or reinviting folks to partner with  
22 NCEIA [sic]. The other one is -- and I think

1       you're well aware of some of these organizations,  
2       but there are a few that come to mind.

3                 It's great that we're partnering pretty  
4       closely with NSBE. And I agree some of the  
5       programs they put out have been fantastic, as  
6       Robin has mentioned. But I also wonder about  
7       invent together, I wonder about the newly created  
8       US IP Alliance, where there is actually quite a  
9       bit of overlap between the Innovation Expansion  
10      Council and the Board members for this new  
11      organization that's focused on innovation  
12      strategy.

13                And then the last one is, you know, as  
14      we're expanding beyond just patents and thinking  
15      more about innovation expansion, you know, I think  
16      about leveraging other expertise with groups like,  
17      A Needle Bee and Spark Loud, and these groups that  
18      are focused on STEM education or other things.

19                And that kind of leads me to my last  
20      point, which is I think we have been pretty  
21      intentional and deliberate about calling this  
22      innovation expansion and not limiting or

1       constraining ourselves to just patents. And if  
2       that's true, I think we just -- we would be wise  
3       to consider all of the other innovation pathways.

4               And I think about, you know, I think  
5       about the open source community. I think about  
6       collaborative research. I think about sponsored  
7       research that are all about open ecosystems, open  
8       research types of environments.

9               And that could be something we also  
10       think about as well, not just patents, but also  
11       making sure that we kind of support and facilitate  
12       the open source community and other avenues for  
13       innovation.

14              So that was a mouthful, but just a few  
15       comments I wanted to make for that area.

16              MS. MARTIN-WALLCE: Thank you. I  
17       appreciate you bringing those up. And, yes, I can  
18       give you some updates on it. So, first to start  
19       with, our working group has grown since our first  
20       event. We will not stop adding anyone who is  
21       willing to roll their sleeves up and help us get  
22       this done.

1                   So we actually have grown quite a bit in  
2                   our working group that's working with us not only  
3                   on a strategy but putting some events together.  
4                   We do plan on having an event around this  
5                   strategy.

6                   But part of what we're doing is with the  
7                   Innovation Chats, with the events that we're  
8                   having the partnerships that we're building is to  
9                   make sure that no one forgets that this is still  
10                  just as strong as when we first started and that  
11                  we're not stopping, to keep it in the forefront of  
12                  everyone's mind.

13                  And we are partnering, actually, with  
14                  several that you have talked to. I have,  
15                  actually, with USIPA, one of the leads in that was  
16                  the Vice Chair, I believe, Scott Frank. I have  
17                  already had several meetings with him about how  
18                  we're partnering the two efforts together.

19                  And I'm happy to say Scott Frank is also  
20                  a member of the NCEAI. So we are building  
21                  partnerships left and right, not only through  
22                  NCEAI, but in all of the areas, the regional

1 directors, the different organizations within our  
2 agency have also developed partnerships towards  
3 expanding innovation and what they're doing.

4 So we have, actually, are constantly  
5 building partnerships and we're looking to build  
6 even more. Because, as I mentioned, you know,  
7 when we publish this really is -- the hard work is  
8 to get people to adopt it.

9 So we're looking to partner with  
10 everyone who is helping us to get out and not only  
11 promote it but also help every aspect, every  
12 corner of this nation to educate them on it and to  
13 adopt it as their own to build successes.

14 So you're exactly -- thank you for  
15 bringing those up, those are areas. And I'm  
16 letting everyone who can hear me now know, please,  
17 contact us. We would like to partner, not only  
18 through NCEAI, but as I mentioned, other areas of  
19 the USPTO in developing more inventors and being a  
20 more inclusive environment.

21 And I missed the last one, the last  
22 comment you made. I don't think I commented on

1 that. Can you remind me again?

2 MR. CHAN: Yeah. I was just saying,  
3 just as we have expanded kind of the charter of  
4 the innovation expansion mission, just to make  
5 sure that we also include things, like, open  
6 source community, collaborative research --

7 MS. MARTIN-WALLCE: Yes.

8 MR. CHAN: -- other paths for  
9 innovation.

10 MS. MARTIN-WALLCE: Thank you. Thank  
11 you so much. Yes, that's an area we're looking  
12 into and we're going to further. And you have  
13 been very, very helpful and very supportive in  
14 leading the way on that. So, thank you, very much  
15 for leading the way in that area.

16 But, yes, that is an area that we're  
17 look at as well. So we have a lot to do. And I  
18 have the energy to do it and so does my team.

19 MR. CHAN: Thank you. Well, we're all  
20 glad you're in charge. (Laughter)

21 MS. MARTIN-WALLCE: Thank you.

22 MR. CALTRIDER: Valencia, I also have a



1 question. And, certainly, I'm glad you're in  
2 charge, as well, because I think these initiatives  
3 are important to innovation in the country and to  
4 the U.S. economy.

5 I have two questions: One is my own;  
6 and one we have received from one of the observers  
7 today. The question that's my own is, you  
8 mentioned metrics and developing metrics. And,  
9 you know, I'm really quite curious on your  
10 thoughts on how do you define success, both  
11 intermediate success goals, as well as your longer  
12 term success? What does success look like?

13 And let me ask both questions, and then  
14 I'll put myself back on mute. The other question  
15 is: Innovation is clearly influence by access to  
16 data and will the USPTO commit to remain a global  
17 leader in empowering innovation by expanding and  
18 improving free access to USPTO data?

19 MS. MARTIN-WALLCE: Two actually great  
20 questions. And I can tell you that is one of the  
21 biggest challenges across this entire system is  
22 the sharing of data. It is not something that's

1       been done readily when we're talking about  
2       demographics.

3               And it's something that is part of the  
4       strategy of how we can help each other and with  
5       the sharing of data to take, you know, the stigmas  
6       away from not being, you know, where we should be  
7       right now and start thinking more of it as, okay,  
8       it's an opportunity to grow and to be more  
9       successful.

10              It's an area that -- anyone listening --  
11       that's an area that we are really challenged with  
12       and would love to get more information, more ideas  
13       from others. The working group has been working  
14       on that, but a lot of the ideas are going to be  
15       brand new. And we will have to, once again, as  
16       you were asking us, even the first question is,  
17       how we're going to measure the success?

18              Really, it's not going to be just one  
19       big look at it, a high-level look. It really is,  
20       as I was mentioned before, you know, going into  
21       maturity assessments within each organization and  
22       seeing the steps that they are making.

1                   We have at the USPTO several areas that  
2 we're looking at with the progress of potential  
3 reports. And Andy, too, who is also on the  
4 strategy team and our chief economist here, who  
5 has been looking into more creative ways of how  
6 are we going to measure, and how are we going to  
7 collect the data in order to measure?

8                   One of the areas that we talked about a  
9 little bit that we're developing is looking, how  
10 do we look at our region and compare it to our  
11 inventors, but and see where we need to grow  
12 within the regions of the country?

13                   It's a struggle. It's a big challenge  
14 and I absolutely am looking for as much help as  
15 possible in how we can do that, so if anyone has  
16 had any success. And I can just tell you for  
17 myself, as I was researching organizations that we  
18 were inviting on to the Council, there aren't a  
19 lot of numbers out there. There is not a lot of  
20 data out there, so it is an area of a greater  
21 challenge for us.

22                   MS. MAR-SPINOLA: This is Julie. So on

1 the issue of sharing data, particularly, in this  
2 area of innovation expansion, diversity, you know,  
3 this particular topic, I think that that has  
4 always been one of the hurdles for not overcoming  
5 these issues.

6 Because, for example, major or large  
7 employers don't want to share their information  
8 about their employee stat. And I'm not just  
9 picking on the large ones, but they have a lot of  
10 data. Right?

11 MS. MARTIN-WALLACE: Yes.

12 MS. MAR-SPINOLA: So I would encourage,  
13 in the name of transparency, for the Patent Office  
14 to find a way to share the information not only  
15 for -- because we need it in order to accurately  
16 and honestly assess the issue and how to improve,  
17 and even to form the strategy that can be  
18 effective.

19 But also I think it's important because  
20 we need to have a dialogue. Right? So for, to  
21 receive, to put out questions, to receive some  
22 comments is not going to be enough. There has got

1 to be a comment about -- a comment about a  
2 comment, right, or a comment about the statistic.

3 That way when we talk about someone  
4 being able to recognize or see someone familiar to  
5 them, they can at least have an opportunity to  
6 express the diversity that actually -- right? And  
7 so I would encourage, to the extent possible, and  
8 when it's available is for the Patent Office to,  
9 as part of their strategy is to share the data so  
10 that folks can contribute to that discussion.

11 MS. MARTIN-WALLCE: Thank you. Yes, I  
12 agree with you completely.

13 MR. BROWN: So, if we have a second, and  
14 this is I think fantastic to lowering the bar and  
15 getting more people involved in invention and  
16 innovation. Have you sought inventor groups or  
17 tried to get some inventors involved in the  
18 mentoring process, or have you seen any models in  
19 your -- referred to any here and what works?

20 MS. MARTIN-WALLACE: We actually have,  
21 thank you, another great question. We have looked  
22 into that, the mentoring and coaching at every

1 stage on the path. And we have a couple of  
2 toolkits that we have relied upon and looking to  
3 more, so that is an area that we are looking to.

4 Or, as I said, you know, we are taking  
5 all and any comments and suggestions, but it is an  
6 area that we are looking to have as part of our  
7 strategy at every, as I said, every stage.

8 MR. BROWN: So I'm sure you're aware.  
9 But is the 30-odd U.S. national inventor groups  
10 sort of self-organized and independent?

11 MS. MARTIN-WALLACE: Yep, yep.

12 MR. BROWN: But they do a lot of this  
13 organically within their groups and possibly a way  
14 to elevate understanding and to reaching out to  
15 more people in their own communities, you know,  
16 supported by the Patent Office could be a great  
17 way to, you know, integrate inventors into the  
18 process of mentoring investors, as well as, you  
19 know, I guess getting a quick start on that  
20 process. I would be happy to do anything to help  
21 facilitate that with you so.

22 MS. MARTIN-WALLACE: Absolutely, thank

1       you. I really appreciate that. So we have  
2       partnered with some inventor type of  
3       organizations, or non-profit organizations, as  
4       well, in that direction.

5                 So, but, I would be very happy for us to  
6       meet and talk more about it, Dan, about your  
7       experience. But, yes, it is an area that we have  
8       partnered with inventors. Because, you know,  
9       that's what this is all about.

10                One of the things that -- comments that  
11       we have received when we first started the NCEAI,  
12       and have still till this day, is we have a lot of  
13       large corporations, big universities. That's  
14       great and all, but what about the independent  
15       inventor? What about the small business?

16                They are represented not only on our  
17       Council, but they are represented in our working  
18       group and their ideas, their -- what they need to  
19       fill the gaps will be represented in our strategy  
20       and we're very happy to partner with them, as  
21       well, because we will need them. We have, like,  
22       as I mentioned, several already, but we will need

1       them in order to get the strategy adopted and have  
2       others to use it.

3                   It's the local communities that are  
4       going to make all of the difference. It's going  
5       to be the small inventors. As I mentioned before,  
6       it's going to be the practitioners as well, who  
7       are going to make the difference not just about  
8       large agencies, large corporations, it's about  
9       every person, every individual, as well as every  
10      organization within the IP community.

11                   MS. MAR-SPINOLA: So, and I might have  
12      misheard this. But I thought I heard Dan say,  
13      "lowering the bar." I just want to clarify that  
14      we're talking about raising the bar, particularly,  
15      about the analyses and making -- being more aware  
16      and sharing the data so that we can actually go  
17      over the bar at a very, very, very high level to  
18      break this barrier --

19                   MR. BROWN: Sure.

20                   MS. MAR-SPINOLA: -- that has been  
21      around for a lifetime. So I just wanted --

22                   MR. BROWN: You know, it's sort of, you



1 know, to the data, not lowering bar overall.

2 (Laughter)

3 MS. MAR-SPINOLA: Yes, thank you.

4 MR. BROWN: Yes.

5 MS. MARTIN-WALLACE: Absolutely,  
6 absolutely. And, in fact, one of the things that  
7 I had a conversation with an amazing inventor,  
8 Rick Hamilton, who is also part of our  
9 partnership, as well, who gave me this great  
10 comment that stays in my head. It says, "Talent  
11 is equally distributed, but it's the opportunities  
12 that are not."

13 MR. BROWN: Sure, yep.

14 MS. MARTIN-WALLACE: And that's what  
15 we're going for --

16 MR. BROWN: Yeah.

17 MS. MAR-SPINOLA: So, Jennifer Camacho,  
18 we have -- thank you, Valencia. We have one  
19 minute before break. Any parting words?

20 MS. CAMACHO: I don't know how I can top  
21 that from Valencia. (Laughter) So I'd like just  
22 to thank all of my fellow PPAC members for the

1 helpful comments and questions today, certainly,  
2 thank Valencia for all of the feedback and also  
3 the questions from our observers. So I do  
4 appreciate the robust discussions. This is  
5 certainly one that will continue.

6 MS. MAR-SPINOLA: Okay, thank you. So  
7 we are 10 [SIC] o'clock, on time for -- and did  
8 someone want to say something?

9 (No response)

10 MS. MAR-SPINOLA: Okay. So we're on  
11 time for a 10 minute break. If we can come back  
12 at 1:10 p.m. Eastern, and we'll resume. Thank  
13 you.

14 (Recess)

15 MS. MAR-SPINOLA: Thank you, everyone.  
16 Let's resume. So far we have had, I think, at  
17 least for me, a very robust discussion on these  
18 topics. And so I look forward to, now that we  
19 have a little bit of a break, to be reenergized.  
20 And, of course, it won't take much because we have  
21 Jeremiah Chan and Jamie Holcombe speaking next.

22 So let me hand it over to Jeremiah.

1                   MR. CHAN: Thank you, Julie. I hope  
2 that everyone can hear me.

3                   MS. MAR-SPINOLAA: Yes.

4                   MR. CHAN: All right. Hello, everyone,  
5 I'm Jeremiah Chan. And this year I have the  
6 privilege of chairing our Subcommittee on AI and  
7 IT. I also get to partner with an impressive team  
8 of PPAC members: Steve Caltrider, Barney Cassidy,  
9 and our new PPAC member, former Chief Judge Susan  
10 Braden.

11                   We're excited to continue our close  
12 collaboration with the office on Implementing a  
13 Robust and Scalable IT Infrastructure and adopting  
14 the latest and greatest AI technology to improve  
15 efficiency and ultimately the durability and  
16 quality of patents.

17                   The investment in data management,  
18 technology, and tools is not only relevant to  
19 improving the quality of patents in examination,  
20 as we have talked about today, but also patents  
21 challenged ion post-grant reviews, which I think  
22 will be at most importance.

1           As we described in last year's annual  
2           report -- and if you haven't looked at it, I would  
3           encourage you to do so -- the office has already  
4           made big strides to improve its IT systems and  
5           harness the power the AI.

6           While many government agencies and  
7           private sector companies encounter great  
8           difficulty during the pandemic in transitioning  
9           from an in-person to virtual work environment, the  
10          PTO and its thousands of examiners went fully  
11          virtual without skipping a beat and it was  
12          recognized for its accomplishments.

13          Jamie Holcombe was named the Artificial  
14          Intelligence Government Executive of the Year, and  
15          many organizations look to the PTO as the gold  
16          standard for virtual work.

17          On the policy side, the office was  
18          actively engaged with IP specialists and the  
19          public to facilitate information exchange and  
20          collect feedback on a variety of AI-related  
21          topics. They also enhanced their AI portal with  
22          published comments from the RFCs and lots of

1 helpful resources and information for the public.  
2 And, again, I would encourage you to visit the  
3 portal on the USPTO website.

4 Last year, AI and IT were two separate  
5 subcommittees. The AI Subcommittee was brand new  
6 to both PPAC and the office. And so we took some  
7 to ramp up and learn about fast-moving  
8 initiatives, like, auto classification and  
9 enhanced patent search. While the IT Subcommittee  
10 focused on building a resilient, secure, and  
11 scalable infrastructure, a strong connection  
12 between IT and AI became exceedingly clear over  
13 the course of the year.

14 And that's why this year with Julie's  
15 leadership, we have decided to merge the two  
16 subcommittees, which I think has been a fantastic  
17 idea. I have already observed efficiency gains  
18 and increased collaboration across the agency. I  
19 think the office is well-positioned to deliver  
20 even great impact than last year, and we're very  
21 excited to share our ambitious plans with you all  
22 today.

1                   With that, I'm going to hand it over to  
2                   Jamie Holcombe and also Matt Such. and Coke  
3                   Stewart, after him. Here you go, Jamie.

4                   MR. HOLCOMBE: Well, thank you very  
5                   much, Jeremiah. I really appreciate the  
6                   opportunity. One of the things we want to make  
7                   sure of that everyone knows are our three  
8                   priorities for the next year or 18 months and they  
9                   are the following: Cybersecurity; moving to the  
10                  cloud; and resiliency.

11                  And I wanted to introduce those in that  
12                  order because what we are doing with cybersecurity  
13                  is ensuring that we remediate any known  
14                  vulnerabilities and we continue our vigilance not  
15                  only for external threats, but also we're looking  
16                  at our insider threats, the ability to work  
17                  together very securely with encryption and making  
18                  sure our data at rest is secure.

19                  Knowing that, we're also going to be  
20                  moving to the cloud. Now that's going to take a  
21                  lot of analysis and understanding of what  
22                  application actually belong out in the cloud, and

1       what application will remain inside our data  
2       center walls.

3                   And, finally, I wanted to say in our  
4       resiliency efforts what we are doing is creating a  
5       data center, another alternative place to work,  
6       for all of our operations in the Manassas,  
7       Virginia area.

8                   This will supplement our Alexandria data  
9       center to the point where we have continuous  
10      operations. And if anything happens in one of the  
11      sites, the other site will be able to continue our  
12      operations throughout with no break in continuity.

13                   That is our goals. And those are the  
14      goals for the next fiscal year, as well, for the  
15      next 18 months. And unless anybody has any  
16      questions, I wanted to get right on to the  
17      follow-on updates.

18                   MR. CHAN: I think we are good to  
19      proceed, Jamie.

20                   MR. HOLCOMBE: Very good. I believe  
21      that will be me. We can move forward to the next  
22      slide. (Slide)

1                   MR. STRANSKY: Is it me or is the AI  
2 slide before that?

3                   MR. SARNA: I think in the sequence of  
4 this slide, Bill, we have patent search, we have  
5 IT followed by AI.

6                   MR. STRANSKY: No problem. I'll  
7 introduce myself. My name is Bill Stransky. I am  
8 the patent product lead, and I am going to talk to  
9 patent search. So we have moved to build a very  
10 resilient new tool to replace our legacy aging  
11 internal tool. And the new tool is built on a  
12 foundation of new technology; it's expandable.

13                   And in this case, in our 2020  
14 milestones, we have actually ingested 39 million  
15 in the Chinese, European, Korean, Japanese, French  
16 and World Intellectual Property Office documents  
17 into the search tool. Those are complete  
18 collections, complete images and documents and  
19 English translations.

20                   So we have really provided a one-stop  
21 shop for all patent information to the examiners  
22 today. We have also, in 2020, as Jeremiah alluded



1 to, we have had a program to provide artificial  
2 intelligence to this tool.

3 So, as the examiners are searching,  
4 they're giving AI capabilities to help them find  
5 the needle in the haystack faster, or to help them  
6 get more haystacks to help to see to find the  
7 references that he needs.

8 So we have had over 300 examiners in our  
9 user center design. That's looked over 700  
10 applications and we have gotten some great results  
11 out of that. And we're going to build upon that,  
12 as we are right now.

13 So our 2021 outlook is, you know, we  
14 have these IT themes that we kind of marry up to  
15 to ensure that we're on the path. So we see the  
16 search tool and the AI capabilities increasing  
17 efficiency, giving better information back to the  
18 examiner.

19 We're reducing costs by removing the  
20 legacy systems and building on newer technology,  
21 therefore kind of coming away from aging  
22 technology. This year we're going to make at

1       least one AI capability to all examiners and it's  
2       going to be very much integrated in the tool.  
3       It's not going to look like a plug in. It's going  
4       to be a user experience that the examiners are  
5       used to.

6                So, as I mentioned, we want to roll out  
7       the search tool to all examiners and lay the  
8       foundation and retire those legacy tools; that  
9       tool was established in 1999. We want to complete  
10      the ingest of all of the foreign documents and  
11      tech documents and we want to deploy those  
12      capabilities to all of the examiners in '21.

13               And then, right now we're looking at a  
14      cloud solution using the code base and the  
15      technology infrastructure of our search tool to  
16      offer to the public. So we have some ambitious  
17      goals in '21 and we feel we're going to make some  
18      great inroads to get there.

19               Does anyone have any questions on patent  
20      search? (NO response) Thank you. Next slide  
21      please.

22               MR. CALTRIDER: Bill, this is Steve

1 Caltrider. I apologize. I couldn't get off mute  
2 quickly enough to ask my question on search.

3 MR. STRANSKY: Sure, no problem.

4 (Laughter)

5 MR. CALTRIDER: I do have a question  
6 search and that is, have you done kind of -- you  
7 indicated that the AI is seamless in the sense  
8 that the examiners -- it will be the same  
9 interface and same interaction with the examiner  
10 --

11 MR. STRANSKY: Yes.

12 MR. CALTRIDER: -- in terms of doing the  
13 search. Have you done a robust test on, you know,  
14 is it a higher quality search, or is it a higher,  
15 more efficient search, or is it both, or do you --  
16 can you just speak a little bit about the results  
17 of --

18 MR. STRANSKY: Sure.

19 MR. CALTRIDER: -- of the AI  
20 contribution to that search?

21 MR. STRANSKY: Sure. And I think Matt  
22 is going to allude to it later on in the

1 presentation. But I think, first, I just want to  
2 talk about the actual program. Right? So we have  
3 what we call a plug-in, which is kind of a  
4 prototype to make sure that we're validating the  
5 approach and the technology, the model technology  
6 underneath the activity. And we have provided  
7 that to 300 examiners.

8 Our plan in '21 is to use a much loosely  
9 coupled engagement with our AI solution to make it  
10 seem like a seamless feature within the tool, even  
11 though it's not within the boundaries of the  
12 search tool.

13 And that's using an SDK integration. So  
14 it's almost a way in which the examiners  
15 experience is that they're using a button and they  
16 don't know that that button is in a different  
17 cloud environment with a different code based in  
18 the search tool.

19 With respect to the results, we offered  
20 -- you know, if you think about two major  
21 features, here is one, take a list of results and  
22 then anchor it with an information set and then

1 sort the information according to what you anchor  
2 it to; so, therefore, kind of bubbling up the ones  
3 that are most like what you anchor it to. And so  
4 it's kind of allowing the needles of a haystack to  
5 come up to the top.

6 The other feature that we have is kind  
7 of an expand feature, find more like this, which  
8 then will allow an examiner, if he or she is in  
9 kind of a dead-end to kind of find out of it.

10 Most of the findings from both cases  
11 have been subjective analysis of that. What we're  
12 planning on doing in '21 is have much more of a --  
13 both the subjective analysis, but actually  
14 objective analysis where we're actually tracking  
15 how the tool is being used and the result output  
16 of the tool.

17 So we have some preliminary subject  
18 information. We're hoping to find much more  
19 concrete decisions to make that proper value  
20 justification to continue the program forward. So  
21 we're constantly measuring as we move forward.  
22 And right ow we have gotten some very positive

1 feedback on the -- from the 300 examiners using  
2 the 700, again, 700 applications.

3 MR. CALTRIDER: And if I could just ask  
4 a follow-up question?

5 MR. STRANSKY: Sure.

6 MR. CALTRIDER: Will public search, when  
7 it becomes available have the same features, the  
8 AI features, as well as the other features?

9 MR. STRANSKY: We haven't explored the  
10 -- I don't think it -- initially, it would not.  
11 Right now, we're not sure if the AI search is that  
12 is ready for primetime. I think it was always the  
13 intention of the previous undersecretary to offer  
14 the AI tool externally to the public.

15 I think there is a lot of due diligence  
16 for us on this side of the table to know what  
17 those features do and how that model can be in  
18 place, and how it's going to be leveraged.

19 So it is part of the longer term plan.  
20 I don't know if we -- I can tell you particularly  
21 when that would be implemented. Because right now  
22 we're still kind of getting our feet under us with

1       respect to AI. We're going to learn a lot more as  
2       examiners use it.

3                   MR. CALTRIDER: Thank you.

4                   MR. SEIDEL: Bill, I would just add  
5       going back to the availability of public search in  
6       the cloud. To start, to your point about AI and  
7       the future, to start, it will just be U.S.  
8       Patents and publications will be available and in  
9       search in the public search aspect.

10                   At this point, we don't have immediate  
11       plans for foreign image and tech data that you  
12       shared earlier, is that correct? Just trying to  
13       manage the expectations about what will be  
14       available --

15                   MR. STRANSKY: That is correct.

16                   MR. SEIDEL: -- at the end of this year,  
17       right.

18                   MR. STRANSKY: I think we're going to  
19       offer a much more modern interface. And, again,  
20       if people use our patent search, again, it was  
21       built on the foundation from the late '90s, early  
22       2000s.

1           Okay. I'm up next again with Patent  
2           Center. Patent Center is our eCommerce portal, in  
3           which we engage with our Applicants and people who  
4           are in the prosecution pathway, and people who  
5           want to look at data that we have in-house, right?

6           So, to date, we have trained about 6200  
7           users in April, and we're receiving very positive  
8           feedback on the training and the capabilities. We  
9           continue to address defects from user feedback and  
10          we're improving the DOCX handling and customer  
11          experience.

12          So DOCX is definitely the future of our  
13          agency with respect to -- actually, structured  
14          text is the future of the IP/IT activities.  
15          Because the more structured text that we have, the  
16          more we can allow the computers to provide  
17          information to the end users, the knowledge  
18          workers in this pathway and to allow for quality  
19          to happen. Right?

20          Our output is a structured patent. The  
21          more we capture that structured data at the time  
22          of creation, either it be the Applicant, the



1 attorney, the examiner, and the more we manage  
2 that data all of the way through, the better our  
3 publications will be, better our examinations will  
4 be, better our responses will be.

5           So we have the DOCX program. We're  
6 taking a lot of feedback and we are working that  
7 through in 2020. We have added additional  
8 capabilities into the tools: Supplemental  
9 examination; additional ePetitions, where people  
10 go online and get a petition decision immediately  
11 when they enter all of the facts of the case.

12           So we're moving forward and we have had  
13 some good progress in 2020 on Patent Center. Our  
14 2021 outlook, the themes, again, these are the  
15 things that the agency kind of puts forth across  
16 all of the business units to kind of marry to. So  
17 we wanted to manage and modernize and streamline  
18 patent application processing, a unified user  
19 interface for submitting and management and  
20 researching patent applications.

21           So it's definitely a goal for you to  
22 have a one-stop shop and not a disparate

1 experience when you're dealing with the Patent  
2 Office. We want to continue to add functionality  
3 from EFS-Web and Private Pair into the tool.

4 We are continuing to receive feedback in  
5 improving the systems and usability. And we're  
6 going to continue to prototype DOCX functionality,  
7 not just with initial filings, but other filings.

8 So, again, we can use those other  
9 filings and use that text to better examination,  
10 better improved prosecution and improve  
11 publication. Does anyone have any questions about  
12 Patent Center? (No response)

13 The one thing I'll say with Patent  
14 Center is really need more people to try the DOCX  
15 functionality. It is the future of our agency.  
16 We believe we need your feedback and your  
17 improvements; it is the foundation.

18 We have taken surveys. We know that  
19 DOCX is a foundational file format in which people  
20 exchange information and manage information. When  
21 we first did EFS-Web, we started with pdf in the  
22 early 2000s. We know that that's expanded to DOCX

1 and other formats.

2 So, please, take the time to try it out,  
3 take the training and use the tool.

4 MR. BROWN: Sorry.

5 MS. MAR-SPINOLA: No, go ahead, Dan.

6 MR. BROWN: Well, Bill, I have a  
7 question. So this was exciting for me because I  
8 teach hundreds of students a year how research  
9 patents. I have two questions, one, how does this  
10 system compare to some of the current systems in  
11 the private marketplace out there that they are  
12 subscription-based?

13 MR. STRANSKY: The Patent Center is the  
14 filing and where we send out our Office Action  
15 correspondence. We will have linkages to the  
16 search, the public search tool.

17 MR. BROWN: Yep.

18 MR. STRANSKY: The public search tool in  
19 the new environment hasn't been deployed to the  
20 public yet. I think that if I can give maybe a  
21 high level view of it, as Mr. Seidel said, we  
22 will have both the public patents and the

1 published applications from the U.S. in that, a  
2 complete collection of that.

3 I think what you're going to get ion our  
4 tool that might be a little bit different than the  
5 tool that, say, offered by Google or that you can  
6 buy from a Thompson's, Reuters, or a Lexis-Nexis  
7 is probably a much more stringent, refined, duly  
8 in operators and proximity searchers.

9 So we provide tools for examiners to  
10 find particular words and phrases and linkages  
11 between words in applications, where most search  
12 tools out of the box, they're providing almost a  
13 kind of a relevancy perspective where we want to  
14 give our examiners:

15 Is that word in this collection or this  
16 listing, or is this phrase in the collection and  
17 listing? Whereas, other tools are saying, you put  
18 in cat, so I'm consider feline and lion and  
19 various words, and there is going to rank those as  
20 we go on.

21 We are very prescriptive about finding  
22 the item. So it's going to be much more of a tool

1 that's leveraged by examiners, which when you look  
2 at your file wrapper you're going to see the  
3 search notes associated with them.

4           So you'll be able to do much more of the  
5 experience that the examiner does when he or she  
6 is searching; whereas, the private tools are  
7 looking for researchers to leverage those  
8 capabilities.

9           So our capabilities are very much, let's  
10 find the information in the collections itself;  
11 whereas, the tools are kind of, I'm going to look  
12 probably in a different manner and then drill  
13 down.

14           So I think that would probably be one of  
15 the distinctive differences between the commercial  
16 tools and our tools. I haven't done the full  
17 market research. I'm just giving you kind of my  
18 humble opinion thing based on my experience in  
19 both forms.

20           MR. BROWN: Well, sure, and I can give  
21 you feedback on the market stuff. I have been  
22 using them for years. But, and then, so the

1 Patent Center is much like the online when you  
2 bring students who are involved in the provisional  
3 applications online and all of that?

4 MR. STRANSKY: Correct.

5 MR. BROWN: And I'm going to say that  
6 that works very well. That's really I think a  
7 great way to bring people into the process. And I  
8 think that you have a great job.

9 MR. STRANSKY: We generate 97 percent of  
10 our filings come electronically. And I think  
11 close to 80 percent go out electronically. So we  
12 do have a good adoption rate. I think the new  
13 tool is going to offer a lot of features.

14 I know change is sometimes hard for  
15 people, but we would really like everyone to kind  
16 of try the new tool and give us the feedback so we  
17 can build the tool that's going to best suit you  
18 and your needs.

19 MR. BROWN: So if I go to the Patent  
20 Office now, am I'm going to the old tool or the  
21 new tool?

22 MR. STRANSKY: You have a choice. We're

1 going to have an overlap and you'll have a choice.

2 MR. BROWN: Okay, good. Well, I'll look  
3 out for it.

4 MS. MAR-SPINOLA: Bill, this is Julie.  
5 I have a question for you is: I have heard you a  
6 couple of times now, at least, to ask folks to use  
7 the new tool and provide feedback. So my question  
8 is, what are the outreach efforts to, you know, to  
9 let folks know that the Patent Office would like  
10 them to use and provide feedback on the new  
11 feature?

12 MR. STRANSKY: I should know and  
13 memorize the URL off the top of my head to promote  
14 it, but I don't have that. But we have a website,  
15 a Patent Center website, it probably comes right  
16 off the homepage. If you just, say, file patent  
17 application, you'll see the Patent Center  
18 information.

19 There will be training and materials  
20 that you can read about the new tool. I think  
21 what we can do is probably provide those links to  
22 the moderators so they can put it in the chat

1 maybe, or a way to kind of get it out to the  
2 public before the end of the day. But right now I  
3 would say that the website. But I apologize for  
4 not knowing that off the top of my head.

5 MS. MAR-SPINOLA: And that's fine.

6 MR. CHAN: It's [uspto.gov/patents/apply](http://uspto.gov/patents/apply).

7 MR. STANSKY: Thank you so much,  
8 Jeremiah, for saving me on that one. (Laughter)

9 MS. MAR-SPINOLA: Thanks, Jeremiah. So,  
10 if I can characterize that that's a little bit  
11 more inbound. Are there any outbound outreaches?  
12 For example, I was thinking, is there a way to  
13 communicate with registered practitioners about  
14 this directive in the office?

15 MR. STANSKY: Yeah, we have a variety of  
16 communication channels. We have -- I don't want  
17 to use the word "listserve" -- but we do have a  
18 collection of email addresses that people have  
19 signed up for, and we also have eCommerce  
20 notifications that's usually a page right off the  
21 link that Jeremiah said.

22 So we do have different channels that we



1 have managed over time, and we have been using  
2 those channels. We have been engaged with our  
3 Chief Communications Officer to get information  
4 out also.

5 And, you know, any forms that you can  
6 provide where you can get that communication we'll  
7 get you, what I'll call, a media packet, since I  
8 am an internal savvy person, who clearly is not  
9 involved in outside communication since I can't  
10 remember any of these items.

11 So I think we'll be happy to kind of  
12 provide the information so PPAC can help get the  
13 word out, and we will at the end of this provide  
14 some of those linkages. But we do have those  
15 channels in place.

16 MR. SEIDEL: Hey, Bill, if I could just  
17 jump in real quick, piggybacking on Jeremiah's  
18 link. If you go one step further, after you get to  
19 /patents/apply, there is a backslash Patent  
20 Center, and there is a treasure trove of  
21 information on the webpage.

22 Some of the feedback, some of the bug

1 fixes, we have taken care of. As far as outreach,  
2 interestingly, as we speak, we're providing  
3 training at this time via webinar. I think  
4 to-date we have had nearly 7,000 folks tap into  
5 that training to learn about the functionality in  
6 Patent Center, as well as, how to navigate the  
7 DOCX submissions.

8 So, today, our next one is two weeks  
9 from today, February 25th, from 1 to 2, so  
10 encourage users to take a look at that site. And  
11 then, the last thing I would say is, one of the  
12 things in terms of external awareness is a  
13 potential blog.

14 I know we have talked about things in  
15 the past. But that might be an avenue to further  
16 things, particularly, as we get closer to, you  
17 know, the end of the calendar year with our fee  
18 package and having a surcharge planned for those  
19 that do not file in DOCX in early 2022.

20 MR. FAILE: Julie, also if I can jump in  
21 and echo a point that Bill just made about  
22 anything PPAC can do to help us publicize this

1 Patent Center, anything else we do.

2 And maybe even going a step further,  
3 Julie, it might be a good conversation, maybe a  
4 different venue, a conversation about how can we  
5 partner up on more communications for what the  
6 office is doing, whether it's trying to get more  
7 input through our fellow Register Notice, comment  
8 period, and publicizing some of the other things  
9 we're doing and getting some more input directly.

10 And I think PPAC is uniquely positioned  
11 with the reach that you guys have to help us to do  
12 that not only in Patent Center but in probably a  
13 lot of different things that we do, so maybe  
14 taking a little bit more of a higher level look at  
15 communication structure, maybe a communications  
16 part of a subcommittee and trying to develop  
17 different ways we can partner together to do  
18 outreach and get information into the office. I  
19 think that could be something to flag for later.

20 MS. MAR-SPINOLA: So, thanks, Andy. I  
21 have made a note of it. Because I do think that  
22 it's a great idea and PPAC is always looking for

1 ways that we can contribute. So since I know I  
2 have asked at least two questions about outbound  
3 communication, we'll take it on. Thanks for the  
4 suggestion.

5 MR. CHAN: Sorry, Steve.

6 MR. CALTRIDER: I'm sorry.

7 MR. CHAN: We'll do a time check. So we  
8 can have you ask your question, Steve. But  
9 looking at the clock I think we have about 15  
10 minutes left and we still have Matt and Coke left,  
11 so just raising that.

12 MR. CATLRIDER: Let me try to ask  
13 quickly. Because we have got a number of  
14 questions about DOCX, and I know there was a great  
15 deal of interest from the public on DOCX. The  
16 first question is: You made a distinction between  
17 DOCX and structured text, can you expand on that  
18 distinction? Does that mean there will be  
19 additional platforms coming down the pike, the  
20 timing of DOCX, and what is really the driver  
21 around DOCX?

22 MR. STRANSKY: I think the driver around

1       DOCX, as I mentioned, is to improve the global IP  
2       community's exchange of data. We, in the office,  
3       have established tools to capture structured text,  
4       some of it in DOCX when we're using MS-Word; some  
5       of it in webpages.

6                I think DOCX is just a subset of  
7       structured text. It is the most prevalent  
8       exchange of structured text in document formats in  
9       the world. We have done surveys with law firms,  
10       corporations, various different businesses.

11               MS-Word is ubiquitous out there and also  
12       open source tools and other word processing tools  
13       output DOCX, as a format; it's an open source  
14       format. So we felt that that was the strongest to  
15       go out there after making that be.

16               I use the term "structured text" because  
17       the further we go down this road, the more the  
18       formats are going to be -- the tools are going to  
19       be less important than the formats. I think that  
20       XML exchange is what happens between computers.  
21       And if your organization is generating structured  
22       text according to the standards in which we can

1 consume it, we can just exchange the data and not  
2 worry about the tools that are producing the data.

3 I think that's happening in a lot of  
4 realms, in a lot of B-to-B and G-to-G type of  
5 situations. And that's where we want to go. It's  
6 definitely where the other offices are going down  
7 that road, too, the other IP offices.

8 So this has been a concept, you know,  
9 since the early 2000s, I think, now is a right  
10 time to move forward with it. And I do believe we  
11 can find a lot of efficiencies in our processing,  
12 and a lot of quality improvements in our  
13 processing.

14 MR. CHAN: Thanks, Bill. Why don't we  
15 proceed?

16 MR. SARNA: Hey, Jeremiah, a quick  
17 question for you. So just doing a quick time  
18 check. We are now at 1:40. Do we want to do the  
19 AIPs first, and then come back to the Data Center  
20 and you as in working, or stick to the format that  
21 we have right now?

22 MR. CHAN: Why don't we stick to it, but

1 let's just all keep an eye on the clock.

2 MR. SARNA: Okay, all right.

3 MR. CHAN: So we can make sure we have  
4 got time for Matt and Coke.

5 MR. SARNA: Okay. All right. Next  
6 slide please. (Slide) Hi, good afternoon,  
7 everyone. My name is Raman Sarna. I'm the  
8 Patents Product Line Lead. The scope of the Data  
9 Center migration is to essentially relocate and  
10 modernize the current facilities in Alexandria  
11 headquarters.

12 The goals of this modernization being  
13 greater throughput and performance, as well as a  
14 60 percent reduction in footprint. In terms of  
15 the key 2020 milestone, the contract for the  
16 primary site in Manassas was awarded in August of  
17 last year.

18 The site design and migration strategy  
19 planning are now 90 percent complete, and on the  
20 security side the vendors self-certified their  
21 compliance within this protocol. And after  
22 construction is complete the agency will conduct a

1 site security assessment prior to providing the  
2 authority to operate.

3 Outlook for FY '21 is to continuously  
4 increase the resiliency of the infrastructure and  
5 product. How do we get there? One, achieving the  
6 authority to operate for Manassas; migration of  
7 the Boyers infrastructure to Manassas; and then,  
8 lastly, moving to NOAAs N-Wave network which will  
9 provide an expected 30 percent cost reduction, as  
10 well as, more (phonetic) time in terms of  
11 (inaudible). Any questions on this slide? (No  
12 response) Okay.

13 Next slide please. (Slide) New Ways of  
14 Working with References. The IT stabilization and  
15 modernization journey that the agency undertook  
16 about two years ago, the goal of this being to  
17 move towards a more efficient way of working and  
18 delivering key milestones along the way; the  
19 establishment of the Agile Delivery Office, which  
20 is providing team's training in the agile  
21 methodology, as well as being the on-ground leader  
22 and moving team to that with working and having



1       them overcome the learning curve.

2                   On the stabilization front, the moving  
3       of infrastructure components to vendor-supported  
4       version so that we are minimizing the risk of  
5       outages, as well as, establishing a roadmap for  
6       moving to the cloud.

7                   On the securities front, we have  
8       achieved a 40 percent reduction in security  
9       vulnerabilities, as well as, improve the training  
10      so that the employees have a greater awareness of  
11      social engineering (phonetic) issues.

12                   Outlook for 2021 -- excuse me -- is to  
13      increase both the value delivery, as well as the  
14      security posture of our infrastructure and  
15      products. How do we get there? The goal is to  
16      move 68 teams to the agile methodology, as well as  
17      using metrics to track their progress, and then  
18      increasing the number of cloud hosted systems.

19                   On the experimental side, we'll be  
20      assessing the costs and the architecture of moving  
21      to the cloud, like Jamie said, it's not a  
22      one-size-fits-all solution. So it will be done on

1 a case-by-case basis, as well as, moving to the  
2 next year-end (phonetic) platform.

3 Any question on this?

4 MR. CHAN: Yeah, just a quick one,  
5 Raman. Both you and Jamie have mentioned the  
6 focus on security, which I think is great.

7 I just wanted to bring up probably some  
8 news that many members of the public noticed  
9 around the solar winds security breach, and maybe  
10 just ask pointedly, like, what was the impact of  
11 that breach on the office knowing that I know it  
12 did affect many federal, local and federal,  
13 agencies, as well as private sector companies?

14 So it would be great if either you could  
15 comment on that or Jamie could.

16 MR. HOLCOMBE: If you don't mind, Raman,  
17 I'll step in her and just describe the fact that  
18 because we do not use solar winds internally at  
19 the USPTO, the breach did not affect any part of  
20 our systems.

21 However, because we are part of the  
22 Department of Commerce, we did reach out and help

1       them with some of their resolutions and some of  
2       the remediation. So we offered our assistance and  
3       our help just like any good brother would.

4               And so through that we always remained  
5       vigilant and we don't say if a breach happens, we  
6       say when a breach happens we'll be able to respond  
7       appropriately. But it did not affect us  
8       whatsoever.

9               MR. CHAN: Great. Thank you, Jamie.

10              MR. SARNA: Okay. Any other questions  
11       on the new ways of working or the Data Center  
12       relocation? (No response) All right. If not,  
13       then I will yield the floor to Matt for the AIPs.

14              (No response)

15              MR. CHAN: Not sure if Matt is on mute.  
16       I can't hear him.

17              MR. SUCH: Good afternoon, everybody.

18              MR. CHAN: There you are.

19              MR. SUCH: Bill and the Committee have  
20       covered a lot of the content on this slide for AI  
21       search. So, in the interest of time, I would like  
22       to just add one other item here. We did talk a

1 little bit earlier about the qualitative and  
2 quantitative metrics for determining success.

3 We're really focusing on things, like,  
4 adoption of the AI into the examiner workflow, as  
5 well the success rate for the tools to be able to  
6 help the examiner identify prior art.

7 So that means we're looking at things  
8 like usage rates, looking at ways to compare AI  
9 versus non-AI capabilities to benchmark against  
10 each other, and a variety of discovery on these  
11 tools in terms of metrics that can offer us  
12 insight into how they're helping examiners be more  
13 efficient and more effective in their search  
14 outcome. So that's kind of a little bit more  
15 detail around the metrics that are being utilized  
16 for the AI search.

17 I'm going to assume that there is no  
18 further questions on this topic and move forward.  
19 But, certainly, if we have some after I finish the  
20 next, we can come back to that. So let's move  
21 forward to the next slide please and discuss the  
22 auto-classification effort. (Slide)

1                   So I think we had a very exciting year  
2                   last year with this. The roadmap is really  
3                   designed around being able to develop a capability  
4                   to be able to classify documents in CPC; and a  
5                   second capability which is looking at a subset of  
6                   those symbols which are claim indicators, and we  
7                   call those claim indicators C\*.

8                   And we're very focused on establishing  
9                   and building upon an ROI, which includes a  
10                  financial component as well as a quality  
11                  component. Our assessments that were done last  
12                  year supported our implementation decision for a  
13                  portion of our applications to utilize AI for  
14                  assigning C\* based on the CPCs assigned to an  
15                  application. And we actually just started that in  
16                  December, so that's a big milestone for this  
17                  effort.

18                  Going into FY '21, we're going to be  
19                  monitoring the quality of those C\*. Since we did  
20                  launch in December, we're very nascent in that  
21                  process, but that is something that's ongoing.  
22                  And we are looking forward to seeing good returns

1       there. And if we continue to have the good  
2       returns, then we're looking at expanding the AI on  
3       our C\* needs for our internal systems.

4               In terms of the full auto-classification  
5       for a full CPC, we did have big milestones last  
6       year as well in that front. We have identified  
7       that the models do provide value in the sense that  
8       they suggest symbols that are very closely related  
9       to the subject matter of applications that are  
10      disclosed.

11             And the steps that we need to take now  
12      is to transform that into the actual selection of  
13      the final symbols that would be assigned to  
14      applications. And that's going to be a big focus  
15      for this upcoming year is the science that needs  
16      to go into making that transformation.

17             We very much view that there will be an  
18      iterative approach in order for us be able to  
19      refine that capability further and reach a point  
20      where the quality of that capability is  
21      competitive with our needs for supporting  
22      classification here at the agency.

1                   So if there is any questions, I can take  
2 those now. Thank you.

3                   MR. CHAN: Any questions for Matt?

4                   (No response) All right. Well,  
5                   Matt, thank you for getting us back  
6                   on track with respect to time.

7                   Coke, I think we are ready for you. And  
8 as you are kind of gearing up on your slides, I'll  
9 just make a quick note on providing a little  
10 information on how the PPAC works with the office  
11 on AI policy.

12                   My suspicion is that many folks probably  
13 don't fully understand it. I know I didn't for a  
14 while. The office actually has an AI policy  
15 working group with representatives across  
16 different parts of the office. And this group is  
17 now led by Coke Steward and Charles Chen, who is  
18 the Director of the Office of Petitions.

19                   The office also coordinates with other  
20 AI specialists across government agencies. And so  
21 I'll let Coke kind of provide the update on what  
22 they have been up to, as well as, how they work

1 with other AI specialist. Coke?

2 MS. STEWART: Great. Thanks, Jeremiah.  
3 Can everybody hear me okay?

4 MR. CHAN: Yep.

5 MS. STEWART: Well, first, I just want  
6 to say, it's a pleasure to be with everyone today  
7 and talk a little bit about our artificial  
8 intelligence policy efforts here at USPTO. And,  
9 as Jeremiah said, we have done a lot of work in  
10 our policy group. And I just want to highlight  
11 some of the work over the past year.

12 We heard about it today. We had two  
13 RFCs on artificial intelligence policy last year  
14 that matured to 200-plus unique comments and a  
15 public report on those comments. And we and our  
16 stakeholders continue to use that report as an  
17 important resource for AI policy-setting with  
18 respect to intellectual property.

19 We have the Chief Economist Report on AI  
20 Patenting Trends, and we have the first final  
21 agency decision on AI and Inventorship. Patrick,  
22 do you want to go to the next slide?



1                   (Slide) And, as Jeremiah mentioned,  
2                   we stood up a new AI  
3                   Portal on uspto.gov and this portal has  
4                   engagement on AI, like, our RFCs, and our report,  
5                   and our comments. And it also has a link to other  
6                   government resources on artificial intelligence  
7                   which I want to spend a minute talking about  
8                   today.

9                   Patrick, can you go to the next slide?

10                  (Slide) So, as you can see, in  
11                  addition to the work we're doing on  
12                  AI policy within the USPTO, we're  
13                  engaged with a lot of outside  
14                  groups on AI policy, like, the  
15                  Administrative Conference, the  
16                  United States, that worked on  
17                  regulatory matters, IP5.

18                  The National OSTP has the machine  
19                  learning group, the AI group that we're involved  
20                  in; the National Security Commission on AI, we  
21                  have a representative on; and also international  
22                  IP offices.

1                   Patrick, can you go to the next slide?

2           (Slide) So, just to give a quick update, with  
3           respect to two of these outside groups, the  
4           Administrative Conference of the United States  
5           just published a statement on government use and  
6           agency use of artificial intelligence.

7                   And that, obviously, directly applies to  
8           USPTO because we're using artificial intelligence  
9           in our examination practices. So they're focused  
10          on transparency, bias, privacy, security,  
11          oversight, regulation. So I commend that report  
12          those of you who are interested in government use  
13          of artificial intelligence tools.

14                   And then, secondly, I wanted to give a  
15          short update on the work of the National Security  
16          Commission on Artificial Intelligence. That's an  
17          independent federal commission created by Congress  
18          in 2019, and their goal is to ensure national  
19          security interests with respect to artificial  
20          intelligence.

21                   And an exciting development there is  
22          that the Commission is issuing a report which

1 should be finalized on March 1st. There is a  
2 draft report up on their website and that report  
3 has 16 chapters including an entire chapter  
4 devoted to artificial intelligence and  
5 intellectual property. And I know they're going  
6 to make a lot of recommendations to the U.S.  
7 Government that are going to be closely watched.

8           So, here, at USPTO, we're still working  
9 to set the agenda for AI policy in the coming  
10 year. But it appears that AI is going to continue  
11 to remain a major priority in the new  
12 Administration.

13           From our vantage point, that appears to  
14 focus on three areas, as I mentioned, national  
15 security, economic competitiveness, and regulation  
16 of private and public sector use of artificial  
17 intelligence. And the USPTO is actively engaged  
18 in all of those discussions across the government.

19           Patrick, can you go to the next slide?

20                   (Slide) I just wanted to highlight  
21 a few of these areas within the  
22 Administration that focus on

1 science and technology because they  
2 directly relate to innovation and  
3 artificial intelligence.

4 And one I mentioned, the Office of  
5 Science and Technology Policy, so a nominee has  
6 been identified for that position and the director  
7 of that office has been elevated to a cabinet  
8 level position. So it gives us a little clue as  
9 to the attention that may be attracted to this  
10 area in the coming years.

11 There is also a recent Executive Order  
12 renewing the President's Council of Advisors on  
13 science and technology policy. That's called  
14 PCAST, and that was established in 1990; and that  
15 has primarily outside representatives in  
16 government and some inside representatives from  
17 the White House.

18 And they serve as a major source of  
19 advice to the -- they will serve as a major source  
20 of advice to the Administration. And then,  
21 interestingly, for the Department of Commerce and  
22 the USPTO, the recent National Defense

1 Authorization Act, which was just passed direct to  
2 the Secretary of Commerce in consultation with  
3 OSCT (phonetic) to establish a National AI  
4 Advisory Committee; and that should be established  
5 within one year of enactment which will be January  
6 1, 2022.

7           And USPTO, of course, as part of the  
8 Department of Commerce, is going to play a major  
9 role in the Committee's efforts. So, as you can  
10 see, that's a quick overview. But AI policy  
11 continues to be a major priority across the  
12 federal government.

13           The USPTO is committed to staying  
14 engaged in all of those government AI policy  
15 discussions, as well as to continue to evaluate  
16 and promote innovation in artificial intelligence  
17 within the agency.

18           And, with that, Jeremiah, I welcome any  
19 questions from you or any of the other PPAC  
20 members.

21           MR. CHAN: I am not sure we have any  
22 time left for questions. But I want to thank you,

1 Coke, Jamie, Raman, and Matt, for covering a whole  
2 lot of material in 45 minutes. I think people  
3 have a good sense of the ambitious plans we have  
4 for this year including a lot of the great work  
5 that's already been done.

6 So, with that, I will turn it back over  
7 to Julie and Tracy. Thank you for every -- for  
8 all of the folks involved in the AI and IT.  
9 Jeremiah, I think that this is going to be a very  
10 exciting time.

11 In 2022, you're still going to be  
12 onboard, I'm sure. And so I'm sure you're going  
13 to play a good role there, a very useful role.  
14 But all of that information is not only -- is not  
15 just information by itself, this is progress.  
16 Right? And so we very much appreciate and are  
17 excited about this endeavor.

18 Okay. So we are on time or pretty close  
19 to time. We only have until 11:50 for the  
20 Outreach International and Regional Office  
21 Subcommittee. I'm going to hand it over to Tracy  
22 Durkin. Tracy?

1 MS. DURKIN: Yeah. Thanks, Julie. So  
2 it is my honor to chair in a newly renamed  
3 Outreach Subcommittee, which, of course, to add to  
4 its existing focus on international patent policy  
5 issues, the work of the five regional offices and  
6 their directors, and for the public's benefit  
7 those offices, they are located in San Jose,  
8 Detroit, Denver, Dallas, and also at the USPTO  
9 headquarters in Alexandria.

10 So we're going to start our conversation  
11 today with Mary (audio break).

12 MS. CRITHARIS: It is an honor and  
13 privilege to be here with everyone today and to  
14 share some update on international trends and  
15 development. While I appreciate the opportunity  
16 to do this, I really do (audio break) meeting some  
17 of the members in person. And I am hoping that we  
18 can have some in-person meeting very soon.

19 Why don't we turn to the next slide,  
20 Patrick? (Slide) Okay, great. So I'd like to  
21 talk today about three really important topics.  
22 One is about global trends on standard essential

1 patents and FRAND rates.

2           There have been recent judicial activity  
3 worldwide on this issue. We're monitoring those  
4 developments closely. Next, I'd like to turn to  
5 some of the IP filing trends. We recently issued  
6 a report on filing trends in China and then look  
7 into the increased filings in China.

8           So I'd like to discuss that report a  
9 little bit, as well as share some worldwide filing  
10 trends, and then I'm going to turn to some real  
11 updates on our work-sharing programs.

12           Next slide please. (Slide) The first  
13 thing that I wanted to discuss was the global  
14 trends on standard essential patents licensing  
15 FRAND rate. The recent decision last summer by  
16 the UK Supreme Court in the Unwired patent case  
17 ruled that a unilateral request from a patent  
18 owner was sufficient to set a global SEP FRAND  
19 rate despite the protest of the party to the  
20 dispute.

21           That decision heavily relied on the  
22 Court's interpretation of the European



1 Telecommunication Standard Institute, as it's  
2 commonly referred to as ETSI agreement which  
3 covered the licensing of SEP.

4 Generally, that agreement compiles  
5 patent essential to standards to be licensed on  
6 fair, reasonable, and non-discriminatory terms,  
7 FRAND terms. At the time of the ruling, the UK  
8 was the first and the highest Court to set a FRAND  
9 rate at the unilateral request of a party for a  
10 global portfolio patent.

11 This isn't something that we have seen  
12 before, and this was a real departure from  
13 international practice in which historically a  
14 Court would assign a FRAND rate only when all of  
15 the parties agreed to settle the issue in that  
16 Court. So this was a little bit of a departure  
17 from previous international practice.

18 China has followed suit shortly  
19 thereafter, and they had issued anti-suit  
20 injunctions in two different cases. The first was  
21 InterDigital v. Xiaomi, and the second was  
22 Ericsson v. Uson (phonetic), and those decisions

1 preclude these SEC owners, the patent owners, from  
2 pursuing claims against device manufacturers for  
3 their standard essential patent portfolios  
4 anywhere in the world.

5 In these cases, it would be implementers  
6 who requested the Chinese Court to set a global  
7 FRAND rate. And the problem is the result is that  
8 this really bars, the patentees in those cases,  
9 you know, InterDigital and Ericsson from enforcing  
10 their patent rights anywhere in the world.

11 And InterDigital filed an appeal with  
12 the Chinese Court asking for a reconsideration of  
13 this anti-suite injunction. Because InterDigital  
14 had tried to enforce their patent rights in India  
15 and they were barred from doing that, and the  
16 Chinese Court held that the parties did not set an  
17 agreement as far as everyone has to agree on the  
18 terms.

19 The Court, a first jurisdiction, shall  
20 be the primary court, and then all subsequent  
21 courts have to renounce jurisdiction. So, in this  
22 case, InterDigital then was barred from enforcing

1 their rights; they found no jurisdiction. This is  
2 a real unusual development and obviously is  
3 concerning, something that we will be following,  
4 but I thought was important to raise to the  
5 attention of this group.

6 Next slide please. (Slide) Before  
7 discussing our report on filing trends in China, I  
8 thought it would be important to share with you  
9 some recent IP statistics which are compiled  
10 annually by WIPO.

11 If we look at the first graph, the top  
12 five offices which we refer to as the IP5 offices,  
13 accounted for over 85 percent of the 3.2 million  
14 patent applications filed worldwide in 2019. This  
15 is eight percentage points higher than a decade  
16 ago.

17 China receive the highest percentage of  
18 applications with over 43 percent of global  
19 filings. The U.S., you can see, is second with  
20 19.3 percent following closely by Japan, Korea,  
21 and then the EPO.

22 Well, if you look to the second figure,

1 this gives us the volume of applications filed in  
2 the various jurisdiction. China received 1.4  
3 million applications just for utility patents  
4 alone. And the U.S. was second with less than  
5 half of applications filed in China with 621,000  
6 applications. Japan and Korea followed suit with  
7 300,00 and 218,000, and EPO came in at 181,000.  
8 The U.S., Korea, and the ETO saw a growth of about  
9 four percent. This is from 2018 to 2019.

10 The third part I thought was pretty  
11 interesting because it shows which country  
12 specialized in which technology. For example,  
13 from the graph we can see that Applicants in China  
14 and the U.S. filed most heavily in computer  
15 technologies; whereas, Applicants from Japan and  
16 Korea in electrical machinery; and those from  
17 Germany in the transport technologies.

18 The next slide please. (Slide) Now  
19 we'd like to provide a little more context on  
20 patent filings and each IP5 jurisdiction by  
21 showing you the application flows between the  
22 various offices.

1           If you look at this chart, the number of  
2 applications originating from the partnered  
3 jurisdiction offices include the direct filings,  
4 as well as, PCT filings when they enter the  
5 National Phase. The numbers you can see are the  
6 colors that correspond to the different offices,  
7 and the numbers on parentheses are the figures for  
8 2017, and the bolded numbers represent the figures  
9 for 2018.

10           So, as a general matter, when applying  
11 abroad there are more applications filed in the  
12 U.S., roughly, to the tune of about 240,000 than  
13 in any other IP block. And when filing abroad,  
14 U.S. applicants filed in the EPC states more than  
15 any of the other blocks.

16           So we can see that there is a lot of  
17 activity between the offices, but the U.S.  
18 Receives the most foreign application. And while  
19 this isn't readily apparent from this chart, I  
20 just want to share some other very interesting  
21 statistics in that the U.S. and the EPO there us  
22 approximately 50 percent of the applications are

1 of foreign origin. Whereas, for Korea and Japan,  
2 foreign origin applications account for  
3 approximately 20 percent of the total filings; and  
4 for China, it is roughly around 10 percent. So  
5 what that means is that over 1.2 million  
6 applications were filed in China are of Chinese  
7 origin; where that's really different for the  
8 United States and Europe where it's roughly 50  
9 percent foreign origin applications. The next  
10 slide please. (Slide) So now turning to our  
11 recent report on trademarks and patents in China,  
12 I wanted to explain a little bit as to why we even  
13 proceeded with doing this investigation and  
14 report.

15 As you can see, the filings in China  
16 were very high to the tune of 1.2 million, which  
17 is more than double the U.S. Filings. And  
18 considering that the filings in the U.S. have a  
19 significant portion are applications coming from  
20 foreign origin, the numbers are even higher than  
21 that.

22 So we wanted to look at this because the

1 figures, the volumes in China are the highest in  
2 history. Since 2013, China's utility patent  
3 filing numbers far exceeded those of all of the  
4 other IP5 OFFICES. And we wanted to understand  
5 what accounts for these high numbers and what do  
6 they actually represent.

7           The report revealed that in China, the  
8 high patent filings in China are heavily  
9 influenced by non-market factors. And when we're  
10 talking about what non-market factors, what do we  
11 mean by that, well, that includes government  
12 subsidies and government mandates.

13           For example, China has adopted more than  
14 195 subsidies and many of these subsidies provide  
15 financial incentives that are greater than the  
16 cost of obtaining the patents. So this is what  
17 encourages these high numbers of filings.

18           In addition, there are government  
19 mandates to target sex (phonetic) for state-owned  
20 enterprises and universities, other research  
21 institution and government officials in order to  
22 meet certain quotas.

1           Given these strong incentives for  
2           filing, it's hard to determine what an action  
3           driving increased filings in China. So that's  
4           just something that I think we need to keep a  
5           perspective about and caution about what the  
6           activity in China really represents whether it's  
7           true innovative activity, the reason for getting  
8           the patent, or it's really to just take advantage  
9           of these non-market factor and other incentives  
10          for filing a patent application.

11          Most interesting was, since we published  
12          this report, a couple of weeks later, China  
13          announced that they will be eliminating their  
14          patent subsidy programs for patent application  
15          filings on June of 2021. However, they won't be  
16          maintaining some of the subsidies for patent  
17          grants.

18          So that's awarding the grant of the  
19          patent rather than just filing the patent  
20          application. We're still working closely with our  
21          Chinese counterparts to get a little more  
22          information about that, but we just wanted to



1 share with you that recent development.

2 Next slide please, Patrick. (Slide) I  
3 know we spent a lot of time in these international  
4 sessions talking about our work-sharing programs.  
5 I know we have discussed in great detail our PTH  
6 program, which is our real flagship program that  
7 was launched in 2006.

8 But I know last year we had some  
9 discussions and we were talking about our Parallel  
10 Patent Grant and perhaps our Patent Validation  
11 Program. I believe that some of the PPAC members  
12 have asked for a chart to kind of highlight some  
13 of these distinctions and the differences.

14 So, to date, under the PTH program there  
15 has been over 60,000 petitions worldwide that were  
16 granted. PTH accelerates the examination process  
17 for corresponding applications filed in  
18 participating IP offices so when Applicant gets a  
19 favorable decision on patentability, or at least  
20 one claim that Applicant may request fast-track  
21 examination of substantially corresponding claim  
22 in a participating PPH office.

1                   These are Applicant-driven processes.  
2                   The Applicant has to request participation to the  
3                   participating offices. This is a request to  
4                   accelerate the examination. Generally, there is  
5                   not a lot of fees associated with this. So it's  
6                   an easy way for Applicants to accelerate  
7                   examination in a subsequent office.

8                   To date, we have over 28 offices  
9                   participating in a global PPH. We also some new  
10                  additions to our PPH family. In January of 2020,  
11                  we have a bilateral PPH program with the IP office  
12                  in Saudi Arabia.

13                  We also have expanded our PPH program  
14                  with Brazil to cover all technologies back in  
15                  December of 2019, and Chile will be participating  
16                  in the global PPH program. They have been doing  
17                  so since July of 2020. The key benefits of the  
18                  PPH program is better quality examination, reduced  
19                  costs for Applicants enhanced efficiency.

20                  But building on the success of the PPH  
21                  program, the USPTO has been exploring ways to  
22                  further enhance our opportunities and maximize

1 reuse and reliance of the U.S. work product.

2 Our first program that we have launched  
3 is the Parallel Patent Grant. We're calling that  
4 PPG. And this is a work-sharing model launched by  
5 the USPTO and Mexico's IP office. Under this  
6 particular program, the Mexican office will grant  
7 a Mexican patent based on an issued U.S. patent.

8 The Mexican office intends to review  
9 these applications to ensure compliance with some  
10 formal requirements and also with their subject  
11 matter of eligibility under Mexican law.

12 This is a little bit of a different  
13 process because the Mexican Patent Office will  
14 directly notify Applicants about the possibility  
15 of taking advantage of this program. So there  
16 will be some communication between the USPTO and  
17 the Mexican Patent Office. And there will be  
18 invitations from the Mexican Patent Office to  
19 Applicants asking them if they would like to  
20 participate in this program.

21 So the key difference between this  
22 program and the PPH is that this program

1 accelerates the grant of patent rights, not just  
2 the acceleration of the examination, but of the  
3 grant of patent rights.

4           And there will be some, like I  
5 mentioned, some reviews done by the Mexican Patent  
6 Office. But our understanding is their goal is to  
7 issue a corresponding Mexican patent within two  
8 months out of receiving the indication of interest  
9 by the Applicants to participate in the program.

10           The second program that we're launching  
11 is called the Patent Validation Program. This is  
12 the program we entered into with Cambodia. Under  
13 the program, U.S. patent holders are able to  
14 request issuance of a corresponding patent in  
15 Cambodia without undergoing an examination by the  
16 Cambodian office.

17           This is an Applicant-driven process, so  
18 this is a more straightforward process. Once  
19 there is a U.S. patent, if there is a  
20 corresponding patent filed in Cambodia, the  
21 Applicant will present the U.S. patent and  
22 Cambodia will issue a Cambodian patent based on

1 the U.S. patent.

2 So these programs are intended to really  
3 build upon and enhance our current work-sharing  
4 efforts in order to maximize reliance on  
5 U.S.-issued patents. You know, these two are  
6 one-way programs, unlike PPH, which is, you know,  
7 two-way, people can file a request here.

8 These two programs are just a way to  
9 leverage U.S. Patent rights making it easier for  
10 U.S. businesses and industry to obtain rights in  
11 foreign jurisdiction. We are pursuing these  
12 programs with other countries. That's something  
13 that's under consideration at the moment. So,  
14 hopefully, in the future, we'll unveil some more  
15 participants for these programs.

16 So I'll stop now. And, obviously, we'll  
17 take any questions that anyone has. Thank you  
18 very much.

19 MS. DURKIN: Mary, thank you. While we  
20 give folks just a minute to ask questions, I just  
21 really want to commend the office for exposing  
22 that issue on the China subsidies. And it's

1 probably no coincidence that the report came out  
2 and the change was announced. But I know that's  
3 something that you were working on for a long time  
4 and it's appreciated.

5 Does anyone have any questions? If not,  
6 we'll turn to Valencia Martin-Wallace. Again,  
7 Valencia, I'm not sure if you were going to give  
8 an update on any of these, or anything  
9 (inaudible)?

10 MR. CALTRIDER: Tracy, could I ask a  
11 question before --

12 MS. DURKIN: Oh, sure, Steve, sorry.

13 MR. CALTRIDER: -- in addition?

14 MS. DURKIN: Yep, please do.

15 MR. CALTRIDER: And it really goes back  
16 to the anti-suit injunction in China. That's  
17 really quite a troubling development. And I'm  
18 wondering, what are the future plans for that in  
19 terms of taking a position, or taking a stance, or  
20 how do you see that playing out?

21 MS. CRITHARIS: Yeah, no, thanks for the  
22 question. As you can see, it's a really

1 complicated, you know, international question. We  
2 have been discussing this on the U.S. Government  
3 level.

4 So we're engaged with colleagues at the  
5 Department of Commerce, as well as with our  
6 colleagues, USTR, to kind of develop a position  
7 that the U.S. wants to take with respect to  
8 whether, you know, there should be some kind of  
9 practice that both parties have to agree to these  
10 licensing terms, but it shouldn't be a unilateral  
11 process.

12 But, again, this is something that's in  
13 the works. We don't have an official position at  
14 the time.

15 MR. CALTRIDER: Thank you.

16 MS. MARTIN-WALLACE: So, unless anyone  
17 has any other questions, I'll just give a brief  
18 update. So Mary did a great job. We're working,  
19 OIPC is working diligently with OPIA, as we're  
20 moving forward with the work-sharing programs.  
21 The three she mentioned, as well as, we have two  
22 pilot programs that are running right now.

1           The search pilot program, we have  
2 actually two; one, we're working with Korea's  
3 office, and one with Japan's office on sharing  
4 results and on applications that are filed in  
5 both, and examiners in each office sharing results  
6 and sharing results with Applicants to move  
7 forward with the best prior art, as we go through  
8 n Office Action.

9           So we're still in the pilot phase.  
10 We're doing assessments in both of those programs  
11 and assessments of how we can also expand those  
12 programs. The other pilot is with PDTs, the PCT  
13 search pilot with the IP5, where we are doing  
14 simultaneous searches on PCTs, sharing those  
15 results.

16           That program ran, I believe, until about  
17 June/July of last year. We're in the assessment  
18 phases of that pilot right now as well. So we'll  
19 have more later on. I believe we extended the  
20 assessment phase for the offices. So it's going  
21 to be about another year before we have further  
22 results on that pilot.



1           Some of the other areas that OIPC is  
2           working on and partnering with OPIA is with data  
3           exchange with offices and expanding on data  
4           exchange, as well as, we have a huge pilot moving  
5           forward on CPC revisions in order to further  
6           refine the revision process and make it more  
7           efficient and effective with the classification  
8           through CPC.

9           As well as the expansion of CPC, we  
10          currently have about 45 offices that classify into  
11          CPC. And we will be working diligently to grow  
12          that number. So that's some of the areas. But,  
13          as I mentioned, you know, Mary did a great job and  
14          hit a lot of points with the work-sharing.

15          MS. DURKIN: Valencia, are there any  
16          statistics that you're keeping in terms of how  
17          often U.S. Applicants are taking advantage of  
18          these programs, especially the PCT pilot? And I'm  
19          wondering if, you know, word is out sufficiently  
20          that these are available.

21          MS. MARTIN-WALLACE: So, actually, with  
22          the PCT pilot we have closed it. We did an

1       excellent job. Each office of the five were to be  
2       the first search on 100 cases. USPTO met 100, as  
3       well as, I believe it was Korea and Japan.

4                I might be wrong on that. I can  
5       absolutely get the numbers. But that was a very  
6       successful beginning to that plot. So we can  
7       certainly share our preliminary numbers on how  
8       many took advantage of that as we're waiting for  
9       the assessment phase.

10               As for the CSP, that one we just renewed  
11       our partnerships with Korea, as well as with  
12       Japan. We did see a dip in both of those pilots.  
13       And right now, we're working with those offices to  
14       assess and see exactly why that happened.

15               But, quite frankly -- and we can share  
16       some data on those later -- both pilots showed an  
17       increased number, a larger number of cases  
18       reaching allowance when going through CSP which is  
19       why we need to do some assessment and find out  
20       exactly why Applicants aren't taking more  
21       advantage of it.

22               MS. DURKIN: Yeah. And my understanding

1 is there is no added costs, but so it just seems  
2 odd that more people aren't using it.

3 MS. MARTIN-WALLACE: Yeah, right.

4 MS. DURKIN: So, thanks.

5 MS. MARTIN-WALLACE: Absolutely. So,  
6 yes, we are working with both the JPO and KPO to  
7 assess that, the program.

8 MS. DURKIN: Great. Any other questions  
9 on that? (No response) Okay, great. Well, now,  
10 I'm going to turn to Wayne Stacy, who is the  
11 Regional Director of the Silicon Valley Regional  
12 Office. And he is going to demonstrate a really  
13 exciting new tool that he actually crated to track  
14 the outreach effort of the regional offices.

15 And this is pretty impressive because  
16 Wayne has only been at the office for about six  
17 months. And I'd say he is already making his mark  
18 with this tool. So, Wayne, if you're on, I will  
19 turn it over to you.

20 MR. STACY: Yes, thank you, Tracy.  
21 First, I appreciate all of the credit, but this  
22 was a multi-business unit collaborative effort

1 that made this work. So it's really all of us  
2 that put this together. And what you're going to  
3 see here are screenshots in the actual operating  
4 system.

5 The key goals we had, so you can see,  
6 is: 1) we wanted agency-wide metrics across all  
7 business units to see about our external domestic  
8 activities; 2) we wanted to encourage  
9 collaboration between the business units to reach  
10 more stakeholders throughout the entire country of  
11 all different types; and then the third piece,  
12 which is probably the thing that we're very proud  
13 of is the system helps promote really an equitable  
14 distribution of the agency services geographically  
15 and demographically.

16 So, with that, can, Patrick, you take us  
17 to the next slide? (Slide) So this is the  
18 homepage. And I wanted to make sure we could talk  
19 about -- you understood the two basic types of  
20 outreach we do; one defined by the statute's  
21 stakeholder outreach.

22 That's typically one-on-one where we're

1 talking with individual customers about their  
2 experiences, gathering feedback from them, and  
3 then also delivering talking points from the  
4 agency about feedback that's needed from them,  
5 pilots we want more participation and those types  
6 of things.

7           But these are small intimate  
8 conversations. We do between four and 500 of  
9 these a year, and then try to collect the data  
10 that we're getting from these individuals and  
11 these companies and feed it back into our system  
12 to improve all of the processes agency-wide.

13           The second piece there at the bottom,  
14 you see training metrics. These are traditional  
15 educational events. And here we start tracking  
16 the number of people that attend, the geographic  
17 area people are attending from, and the target  
18 audience. So we have a really wide variety of  
19 programs. We want to make sure that we're  
20 reaching out like we need to.

21           So, Patrick, the next slide please.

22                   (Slide) The core behind this

1                   entire system is we subdivided the  
2                   nation into what we call hubs.  
3                   There are 64 hubs nationwide. To  
4                   make it easy on your eyes, this  
5                   slide just shows the western  
6                   region. But every region across  
7                   the country has been divided.

8                   We divide it based on technology,  
9                   geography, population, and demographics. And in  
10                  this particular example, you can see the blue area  
11                  is what we call the Ag Belt, carves out the  
12                  Seattle area, the Portland area, but focuses on  
13                  the primary industry.

14                 But when you go down to what a lot of  
15                 people call southern California and lump it all  
16                 together, you can see we broke it up into markets  
17                 that we thought were individual. And, for  
18                 example, if you look at the green, you'll see  
19                 coastal LA, but we also separated out the inland  
20                 empire looking at Riverside, looking at east LA.  
21                 Because the businesses are different there than  
22                 they are in the core coastal LA market.

1                   So what this does is then breaks into  
2                   42,000 zip codes that we can track our outreach  
3                   and efforts very precisely, and eventually we'll  
4                   cross this, the next phase is to cross it with  
5                   census data so we can watch our estimated  
6                   demographic penetration for kind of an equitable  
7                   distribution of services.

8                   So, with that, let me talk first about  
9                   the training pieces. Patrick, could you move  
10                  forward two slides? (Slide) There we go, and then  
11                  one more please.

12                  So, at the top level, we count number of  
13                  events. We have done 314 training events  
14                  agency-wide and we're starting to again track  
15                  across all business units.

16                  So you can see how this initially  
17                  started. And what we really expect is more  
18                  collaboration, so these are going to be really an  
19                  equal pie as we move forward through the year.  
20                  But we'll see 8, 900, maybe 1,000 events  
21                  agency-wide over the course of this fiscal year.

22                  And, Patrick, the next one.

1 MS. MAR-SPINOLA: Wayne, well, can you  
2 come back to that slide for a quick second? This  
3 is Julie.

4 MR. STACY: Yes.

5 MS. MAR-SPINOLA: So, for the numbers  
6 around the circle, so that represents the number  
7 of training or the number of trainee?

8 MR. STACY: That's the number of  
9 training events.

10 MS. MAR-SPINOLA: Okay.

11 MR. STACY: So that the number of --  
12 I'll show you, in the next slide, I'll show you  
13 the number of attendees, what we have seen so far  
14 this year.

15 MS. MAR-SPINOLA: Okay. And then can  
16 you -- sorry, go back one again. Can you also  
17 explain why some have more training events than  
18 others?

19 MR. STACY: Yes. So part of it is based  
20 on population, part of it is based on the number  
21 of hubs, and some of its seasonal. Some of the  
22 organizations are set up to train in December,



1       have their big events in December; other regions  
2       have a lot of the events spring or fall. So this  
3       will balance out over the year according to  
4       population.

5                   MS. MAR-SPINOLA: Great, that's good to  
6       know. Thank you.

7                   MR. STACY: Can we just go the next one,  
8       Patrick? (Slide) So out of this there is one  
9       slide that's apparently is not coming up. But you  
10      were asking about the total number of registrants.

11                   So this year so far, we have got close  
12      to 14,000 total registrants for our events,  
13      domestic events nationwide; and then out of that  
14      we break them out by geography and very  
15      specifically by small concerns, so we can make  
16      sure the efforts are divided.

17                   And, with that, you know, we're seeing  
18      that almost 4,000 of our 13, 14,000 registrants  
19      are small business concerns. So we like those  
20      numbers, but that helps us figure out how to  
21      target more small businesses going forward.

22                   And then we start breaking this data

1 down granularly to improve distribution as we go  
2 forward. We track by each originating business  
3 unit. And I'd like to highlight one of Mary's  
4 programs coming out of OPIA and GIPA (phonetic)  
5 and that's the USPTO China IP webinar.

6 So we put that on, or they put that on,  
7 back in October. We had 900 registrations and,  
8 notably, from 47 states and across 60 of our 64  
9 hubs. So that helps us get a baseline for next  
10 year to try to drive that up to 1500 registrants.

11 Can one more, Patrick? (Slide) We, for  
12 data visualization purposes, we start taking all  
13 of this registration information and mapping it to  
14 see where we are in the country. And we're not  
15 really interested in what we're doing well.

16 I know I'm going to do well in the Bay  
17 area. What we're interested in is, where are we  
18 doing poorly, and where do we need to reach people  
19 more? This is just a non-normalized map. It's  
20 not adjusted for population. So, of course, the  
21 middle of the country is going to have fewer  
22 attendees based on population.

1                   But what we can start seeing are gaps in  
2                   what we know about our regions, you might have a  
3                   gap in the Portland region. And that's what I'm  
4                   focusing on reaching more people in the Portland  
5                   region, the maker community there, for example.

6                   Next one, Patrick. (Slide) The level  
7                   of granularity increases in our new dataset, so we  
8                   can start looking at small businesses versus large  
9                   businesses. To make sure we're handling all of  
10                  the stakeholders in a fair way across the nation,  
11                  we can just break this out.

12                  And you can really start to see who is  
13                  attending the events. Do we need to advertise  
14                  differently? Do we need a different type of event  
15                  to attract small businesses, for example?

16                  Let's go to the next one please,  
17                  Patrick. (Slide) And we'll break it down, and  
18                  this is the final level of granularity. We can  
19                  start seeing by program. And I call out the  
20                  Trademark Program here because we just had  
21                  discussions on it.

22                  We had distribution in the Bay area, in

1 coastal LA, but none in the Central Valley, not a  
2 single attendee for this program. So we started  
3 making phone calls and asking the small business  
4 development centers why.

5 We found out what the root cause was,  
6 next time we expect large attendance in that  
7 particular region. So this kind of data really  
8 helps us target what our problems are and where we  
9 can reach more people.

10 And then, Patrick, can we go forward two  
11 slides? And one more from here. (Slide) And  
12 this is the piece that is most challenging for us.  
13 And that's the great piece about tit. It's making  
14 sure we get equitable distribution across all  
15 regions of the country.

16 What we have said is a baseline  
17 distribution system for each region, each of these  
18 hubs that we have defined, based on population,  
19 and we set an initial target goal of 20 contacts  
20 per 100,000 population. And this is a 12-month  
21 meter. It should fill up over 12 months, and we  
22 have every reason to believe that it will fill up.

1                   But it starts illustrating where we're  
2                   having difficulty connecting with the local  
3                   innovator market. And so we can see in the inland  
4                   empire, where we need to catch up, and we found  
5                   ways to do that by partnering with the SBDCs, the  
6                   minority business development agencies and the  
7                   local chambers of commerce.

8                   So its making us go out and find  
9                   networks we didn't have before and making, as an  
10                  agency, think about content and creation of  
11                  content we didn't have before to target these  
12                  audiences.

13                 So, Patrick, can we go forward three?

14                         (Slide) Okay. Now I want to show  
15                         you the stakeholder piece. This  
16                         one is really about our one-on-one  
17                         outreach where we're gathering  
18                         feedback. The key to this -- if  
19                         you'll go to the next one, Patrick  
20                         -- (slide) -- is balance.

21                         If we're getting feedback from  
22                         stakeholders, we want to make sure we're getting

1 feedback from all types of stakeholders. So,  
2 again, I mentioned we were doing 4- to 500 of  
3 these interviews a year.

4 And we divided it up into a balanced 25  
5 percent for each category, small companies, medium  
6 companies, large companies, and this category of  
7 other and institutions, non-profits, occasionally,  
8 law firms that are representing micro-entities and  
9 their kind of aggregating data, as far as,  
10 investors, those types of things; and this over a  
11 year should balance out around 25 percent each.

12 So that helps us make sure we're getting  
13 feedback from large companies, small companies,  
14 solo inventors. We're really, I think, can rely  
15 on the feedback for improvement of processes and  
16 we're not skewed toward one end of the spectrum.

17 And then, if you go one more, Patrick,  
18 and this will be the last of the slides. (Slide)  
19 The last piece of this were balance on company  
20 type. We're also focusing on trying to balance  
21 across those hubs and making sure we're reaching,  
22 getting feedback from all different areas.

1           We want to make sure that we're doing  
2           the same type of work in Omaha, Nebraska, that we  
3           are in Silicon Valley. And that is challenging in  
4           certain markets when we talk about the western  
5           region, Alaska, for example, that's going to be  
6           harder to balance with big companies that may not  
7           exist. So if we end up deviating from the  
8           geographic balance in any particular region, at  
9           least we'll have a principled reason why.

10           And so the feedback we provide for  
11           patent-to-patents department on pilot programs,  
12           those types of things, we know will be  
13           geographically balanced as much as possible and  
14           will be balanced across company size, so it  
15           actually provides as a nice platform to evaluate  
16           future action within the Patent Office.

17           So I'll give it back to you, Tracy.

18           MS. DURKIN: Thanks, Wayne. It is  
19           really an exciting tool and is, I think, going to  
20           really improve the outreach to companies big and  
21           small and, as you said, independent inventors and  
22           in many other ways as well. Let's see if they

1 have any question on this, this is an internal  
2 tool, is my understanding, right? This isn't a  
3 dashboard the public would have access to. This  
4 is something you are using, Wayne, internally to  
5 keep track of your efforts, right?

6 MR. STACY: Correct, it's to help us  
7 improve our services.

8 MS. MAR-SPINOLA: So this is Julie, a  
9 question, two comments to Wayne. And I think  
10 you're already familiar -- well, one, you're  
11 already familiar with from our prior discussion.

12 But in your very last slide, is there  
13 anticipation or expectation that you'll be able to  
14 reach out to VCs, a VC group to, you know, you  
15 have a small, medium, large groups in the  
16 government in academia. And I think that being  
17 able to reach out and to get feedback from venture  
18 capital folks who put money into these small  
19 entities and startups would be -- it could be  
20 helpful.

21 So is there a plan to do that? Is that  
22 something that's within the scope of your program?



1                   MR. STACY: So, yes, the category we  
2                   have now of other/institution, so we defined those  
3                   includes, venture capitalists and private equity  
4                   groups. So that is a focus for us. Because,  
5                   eventually, you have talked to the institutions,  
6                   there are only a handful of those and that's going  
7                   to force us. Because we're always looking for new  
8                   contacts that will force us to move into VCs and  
9                   the private equity groups, so very much a target.

10                   MS. MAR-SPINOLA: Yeah, good. And,  
11                   particularly, the small VC firms, right, because I  
12                   think it would useful to get some feedback from  
13                   them. The other thing is I see Valencia is still  
14                   on the screen, too.

15                   So I wanted to raise this because  
16                   earlier we had talked about the affinity groups.  
17                   And I think I saw, Wayne, on your slide, I think  
18                   it was slide 55, it was a little teeny-tiny for me  
19                   to see.

20                   But you had at the very top, you had  
21                   entrepreneur group and veteran -- I think it was  
22                   slide 55. And I raise it only to identify them as

1 -- or to identify them in terms of wanting to know  
2 if we already have an affinity group with those  
3 two, what I'm going to call, underrepresented  
4 groups that we're focused on.

5 MS. MARTIN-WALLACE: A great point,  
6 Julie, and you're right. We do have, for  
7 veterans, we do have a very strong affinity group  
8 at the office; entrepreneur groups, I'm not  
9 familiar with. I can find out though, if we have  
10 something that goes more towards that. But,  
11 definitely, on the veterans side we do.

12 MS. MAR-SPINOLA: Yeah.

13 MS. MARTIN-WALLACE: And, actually, I  
14 wanted to -- oh, I'm sorry, go ahead, Julie.

15 MS. MAR-SPINOLA: I think the  
16 entrepreneur's group was focused -- and, Wayne, I  
17 think I need your help on this from slide 55. Was  
18 it Latinx, or Mexican entrepreneurs, or something  
19 like that group?

20 MR. STACY: So it depends on the  
21 individual hub. What we're doing is digging into  
22 each hub and finding all of the innovator groups

1 that have been setup. So if these affinity groups  
2 exist, like, the Hispanic Chamber of Commerce, we  
3 are identifying them and then working with them.

4 NS. MAR-SPINOLA: Right, right. And so  
5 it's the Hispanic group. I apologize to everybody  
6 o--

7 MR. STACY: Yeah.

8 MS. MAR-SPINOLA: -- on that. But to  
9 the extent that it's a broader focus through  
10 Valencia's NCEAI, right, to have and to identify  
11 that as a larger focus of these groups adding on  
12 to the affinity group that you mentioned before,  
13 the African-American group, you know.

14 Because to me, I think, as I mentioned  
15 before, I think the value and the goal for kind of  
16 breaking through the barrier here is to have all  
17 of these affinity groups working with the Patent  
18 Office -- excuse me.

19 MS. MARTIN-WALLACE: Yes, absolutely,  
20 Julie, agree. And we do have a chapter of SHPE --  
21 that's the Society for Hispanic Examiners -- on  
22 campus, as well, that's very active also, both on

1 campus as well as in the community.

2 MS. DURKIN: Julie, it does seem like  
3 there is some synergy here between what's  
4 happening on the National Council and the  
5 organizations that you're working with, and what  
6 the regional offices are working with. And I'm  
7 sure having this tool will identify where there  
8 might be some fertile, you know, ground for the  
9 new council so.

10 MS. MARTIN-WALLACE: Absolutely. And we  
11 have, actually, what part of our partnership is on  
12 both our working groups, as well as with the  
13 National Council is the 50K Coalition which was  
14 our way of getting four groups together: The  
15 National Society of Black Engineers, the Society  
16 of Hispanic Engineers, the Native American  
17 Engineer, Aces (phonetic), as well as, Women  
18 Engineers. All four of those organizations lead  
19 the 50K coalition whose mission is bring about  
20 50,000 engineers into the fold. So we have them  
21 not only on campus, but we partner with them  
22 through the National Council in our working groups

1 as well. So, yes, you're absolutely right, very  
2 strong partnerships that are helping us move  
3 forward.

4 And if I could just give a comment  
5 towards Wayne's presentation, his breakthrough in  
6 this has really helped bring about a breakthrough  
7 for our strategy, as well as, I mentioned to all  
8 of you the campaign that we will have after the  
9 publication of the strategy of where we need to  
10 move into across the nation it really has been a  
11 huge help for us, as we're identifying the areas  
12 that we need to further educate and make aware.

13 MS. DURKIN: Great.

14 MR. STACY: Oh, and, Tracy, I would  
15 leave you with -- right where we started,  
16 originally, I said that this was a collaborative  
17 effort. And, Valencia, the National Council  
18 (inaudible), they have been there since day one to  
19 make sure that this blends with the larger  
20 strategy.

21 So it's been a great collaborative  
22 effort. I have loved being here so far.

1                   MR. BROWN: So, Wayne, I was wondering,  
2 did you track the different content of your  
3 outreaches? You know, you had the one about, you  
4 know, protecting new products in China. But is it  
5 patent research, or application process, what's  
6 the difference, or even the most popular outreach  
7 topics?

8                   MR. STACY: So we track every program.  
9 So every registrant we can show geography, where  
10 they're based by zip code, the number of  
11 attendees. In terms of share volume, trademark  
12 programs strive from a lot of volume. We don't  
13 try to measure necessarily volume as success.

14                   Because sometimes if you can reach 50  
15 practitioners that are filing thousands of  
16 applications a year, you can change the  
17 interaction between the bar and the Patent Office.  
18 That's the reason we look at each program.

19                   We map it against what the target  
20 audience is, and are we getting the right  
21 attendance for that target audience. And then  
22 that may be, like I said, that may be design

1 patents specialists. Well, that's a small group.  
2 But if you can get to them, you can make great  
3 improvements in that, you know, design patent  
4 prosecution process.

5 MR. BROWN: So I hear you, it sort of  
6 customized what you're going to present based on  
7 your target group?

8 MR. STACY: Very much so.

9 MR. BROWN: Okay.

10 MR. CHAN: And, Tracy, I just wanted to  
11 quickly pile on Valencia's comment, because I  
12 think, I agree actually it is kind of a  
13 breakthrough, I mean, when I first saw the  
14 presentation and the way Wayne presented.

15 And I think it does highlight a number  
16 of things. But for me it really does highlight  
17 the power of data. Because he is using the data  
18 almost in a scientific method way to kind of  
19 figure out where should we drive a program, where  
20 should we focus.

21 And it really does, I think it shows you  
22 a lot of benefit around not only guiding and

1 understanding the baseline and where we need to  
2 focus, but also being able to set targets. So we  
3 can actually roll out different types of  
4 experiments and hypotheses we have and actually  
5 see, are these working or are they not.

6 And I know it sounds pretty  
7 straightforward to many of us here, but too often  
8 I see where we launch a whole bunch of program.  
9 We don't really have any measurement, and we're  
10 kind of shooting in the dark.

11 And that's one of the things I love  
12 about this approach which is we have a way to  
13 measure it and we can actually see whether or not  
14 the things we're doing create meaningful change.  
15 It's terrific.

16 MS. DURKIN: Yeah, I think we all agree.  
17 Wayne, we can't see you anymore. So I don't know  
18 if you're there. But if there aren't any more  
19 questions, I'm going to thank you -- we can see  
20 you know.

21 I'm going to thank you. And, hopefully,  
22 this is just the beginning of including you and



1 the other regional directors in the PPAC, and  
2 certainly in the Outreach Committee. So thank you  
3 for being the kickoff person on that. We  
4 appreciate it.

5 MR. STACY: Thank you.

6 MS. DURKIN: I think we'll -- oh, we're  
7 right on time. I was going to give you a minute  
8 back, Julie, but I can't even give you that.

9 MS. MAR-SPINOLA: Well, thank you. And  
10 on time is just as good and maybe even sweeter.

11 MS. MARTIN-WALLACE: I'm sorry.

12 MS. MAR-SPINOLA: Yes?

13 MS. MARTIN-WALLACE: I'm going to take  
14 you off course by 30 seconds. I just wanted to  
15 follow back up with a stat that I said I would  
16 look into. The PCT CS&E pilot, I mentioned that  
17 U.S. Made their 100 applications.

18 But, as a total, there were 468 total  
19 out of the 500. However, 50 percent of all of  
20 those cases or applications came from U.S.  
21 Applicants. And I can give you more stats later.

22 MS. MAR-SPINOLA: That sounds great,

1 good to know. Thank you, thank you. So, thank  
2 you, Valencia, Mary, Wayne, Tracey, very much  
3 appreciate it. Information is really, really  
4 good. And I look forward to expanding the  
5 discussion with the other regional directors, too,  
6 in the meetings to come.

7 So, with that, I'm going to hand this  
8 over to our Vice Chair, Steve Caltrider, and Scott  
9 Boalick for the PTAB Subcommittee discussion.  
10 Steve?

11 MR. CALTRIDER: Great, yes. Thank you,  
12 Julie. Can you hear me okay?

13 MS. MAR-SPINOLA: Hear you fine, thank  
14 you.

15 MR. CALTRIDER: Great. I'll just make a  
16 couple of comments of introduction because we have  
17 lots of material to cover today. The first item  
18 is, we have heard a great deal of discussion about  
19 closing the gap between patents and the PTAB.

20 And the PTAB Subcommittee certainly  
21 recognizes high quality and durable patents are  
22 essential to support innovation and support a

1 healthy U.S. economy. And then the high quality  
2 durable patent rights starts with the Applicant  
3 and continues through examination in the  
4 post-grant proceedings.

5           Second, the PTAB Subcommittee is also  
6 working closely with Pendency and Quality, a  
7 subcommittee on improving the quality and  
8 durability of patents. A number of these  
9 initiatives you have heard about already today and  
10 were reported out in Pendency and Quality  
11 Subcommittee report.

12           You will hear more about that, those  
13 initiatives, and the progress in subsequent  
14 meetings. That's not the focus of today's agenda.  
15 Today's report will focus on the Legal Experience  
16 and Advancement Program, or LEAP, which is a great  
17 program to develop less experienced advocates  
18 before the PTAB.

19           It will provide an update on the  
20 fast-track appeal, pilot, and the Motion to Amend  
21 pilot. It will talk about some new rules in the  
22 recent memo on indefiniteness, and it will also

1 provide the latest data on PTAB filings and  
2 outcomes. So I'll turn the agenda over for Scott,  
3 to Scott and his team.

4 JUDGE BOALICK: All right. Well, thank  
5 you, Steve. Thank you, Julie. Yes, there was a  
6 good deal of discussion earlier. And, you know,  
7 we'll return to some of those topics in subsequent  
8 meeting.

9 Yeah, also heard Drew mention, a couple  
10 of the really, you know, high profile activities  
11 that are happening, such as Arthrex and our recent  
12 request for comments. But there is a lot of other  
13 activity at PTAB that you mentioned, Steve. And  
14 we'd like to go over some of that today.

15 So if we could advance to the next  
16 slide. (Slide) And we're taking a little  
17 different approach to our slides today. We have  
18 really paired the deck down to kind of just the  
19 bare minimum.

20 So we'll spend a lot of time on this  
21 slide before moving to the next. And we're just  
22 going to go through topics-by-topic. And so, for

1       our first topic, which is the LEAP update, I am  
2       going to turn the floor over to Vice Chief Judge  
3       Janet Gongola for that update.

4                JUDGE GONGOLA: Thank you. Hello,  
5       everyone. I am very pleased to be with you this  
6       afternoon. I have the first two topics, LEAP and  
7       our Fast-track Appeal Pilot Program. Just a  
8       little bit of background, LEAP is our attempt to  
9       provide both training and oral advocacy  
10       opportunities for junior practitioners.

11               We want them to gain experience before  
12       the Board in both trial, as well as, appeal. I  
13       really believe this experience will generally help  
14       them in their careers beyond the Board in  
15       advocating before any tribunal, the district  
16       courts, the ITC, the Federal Circuit.

17               Now, in exchange for permitting a junior  
18       practitioner to argue before the Board, the party  
19       offering that practitioner the opportunity will  
20       receive typically 15 extra minutes of argument  
21       time.

22               More senior counsel is able to assist

1 the LEAP practitioner during the argument, for  
2 example, by making a clarifying statement on the  
3 record. To qualify as a LEAP practitioner, a  
4 junior attorney has to meet two conditions: 1)  
5 have fewer than three substantive oral arguments  
6 before any tribunal including the Board; and 2)  
7 have seven or fewer years' experience as a  
8 licensed attorney or agent.

9 Now, since we launched this program in  
10 May of 2020 through the end of January, we have  
11 received 33 LEAP requests; 27 percent of those are  
12 to appear in an ex parte appeal, the balance for  
13 AIA trials.

14 If we look at the breakdown of our  
15 requestors, 27 percent are appellants in an  
16 appeal; 33 percent are representing petitioners in  
17 trial; and the remaining 40 percent represent  
18 patent owners in a trial.

19 We have seen an array of law firms come  
20 before us with their junior practitioners. But  
21 topping our list, I'll mention Sterne Kessler,  
22 Sunstein, Wilkie Farr, and Finnegan, thus far, has

1 had the most. We're talking in the range of two  
2 to five, but for us it is notable.

3 Now, another aspect of the LEAP program,  
4 apart from standup opportunities before the Board  
5 is training. We are offering intense training for  
6 appeals and trials. In fact, we had two trials,  
7 mock argument practicum in 2020, and we are  
8 preparing to do our first pre-rolling out, an  
9 appeal practicum in March of this year.

10 And practicum is probably an  
11 understatement. What I'm talking about is, like,  
12 a slate of activities here. First, we're going to  
13 start out with a session about how to prepare for  
14 an argument.

15 This will cover a judge lecture, as well  
16 as, a panel discussion with Carl Reiner (phonetic)  
17 and Aaron Demson (phonetic), two very experienced  
18 floor practitioners to help get our junior  
19 attorneys in the correct mindset. And on Friday,  
20 March 26th, we're hosting an appeal mock argument  
21 for practitioners in front of 68 PJs. This  
22 session filled up within 24 hours of being

1 publicized.

2           And then, finally, on April 5th, we're  
3 offering what we're calling "The Perfect  
4 Argument," with Todd Walters. He is going to  
5 replicate from the vantage of an experienced  
6 practitioner what the appeal argument should look  
7 like giving our juniors a chance to see a great  
8 model and ask questions.

9           And I know that I mentioned we have  
10 other events coming up for the year; June, we're  
11 celebrating our one year anniversary, with a  
12 recognition event for practitioners, firms ad  
13 clients, who have participated; and then, in  
14 September, we will return to our trial mock  
15 argument.

16           And if I may be so bold as to ask PPAC  
17 for help here, we really want to spread the word  
18 about LEAP. So if you would let your friends,  
19 colleagues, associates know that would be hugely  
20 helpful to us in getting more practitioners the  
21 experience we'd like for them to have.

22           I'll stop there for any questions.



1                   MR. CALTRIDER: Janet, if it's okay,  
2 I'll kickoff with the first question. And I'm  
3 going to tie this back to the conversation we had  
4 on expanding innovation because that included  
5 expanding the scope and breadth, if you will, of  
6 the patent bar.

7                   And I'm wondering, can you shed any  
8 light or share any data on the demographics? You  
9 mentioned levels of experience, but are there  
10 other demographics on the participants in LEAP?

11                  JUDGE GONGOLA: We have not tracked the  
12 demographics for our LEAP practitioners. So we  
13 don't know years of experience, where they're  
14 coming from, educational background, authenticity,  
15 any of that sort of data. The LEAP practitioner  
16 simply makes a statement saying, they meet our two  
17 basic eligibility criteria and we expect that  
18 statement at face value. So we have not looked  
19 behind those statements to try to align any  
20 demographic data.

21                  MR. CALTRIDER: Great, thank you. A  
22 quick question --

1 MS. MAR-SPINOLA: Janet, is there --

2 MR. CALTRIDER: I'm sorry, Judge.

3 MS. MAR-SPINOLA: Sorry, if I can ask  
4 the question, a follow-up on Steve and your answer  
5 there, is there a reason why we can't seek that  
6 information from a LEAP participant? Because I  
7 think there might be privacy issues, I don't know.  
8 But it seems to me, again, that would add to the  
9 IE effort.

10 JUDGE GONGOLA: We have made an  
11 arrangement with the PTAB Bar Association so that  
12 at some future date when we have a quorum, you  
13 know, a large number of LEAP practitioners, we're  
14 going to provide names to the PTAB bar. And they  
15 have agreed to kind of look into the demographics  
16 information.

17 Historically, we have really not tracked  
18 demographic details of patent Applicant's, of  
19 those who to appear in front of the Board. So  
20 keeping in line with our past practices, we didn't  
21 attempt to do for the LEAP program. But we  
22 recognized it's something that people will be

1       curious about. So the PTAB Bar Association, we  
2       have collaborated with, in setting up the program,  
3       s going to perform that function for us at some  
4       point.

5               MS. MAR-SPINOLA: Okay. I am delighted  
6       --

7               MR. HIRSHFELD: Janet and Julie, if I  
8       may jump in for a quick second.

9               MS. MAR-SPINOLA: Sure.

10              MR. HIRSHFELD: I'm sorry to interrupt  
11       here. This is actually, as Janet is indicating,  
12       this is part of a discussion that needs to take  
13       place on the larger scale. Should we be  
14       collecting this data and for what groups?

15              Right now we do believe that there is  
16       restrictions on what we could collect. We might  
17       be able to collect data, and probably can collect  
18       data in a voluntary submission from the public but  
19       mandating that is certainly not something that  
20       we're capable of doing.

21              At this point, we need a statutory  
22       change for that, is my understanding. It is

1 something that I know there is many ongoing  
2 discussions about and we should continue those  
3 discussions.

4           Once you get into voluntarily providing  
5 data, you're not getting complete data and there  
6 is questions about whether you should continue  
7 with that or whether that's viable. And I'm not  
8 trying to make any opinions here on the ultimate  
9 result.

10           But I think that our hands are a little  
11 tied for -- not a little -- our hands are tied for  
12 mandating the data at this point that we receive  
13 it. And then I think a larger conversation should  
14 be whether it's appropriate to get it voluntary  
15 and even whether there should be legislation  
16 permitting us to collect the data.

17           MS. MAR-SPINOLA: Right. Thanks for  
18 that, Drew. I only brought it up because of our  
19 earlier discussion about that when folks,  
20 innovators, or perspective stakeholders, and  
21 particularly future stakeholders, if they can see  
22 folks that they can relate to and look like them

1 then that, by itself, can be a strong motivator.  
2 That's the only reason why I was asking.

3 JUDGE GONGOLA: Pardon me.

4 JUDGE BOALICK: I was going to say just  
5 that I appreciate that what Drew said is, you  
6 know, exactly why we hadn't collected that, and  
7 exactly, it's sort of an ongoing conversation that  
8 we'll take back and, you know, maybe investigate  
9 further. But it's certainly a natural question.

10 So I think next, Janet is going to  
11 continue updating on fast-track, unless there is  
12 any other LEAP questions. (No response)

13 JUDGE GONGOLA: We have very good news  
14 to share about our Fast-track Appeal Pilot  
15 Program. This is the way that an appellant can  
16 get an expedited review of an appeal. Our goal to  
17 give an appellant a decision is within six months  
18 of entry into the program.

19 To secure entry, an appellant files a  
20 petition, and we have a form on our website, it's  
21 some very basic information, and pays a petition  
22 fee, \$420. The program is available for any

1 pending ex parte appeal.

2           It does not have to be a newly filed  
3 appeal. It can be one that's been sitting with  
4 the Board for a while and if appellant so desires  
5 it can transfer that appeal into our fast-track  
6 program.

7           We set a limit of 125 appeals per  
8 quarter, or program total 500, over the course of  
9 one year. We placed a limit in order to ensure  
10 that we can continue to meet pendency goals for --  
11 I'll call them regular tracked appeals -- and  
12 hearing can be conducted in these appeals just  
13 like in normal cases.

14           As of the end of January, we have had a  
15 total of 117 requests to participate in the  
16 program and we are delighted these requests and  
17 really proud to say on average within two days.  
18 So you'll get a yes/no answer in a short period of  
19 time.

20           Of the requests we have received, we  
21 have granted all of them except for six, and in  
22 those six instances the case was premature. The

1 Board didn't actually have jurisdiction over it  
2 yet to even grant the request. Of the 111 cases  
3 that have entered the program, 78 of them have  
4 received a decision. And I'm again proud to say  
5 that we are beating our goal.

6 The average time for a decision has been  
7 under two months. So that is much faster than we  
8 had anticipated. It is way faster than average  
9 appeal pendency of 12 months which, in itself, is  
10 really good.

11 But if an appellant is interested in  
12 getting an expedited decision for their appeal, we  
13 again ask for PPAC's help in spreading the word  
14 about the program. The numbers are better than  
15 our expectation and we want the public to know  
16 about it.

17 Any questions?

18 MR. CALTRIDER: Janet, again, I'll take  
19 the opportunity to ask the first question and that  
20 is: My understanding is that the program has been  
21 tremendously successful and it hasn't been at the  
22 expense of pendency on regular appeals, if you

1 will, because the pendency of regular appeals has  
2 also gone down in this period. So if you could  
3 expand on that just a little bit that would be  
4 great.

5 JUDGE GONGOLA: You are correct, Steve.  
6 We had the fast-track program running. We started  
7 it about a year ago. And in that period of time,  
8 simultaneously, we have been able to continue  
9 working towards the goal of 12 months' pendency  
10 for appeal. And at the end of the last fiscal  
11 year, our pendency for appeals was 13.4 months and  
12 now we're approaching 12 months. I think it's,  
13 like, 12.4 months. So one program has not been  
14 operational at the expense of the other program.  
15 In both we're meeting our goal and we very well  
16 expect to be able to continue to do so.

17 MR. CALTRIDER: Congratulations. Other  
18 questions? (No response) Okay. Thank you, Jan.

19 JUDGE BOALICK: So, next, Deputy Chief  
20 Judge Bonilla is going to talk about the Motion to  
21 Amend Pilot Program and where that stands.

22 JUDGE BONILLA: Great, thank you so



1 much. I wanted to say to everyone, it is really  
2 great to be here and to talk about some of our  
3 latest initiatives. I am going to focus a little  
4 bit on two of them relating to amendment practice  
5 in AIA proceedings which happen through Motions to  
6 Amend.

7           So I'll talk about the latest and  
8 greatest information we have for the motion and  
9 pilot. It is a bit of a status update. And also  
10 our most recent rule that we came out with, this  
11 one issued right before Christmas, which discusses  
12 allocation of burdens of persuasion as it relates  
13 to Motion to Amend.

14           If it's all right, I thought I would  
15 just for a minute give a little bit of background  
16 about how we got here because there is -- a lot of  
17 this was sort of a long time into coming. Just to  
18 remind everyone, and you probably all recall,  
19 there was a decision in October of 2017 by the  
20 Federal Circuit in Aqua Products and that decision  
21 concluded in relation to Motion to Amend that the  
22 office had not adopted a rule allocating the

1       burden to persuasion regarding patentability of  
2       proposed substitute claims.

3               And the Court also said, in the absence  
4       of a rule, the office could not place the burden  
5       on patent owners to show patentability which was  
6       what the office was doing prior to that point.

7               So, thereafter, we issued guidance. We  
8       designated a decision in Western Digital  
9       informative in June of 2018, and we also -- we  
10      ended up replacing that decision with another one,  
11      Lectrosonics, that was designated precedential in  
12      March of 2019.

13              And, especially, Lectrosonics is  
14      actually a great decision to check out if you're  
15      ever interested in Motions to Amend or plan to  
16      file one. It has some great information and  
17      guidance about the motion and practice. And it  
18      does have some information about allocating the  
19      burden and a lot of that is consistent with what  
20      eventually became our final rule.

21              In the meantime, in October of 2018, the  
22      office published a Request for Comments Relating

1 to Motions to Amend. It asked for feedback on all  
2 sorts of things, a version of what eventually  
3 became the pilot, as well as the allocation of  
4 burdens. We got feedback from 49 stakeholders and  
5 they provided some really great feedback to us.

6 And one of the consequences of that was  
7 in March of 2019, we issued our notice relating to  
8 this new Motion to Amend pilot which impacted AIA  
9 trials that were instituted after that date. And  
10 we have talked about that pilot before here at  
11 PPAC, so I won't get into too many details about  
12 the pilot itself.

13 But I did want to mention that right  
14 after that, a month later, which was also  
15 responsive to comments that we got from the  
16 Request for Comments was, in April 2019, the  
17 office issued a notice regarding options for  
18 amendment by patent owners through reissue and  
19 reexam either before, during, or after an AIA  
20 proceeding indicating, for example, that there  
21 were still options for reissue/reexam, even after  
22 a final written decision, even if a Motion to

1 Amend was addressed.

2 With that background, I will give you an  
3 update about Motion to Amend the pilot, our status  
4 today. Because we now have enough Motions to  
5 Amend that have been filed under the pilot and  
6 final written decisions that have issued that we  
7 could see a few trends.

8 And just a reminder, the pilot gives  
9 patent owners two options: The one they may ask  
10 in their Motion to Amend to receive preliminary  
11 guidance from the Board on its Motions to Amend;  
12 and the patent owner may also file a revised  
13 Motion to Amend after receiving a petitioner's  
14 opposition to initial Motion to Amend, or after  
15 receiving the preliminary guidance from the Board.

16 So, in terms of what we have seen so  
17 far, so since March of 2019 through January of  
18 this year, we have seen patent owners file Motions  
19 to Amend at about the same rate. It's about the  
20 same percent as before the pilot. It's about 10  
21 percent of cases that are instituted, you'll see a  
22 patent owner file a Motion to Amend.

1                   So we have seen about 120 Motions to  
2 Amend filed so far that qualify under the pilot;  
3 and so far we have issued 47 final written  
4 decisions addressing Motions to Amend in a pilot.  
5 And what we have seen so far is that in the vast  
6 majority of the cases, the patent owners are  
7 actually electing at least one of the pilot  
8 options.

9                   So we have seen about 80 percent of  
10 Motions to Amend have requested preliminary  
11 guidance, and then if that guidance was requested  
12 over 80 percent of the patent owners actually  
13 filed a revised Motion to Amend.

14                   And the bottom line is is what we have  
15 seen is when patent owners have actually chosen to  
16 take advantage of the pilot in some capacity that  
17 it's more likely that the Motion to Amend is  
18 actually going to be granted for at least one  
19 substitute claim.

20                   So, for example, prior to the pilot, the  
21 average grant or grant-in-part rate was about 14  
22 percent of the Motions to Amend. And what we have

1       seen overall is today overall it's about 30  
2       percent grant or grant-in-part.

3               And, actually, if the patent owner took  
4       advantage of the pilot, which was most of them,  
5       over a third, 36 percent of those Motions to Amend  
6       were granted or granted-in-part. And when they  
7       didn't take advantage of it, one out of 11, so  
8       that was nine percent, only 1 out of 11 was  
9       granted. So it really didn't seem to make a  
10      difference if they requested preliminary guidance  
11      or took advantage of filing a revised Motion to  
12      Amend.

13              So I can answer questions about the  
14      pilot. At this point, I was going to switch gears  
15      and talk about our Motions and Burden rule, but I  
16      can stop for a second and see if there is any  
17      questions about the pilot.

18              MS. MAR-SPINOLA: Jackie, you might have  
19      mentioned this, and I might have missed it, about  
20      how is the pilot to continue?

21              JUDGE BONILLA: So, right now, we're  
22      still plugging along. One of the things that's

1 sort of interesting about the pilot is because  
2 since it has started for all cases that instituted  
3 after March 2019, it takes a year, right, after  
4 institution for us to have a final written  
5 decision.

6 So we're getting to the point where now  
7 -- we're not quite there -- but we're close to  
8 having a years' worth of data. So I think we  
9 wanted to at least continue it through that. I  
10 will tell you that we have gotten very positive  
11 feedback about the Motion to Amend pilot so far.  
12 So, as far as I know, we're going to continue and  
13 we're going to see what next steps are, but for  
14 the time being we are definitely continuing it.

15 MS. MAR-SPINOLA: Great, thank you.

16 JUDGE BONILLA: With that, I'm happy to  
17 answer any more questions, but I'll go ahead and  
18 continue to talk about our latest rule. This is  
19 the rule that relates to burdens on the parties  
20 and as it relates to Motions to Amend.

21 Now back in October, the office issued  
22 -- actually, in October 2019, the office issued a

1 Notice of Proposed Rulemaking regarding the  
2 allocation of burdens. And it was consistent with  
3 what we were already doing, you know, it was  
4 consistent with what we were doing in  
5 Lectrosonics, for example. And we received 18  
6 comments to that MPRN.

7 Now one thing that did happen, before we  
8 had a chance to issue a rule, the POP, the  
9 Precedential Opinion Pane -- this was Director  
10 Iancu, Commissioner Hirshfeld, and Chief Judge  
11 Boalick -- issued a decision in Hunting Titan.  
12 And that addressed circumstances and when the  
13 Board itself may raise the ground of  
14 unpatentability that the petitioner either didn't  
15 raise or didn't sufficiently develop.

16 And what that decision said, it had two  
17 holdings: One was that the Board is not obligated  
18 to undertake independent examination, but it said  
19 it may raise a ground in rare circumstances where  
20 the adversarial system fails to provide the Board  
21 with potential arguments.

22 So this could take place, for example,



1 when a petitioner doesn't oppose a Motion to  
2 Amend, or it doesn't raise -- and this is from the  
3 decision -- "readily identifiable and persuasive  
4 evidence that the Board should take up in the  
5 interest of supporting the integrity of the patent  
6 system notwithstanding the adversarial nature of  
7 the proceedings."

8           And this decision also held, however,  
9 that if the Board does have a ground that it  
10 raises, it must provide notice and an opportunity  
11 to respond to such a ground before the Board  
12 issues a final written decision.

13           So, after that, back in December, on  
14 December 22nd, taking into account all of the  
15 feedback on the MPRN and Hunting Titan profits  
16 (phonetic) issued a final rule, and this is a rule  
17 that amended 37 CFR 42.121 and 221.

18           It basically added a new subsection (d).  
19 And you'll see when you look at that subsection  
20 (d) that it has subparts (1), (2), and (3). One  
21 and two discuss the burden on the parties, and  
22 subpart (3) discusses what the Board can do.

1           So, in the first part, subpart (1), it  
2           says that, "the patent owner bears the burden to  
3           show, by preponderance of the evidence, that a  
4           Motion to Amend complies with statutory,  
5           regulatory requirements for a Motion to Amend."

6           So these are the types of things that  
7           must show that it proposes a reasonable number of  
8           substitute claims in response to a ground of  
9           unpatentability in a trial so as to enlarge the  
10          scope of the claims or any additional matter, it  
11          shows written description support, so on.

12          And then, subpart (2), up near (d),  
13          talks about petitioner's burden and it clarifies  
14          that, "When opposing a Motion to Amend the  
15          petitioner bears the burden to show, by a  
16          preponderance of the evidence, that proposed  
17          substitute claims are unpatentable."

18          Now the last part, subpart (3), talks  
19          about what happens irrespective of those burdens.  
20          And this is consistent with our prior art practice  
21          and what I talked about a bit in *Hunting Titan*.

22          And it says that, "The Board may, in the

1 interest of justice, exercise its discretion to  
2 grant or deny a Motion to Amend but only for  
3 reasons supported by readily identifiable and  
4 persuasive evidence of record in the proceeding."

5 It also clarifies that. "In doing so,  
6 the Board itself may introduce evidence into the  
7 record," But it can only be, again, readily  
8 identifiable persuasive evidence that is either in  
9 a related proceeding before the office or is  
10 evidence that a district court would judicially  
11 notice. And it also clarifies, as is also talked  
12 about in *Hunting Titans*, that when it exercises  
13 that discretion the parties will have an  
14 opportunity to respond.

15 So a couple of things that I thought I  
16 would clarify which are also in the rule package,  
17 which I think are -- and this was responsive to  
18 some of the comments. Basically, it clarifies  
19 that the Board will only step in when the evidence  
20 in support of an outcome is easy to see.

21 I mean, basically, it's readily  
22 identifiable and persuasive. And the evidence of

1 record language in the rules signifies that the  
2 Board will consider the entirety of the record in  
3 the proceeding and include all of the papers and  
4 exhibits.

5           It also clarifies that readily  
6 identifiable and persuasive means evidence that is  
7 so clear from the record that failing to consider  
8 it, although it has not been raised by a party,  
9 would be inconsistent with the goal of supporting  
10 the integrity of the patent system. And it cites  
11 *Hunting Titan* for that.

12           One thing that it also talks about is  
13 some of the comments for the MPRN asks for  
14 clarification about when exactly the Board itself  
15 would step in and it add some sentences to clarify  
16 that.

17           So it clarifies in the vast majority of  
18 the cases, the Board will only consider evidence  
19 that a party introduces into the record. And it  
20 clarifies what is meant by evidence that is  
21 already before the office in a related proceeding.  
22 This would include, for example, in the

1 prosecution history of the challenged patent or a  
2 related patent or application, or in the record of  
3 another proceeding before the office challenging  
4 the same patent or related patent.

5           It also talks a little bit about what it  
6 means, when they will consider evidence that a  
7 district court would judicially notice. And it  
8 clarifies that the type of evidence that we would  
9 judicially notice under Federal Rules of Evidence  
10 201.

11           And this is consistent with current  
12 practice with Board. The Board can introduce and  
13 rely on, you know, well-known dictionaries, or  
14 treatises, things that are of record through email  
15 correspondence between the Board, well-known facts  
16 that nobody can reasonably context.

17           But, just to clarify, the Board will not  
18 undertake its own prior art search, or otherwise  
19 supplement the record with something that isn't  
20 introduced by a party or an interrelated  
21 proceeding.

22           So, basically, the Board only steps in

1 in rare circumstances. It applies the standard  
2 that you see in *Hunting Titan*, and it refers to  
3 situations where the adversarial process fails to  
4 provide the Board with arguments that are  
5 relevant.

6 So one of the things that we clarified  
7 that the Board may step in and grant a Motion to  
8 Amend, even the patent owner doesn't expressly  
9 address every single requirement in its motion.  
10 But it would do that only in circumstances where  
11 it's very easy to see and it would be in the  
12 interest supporting the integrity of the patent  
13 system and petitioner would have a chance to  
14 respond.

15 And, likewise, the Board may deny a  
16 Motion to Amend even in instances where the  
17 petition document was opposed or doesn't meet its  
18 burden. For example, the petitioner ceased  
19 (phonetic) to participate all together; for  
20 example, a result at settlement.

21 Sometimes the patent owner actually  
22 wants us to address the Motion to Amend, even

1       though the petitioner is gone; the petitioner is  
2       there but they don't oppose the Motion to Amend;  
3       and then there are some cases where certain  
4       evidence regarding the patentability issue hasn't  
5       been raised by either party but it is literally so  
6       readily identifiable or persuasive that the Board  
7       should take it up in the interest of supporting  
8       the integrity of the system.

9                But, ordinarily, in the vast majority of  
10       cases, where the petitioner has fully participated  
11       and opposed the Motion to Amend, the office  
12       expects that the petitioner will bear that burden  
13       and the Board will not step in.

14               So that's the general gist of what's  
15       going on. Some of the more sort of leaning  
16       discussion as to when the Board would step in, but  
17       we did that in response to stakeholder comments.

18               And, with that, I'll see if there are  
19       any questions before we go on to another rule that  
20       came out in December. (No response) It sounds  
21       like we don't have a whole lot of questions. So,  
22       with that, I will hand it over to Mike Tierney,

1       who will talk a little bit about another rule that  
2       came out in December.

3                   JUDGE TIERNEY:  Okay.  Thank you,  
4       Jackie.  I think most of you will recall that  
5       there was another rule package that issued and it  
6       came out on December 9, 2020.  And that was a  
7       final rule in a Trial Institution and Responsive  
8       briefing.  Although, internally, I tend to call it  
9       the SAS rule package because that's one of the  
10      main parts that's been in compliance with the SAS  
11      Supreme Court decision.

12                   So what did we actually put out in rule  
13      form?  Well, the rule is basically going to cover  
14      three things and they're not effective, though, I  
15      just want to point out, until January 8th, any  
16      petition filed on or after January 8th.  So if you  
17      had a filed a petition before that these rules do  
18      not specifically apply, but we do have some  
19      similar practices that I am about to jump into.

20                   So the three main changes, first, we are  
21      going all claims.  So if you have claims 1 to 20  
22      in a case, if we institute, we instituted all



1 claims, we don't institute on all claims.  
2 Remember, we used to have some "partial  
3 institution" post-SAS? We are not doing that,  
4 given what the Supreme held, which is it is all  
5 claims.

6 Similarly, the Supreme Court maybe  
7 didn't hold, but gave us at least a strong  
8 indication that it's all grounds' similarly, the  
9 rules put into all grounds. So, now, with the  
10 rules package we're continuing our practice, all  
11 claims/all ground, no partial institution.

12 Second, we have also revised the rules  
13 to conform (inaudible) practice of getting  
14 sur-replies, automatic sur-replies. That's  
15 something we had heard from stakeholders that they  
16 would like to have; we put it into practice; now  
17 we put into the rules.

18 You may recall how originally we had  
19 something called the observation. They were  
20 believed to be too limited for the patent holders  
21 in particular; we listened, we have made the  
22 change to make it a more balanced process. It

1 left them happy, effectively, the last word.

2 Third, we just want to point out there  
3 was another part of a rule package and this one I  
4 share the most specific comments in the comment  
5 package. And that was the one about "genuine  
6 issue material fact."

7 We would view it in the likeness they  
8 were both to petition. That was a rule change  
9 that was back, I believe, it was around 2016. And  
10 this rule package eliminated that presumption.  
11 Why did we do that? This is where we received a  
12 number of comments saying that there was a source  
13 of confusion there about how that rule would be  
14 applied.

15 And there was potential disincentive  
16 that some patent owners filing the testimonial  
17 evidence prior to institution. So to eliminate  
18 that disincentive and to reduce confusion, the  
19 office went ahead and eliminated (phonetic) that  
20 genuine issue of material fact presumption.

21 And now as to the other evidentiary  
22 questions at the institution phase, the Board

1 considers the totality of the evidence to  
2 determine whether or not the petitioner has met  
3 the applicable standards. For example, in the  
4 IPR, is there a reasonable likelihood of at least  
5 one claim in terms of unpatentable?

6 So that's that rule package. And, if I  
7 may, I'm going to turn over. Do you have any  
8 questions? I'll pause here. (No response) You do  
9 not have any questions in that rule package, I'll  
10 now move over quickly to our indefiniteness memo.

11 I think many of you probably saw this.  
12 But for those who didn't, on January 6th of this  
13 year, we put in a memo. We -- and this is the  
14 directors, Scott and Drew -- put out a memo  
15 clarifying the approach we're going to take to  
16 indefiniteness in trial proceedings.

17 So the key here, key takeaway, for AIA  
18 trial proceedings, the Board is now going to be  
19 using and following the merits set forth in  
20 Nautilus. That's the Supreme Court Nautilus case.  
21 And the memorandum, again, will only apply to AIA  
22 trial proceedings. We'll continue to follow

1 what's called "Packard," for our examination  
2 context.

3 And, just briefly, I want to talk about  
4 what is Packard and what is Nautilus and show you  
5 that there is not a real big difference here. But  
6 what we're doing is just trying to align standards  
7 and reduce any confusion as to which one we're  
8 opining.

9 Packard, the standard was from the  
10 Federal Circuit decision, in re: Packard. And  
11 under in re: Packard, a claim is indefinite when  
12 it contains words or phrases whose meaning is  
13 unclear. Right? Packard, meaning is unclear.

14 Now, conversely, we have Nautilus which  
15 came from a district court case and that was 2014,  
16 like, Packard. And in Nautilus it's a little bit  
17 lengthy as to what we say, "Claim is indefinite,  
18 as in patentable, if the claim read, in light of  
19 the specification, delineating the patent and  
20 prosecution history fails to inform with  
21 reasonable certainty those skilled in the art  
22 about the scope of the invention."

1                   So Packard, meaning is unclear;  
2       Nautilus, reasonable certainty is what's required.  
3       I posit, and this is me, there is not much  
4       delineate (phonetic) between the two standards and  
5       I haven't seen a case yet. It's possible that  
6       there is a case, but the two standards are  
7       essentially the same standard, just rewording it  
8       somewhat.

9                   Either way, to the extent there is a  
10       difference, Nautilus is following for AIA trial  
11       proceedings. And by aligning the standards here,  
12       kind of like what we had in (inaudible) we're  
13       aligning with the district court standards here.

14                   So that's going to basically reduce  
15       possible confusion because there was some  
16       confusion about what standards we're going to be  
17       having before us. And it eliminates the  
18       differences to create uniformity and  
19       predictability and improve the integrity of the  
20       system.

21                   So, with that, I'll pause to see if  
22       there is any questions. (No response) All right.

1 Not hearing any questions, I'll turn over to our  
2 last part of the presentation which is, latest  
3 info on PTAB filings.

4 JUDGE BOALICK: Right. And Vice Chief  
5 Judge Kim will be taking this the rest of the way  
6 here. And we finally get to change the slide,  
7 yea. (Laughter)

8 JUDGE KIM: Thank you very much, Scott.  
9 U=Yes, if you could advance to the next slide.

10 (Slide) So the main thing we  
11 wanted to draw your attention to  
12 was our updated statistics webpage.

13 So I'll actually start with the arrow on  
14 the right. Mostly, we publish our appeals and  
15 interference statistics, and the short and long  
16 part of it is that hasn't changed. We pretty much  
17 report the same things that we have done before  
18 and will continue to do so.

19 Where the changes really have happened  
20 are on the left-side, on the trial statistics. So  
21 the change are in two areas. So, actually, start  
22 with the lower area is, we recently put out two

1 end of year outcome roundups, so for FY '19 and FY  
2 '20.

3 And the reason we did that is because  
4 while the sum of our statistics, particularly the  
5 outcome statistics, really went all of the way  
6 back cumulatively to when AIA started in 2012.  
7 And, certainly, there has been a lot of change  
8 since then.

9 So we thought it would actually be  
10 better if we could sort of do an apples-to-apples  
11 comparison on a year-by-year basis. And,  
12 certainly, we have our archives and everything is  
13 there for anyone who is interested, and but that  
14 is something we -- change in format is something  
15 we will continue to move forward.

16 And then, moving to the top one, we have  
17 also decided that those same outcomes statistics  
18 will be recorded on a quarterly basis. So we are  
19 finishing up the Q1, FY '21 Q1 facts now, and  
20 these will be coming soon.

21 Moving on to the next slide please.

22 (Slide) So this, again, just shows

1                   you our appeal statistics. And  
2                   we're very proud of their pendency,  
3                   as Vice Chief Judge Gongola said,  
4                   it is critically approaching 12  
5                   months, is 13 December, and it is  
6                   actually also 13 January.

7                   Now, certainly, the colored bars, to the  
8                   left of it, sort of diverge and that is something  
9                   that we know we want everything closest to the  
10                  average. So we have gone over in past PPAC  
11                  meetings about some of the efforts we have done to  
12                  do that. And we will continue to do so, so that  
13                  the average can be consistent across (inaudible).

14                  And if you go to the next slide please.

15                  (Slide) And, finally, this is just  
16                  an example of our outcome  
17                  statistics and how they are  
18                  displayed. Here we have the FY  
19                  2020 year-end statistics and you  
20                  can go through them at your  
21                  leisure.

22                  I think one takeaway that you will see



1 is, you know, certainly percentages change on a  
2 year-by-year basis, but the overall narrative  
3 pretty much stayed the same. About a third of all  
4 patents, petitions, claims challenged end up with  
5 a final written decision; about third of them  
6 institution is denied; and about a third of them  
7 have settlement or some other decision.

8 So I know I'm over time, if anyone has  
9 any questions, now I would happy to answer them.

10 MR. CALTRIDER: Well, I'm going to take  
11 the opportunity as we're waiting to see if anybody  
12 has questions, to thank everyone for a lot of  
13 content today; that, you know, you come into the  
14 meeting estimating, trying to estimate how much  
15 time we need for each topic and we had an  
16 ambitious agenda.

17 So I appreciate everybody being concise  
18 and clear. And I think we kept to the time pretty  
19 well. So any final questions before I hand it  
20 back over to Julie? (No response) Okay. Thank  
21 you, everyone.

22 MS. MAR-SPINOLA: Thank you, Steve.

1 Thanks, Jane, Jackie, and everybody on PPAC that  
2 presented today. Steve is right. We always have  
3 a lot to cover and not enough time. So we very  
4 much appreciate the path to message information  
5 that you have provided, very helpful.

6 And so, to keep on time, let introduce  
7 Susan Braden and Dan Brown, our newest members of  
8 PPAC, who are co-chairs of the Legislative  
9 Subcommittee. And they're going to speak on the  
10 legislative updates with Kimberly Alton.

11 MR. BROWN: Hello, Susan -- hey, there.  
12 Since we are co-chairs, I just don't want to drive  
13 off away without you.

14 JUDGE BRADEN: I'm here.

15 MR. BROWN: Okay, good. Yeah, so, I  
16 guess, one, being new to PPAC, and new to the  
17 process, I just have to say that, you know, we're  
18 just getting up-to-speed. Kimberly has really put  
19 together a great presentation. So I don't want to  
20 waste too much time.

21 But all I wanted to say also, Judge  
22 Braden now, I need to say that I have found her to

1 be incredibly knowledgeable in this area, and all  
2 veterans are very fortunate I think that she's  
3 here and on this particular committee.

4 So, with that, Susan, I'd like you to  
5 say a couple of words, and then move on, and I'll  
6 be quiet.

7 JUDGE BRADEN: Because it's the  
8 beginning of a new Congress and to see what they  
9 think is going to come up on the desk for the  
10 House in December. So, with that, I'd ask  
11 Kimberly, where are you? (Laughter)

12 MS. ALTON: Great. I'll go ahead and  
13 begin.

14 JUDGE BRADEN: All right.

15 MS. ALTON: Good afternoon, everyone.  
16 I'm Kim Alton, and I am the Acting Director of the  
17 Office of Government Affairs. And I am joined by  
18 my colleague, Tammy Foley, we'll be presenting  
19 together today.

20 Again, a big welcome to Professor Brown  
21 and Judge Braden. We're so happy to have you  
22 onboard and as the co-chairs of our subcommittee.

1 Can we please move to the next slide? (Slide)

2 Perfect.

3 So we just wanted to start by providing  
4 a recap of some of the major IP-related  
5 legislation or operational legislation that moved  
6 at the end of the 116th Congress. So we did see  
7 things happen in December, and even just last  
8 month in January, in Congress that were related to  
9 some of our priorities.

10 The first you'll see was that there the  
11 Patents for Humanity Improvement Act, that bill  
12 became law. It had been pending for quite some  
13 time, but it did enjoy bipartisan and bicameral  
14 support.

15 And that's an important program that the  
16 PTO administers to really help celebrate and  
17 recognize innovation that addresses different  
18 global challenges. So we were really pleased to  
19 see that become law.

20 And then, of course, bullet two,  
21 permanent authorization of TEAPP that is our pilot  
22 program, our telework pilot program that's been in

1 place since 2012, a very successful pilot.

2 We have about 3,000 PTO employees, who  
3 are currently members of that pilot, who  
4 participate in the program. This is the program  
5 that allows employees to live and work anywhere,  
6 including Puerto Rico and Hawaii, and to change  
7 their duty stations, though, a real success for  
8 the PTO and really a demonstration of our  
9 leadership as it relates to telework within the  
10 federal workforce. So we are glad that that is  
11 now a permanent program.

12 We also saw new laws related to  
13 trademark, a major update of the Lanham Act that  
14 was enacted as part of the Trademark Modernization  
15 Act; and then also the Case Act that establishes a  
16 new Small Claims Copyright Court at the U.S.  
17 Copyright Office.

18 And then, finally, you'll illicit  
19 digital streaming. There was legislation that  
20 became law titled, "The Protecting Lawful  
21 Streaming Act," that does create a new criminal  
22 penalty for illegal streaming. So these are all

1 bills that we have followed and provide technical  
2 assistance and we're very interested in.

3 And then, finally, the increase in rank  
4 of our IP attaches that was something that we have  
5 been working on and we were very pleased to work  
6 with our colleagues in the Senate to get that  
7 accomplished.

8 So, now, we have four IP attaches who  
9 have the elevated rank of counselors. These  
10 attaches are in New Delhi, Mexico City, Beijing,  
11 and Brussels. So we're really pleased about that  
12 and believe that this new rank will really help in  
13 their work and activities on behalf of U.S.  
14 Stakeholders.

15 Next slide please. (Slide) So looking  
16 to the 117th Congress that just got started last  
17 month, over the past two weeks, or so, we have  
18 seen Congress, Congressional leadership positions  
19 decided, Committee assignments made. And so this  
20 slide just represents the latest in terms of who  
21 are the different chair and ranking members of the  
22 USPTO's committee of jurisdiction.

1                   So, of course, we have the Senate  
2                   Judiciary Committee. The full committee will be  
3                   chaired by Senator Rick Durbin, from Illinois;  
4                   Ranking Member will be Senator Chuck Grassley from  
5                   Iowa. And then, we, of course, have IP  
6                   Subcommittee within the Senate Judiciary  
7                   Committee, chaired by Senator Chris Koons, and  
8                   Ranking Member Tom Tillis.

9                   And then, moving over on the House side,  
10                  a lot of the leadership remains the same with  
11                  Chairman Nadler, remaining as the chair of the  
12                  full committee, and Ranking Member Jim Jordan,  
13                  remaining as the ranking member; and then Hank  
14                  Johnson, chair of the IP Subcommittee; and then  
15                  Darryl Issa, returning to Congress in his position  
16                  on the IP Subcommittee, as the ranking member.

17                  We will be working closely, as always,  
18                  with these committees. We have, I think, good  
19                  relationships with these members, with their  
20                  staffers, and really hope to continue some of the  
21                  momentum that we saw last year in terms of real  
22                  progress in advancing our priorities.

1           Some of the issues that we will be  
2           monitoring that we expect to see in the new  
3           Congress are certainly issues related to IP  
4           enforcement, so that includes counterfeiting in  
5           trade secrets, theft, also drug pricing. That we  
6           expect to be a very hot issue, and, of course,  
7           innovation inclusion, and expansion.

8           We do know that many members have been  
9           very supportive of Director Iancu's efforts, the  
10          creation of the NCEAI. And so we expect for there  
11          to be a continued focus on those issues related to  
12          innovation inclusion.

13          Next slide. And I'll pass it to Tammy.

14          MS. MAR-SPINOLA: Kimberly, before you  
15          do that, if you can go back to the previous slide,  
16          about the Judiciary Committee. Right. And so, in  
17          there the subheading is, "Retirements and  
18          Changes." Is there anybody that's retire, just  
19          curious?

20          MS. ALTON: So we did not have -- I'm  
21          looking at the list now -- no, we do not have any  
22          retirements from this list.



1 MS. MAR-SPINOLA: Okay, okay.

2 MS. ALTON: It's really just changes.

3 MS. MAR-SPINOLA: Right. I just hadn't  
4 heard of any, so I was just curious about that.  
5 Thank you.

6 MS. ALTON: Sure. Okay. The next slide  
7 is --

8 MR. CHAN: Kim?

9 MS. ALTON: Yes.

10 MR. CHAN: Oh, I'm sorry. I just had a  
11 quick question. On your previous slide, you  
12 mentioned the elevation of the IP attaches, I  
13 think is great news. Just for my own edification,  
14 and maybe for the public, as well, like, what does  
15 that mean in practice, the elevation? Does that  
16 impact their roles and responsibilities? Does  
17 that give them more authorization to do other  
18 types of things? That would be helpful to know.

19 MS. ALTON: Right. So the conversation  
20 that I have had with the attaches is that very  
21 often when they are meeting with their  
22 counterparts in different countries, rank and

1 title, you know, are very important.

2 And so I think having this elevated rank  
3 certainly helps move the path in terms of some of  
4 the meetings that they are able to join, some of  
5 the meetings that they are able to request with  
6 high level -- higher level officials at different  
7 countries. So that's what was really behind this  
8 push, really sort of elevated the cache of the  
9 position.

10 MR. CHAN: Thanks, Kim.

11 MS. ALTON: Sure. Any other questions?

12 (No response) Okay. I will turn it over to  
13 Tammy.

14 MS. FOLEY: Thanks, Kim. Just very  
15 briefly, we're continuing to follow the nomination  
16 of Governor Gina Raimondo of Rhode Island to be  
17 the next Secretary of Commerce. Her nomination  
18 hearing was held before the Senate Commerce  
19 Science and Transportation Committee on January  
20 26th; and on February 3rd, she was advanced by  
21 this committee by a vote of 21 to 3. So we're  
22 just currently awaiting for the confirmation by

1 the full Senate which we anticipate will take  
2 place by the end of February.

3 Do you have any questions? (No  
4 response) Thank you.

5 MS. ALTON: All right. Well, that  
6 concludes our report. Please feel free to reach  
7 out to me, or to Tammy, if you have any questions;  
8 we're happy to follow up. And, again, we look  
9 forward to working with Professor Brown and Judge  
10 Braden on more legislative successes this year.  
11 Thank you.

12 MR. BROWN: Thank you. I think that's  
13 it.

14 MS. MAR-SPINOLA: Thank you, Kim, and  
15 thank you, Tammy, for your presentation, much  
16 appreciated, looking forward to some  
17 patent-related activities to rev up before the  
18 Judiciary Committee now that the folks are in  
19 place, and so thank you for that.

20 We are on time. I think, actually, we  
21 got a note we're on time, so perfect. We're going  
22 to transition over to the Finance Subcommittee. I

1 believe that our chair for the subcommittee,  
2 Barney Cassidy, has been having technical  
3 difficulties in terms of having video access.

4 So I believe he is connected by phone.  
5 And then, Jay Hoffman, the CFO, will be leading  
6 this discussion with Barney. Barney, are you on?

7 (No response) Barney, are you on  
8 mute? (No response) Well, maybe  
9 Barney is having more than video  
10 issues.

11 Jay, are you on?

12 MR. HOFFMAN: I am on. Can you hear me,  
13 Julie?

14 MS. MAR-SPINOLA: I can hear you. I  
15 don't see you. Are you on video? Oh, yeah, there  
16 you are.

17 MR. HOFFMAN: I am on.

18 MS. MAR-SPINOLA: Thank you.

19 MR. HOFFMAN: I am on video, yes. Okay.  
20 Well, I'm sorry that we don't have Barney yet.  
21 And if he is able to join, I hope that he will  
22 just jump in. Would you like me to just go ahead

1 and talk through the presentation?

2 MR. CASSIDY: Can you hear me?

3 MR. HOFFMAN: Oh, good.

4 MS. MAR-SPINOLA: Yeah. Hey, Barney.

5 MR. CASSIDY: Hey, I'm so sorry. I was  
6 triple muted somehow. And thank you, Julie. And  
7 thank you, Jay, for hopping in.

8 I just have a quick reflection on the  
9 day so far. It's been a very impressive series of  
10 presentations. I think when you think about the  
11 mission of the Patent Office to promote the  
12 progress of science and the useful arts, it is  
13 inspiring to see how vigorously the entire Patent  
14 Office is working towards those goals in including  
15 people, and expanding the outreach, and improving  
16 internal processes, and improving external reach  
17 out.

18 I have to say, this has been the most  
19 satisfying meeting of the PPAC that I have had the  
20 privilege to attend. So, congratulations, to all  
21 of you for all of your hard work. And it's not  
22 just you're doing it intelligently, but you're

1 doing it with heart and we need that nowadays.

2 I also want to thank my fellow  
3 subcommittee members, Jeff Sears and Dan Brown,  
4 for their support in getting a presentation today  
5 by Jay vetted and approved. So, with that, Jay,  
6 I'm going to turn it over to you. Thank you.

7 MR. HOFFMAN: Great. Thank you very  
8 much, Barney, appreciate that. We did have an  
9 excellent conversation earlier this week. We went  
10 into a lot of details. I'm going to hit some of  
11 the highlights today. And I promise to get  
12 through this and leave plenty of time for any  
13 questions that the PPAC have.

14 Why don't we go ahead and advance to the  
15 next slide please? One more. (Slide) Okay.  
16 Just a real quick update on our appropriation.  
17 When we last met, we were under a continuing  
18 resolution.

19 But the good news is that the FY 2021  
20 full year appropriation for the agency and COVID  
21 Relief Response Act, which happened December 27th,  
22 the important thing about the appropriation for

1 the PTO is that this bill provides us with \$3.695  
2 billion in authority for FY 2021.

3 And that authority is the authority to  
4 spend the user fees that we collect from the  
5 ratepayers for our patenting activity. So it's  
6 good news to be on a full year appropriation and  
7 have full access to all of the fees that we  
8 collect. Go to the next slide please. (Slide)

9 As we had discussed in our last PPAC  
10 meeting, just as a reminder, that because of the  
11 fee increase that was implemented on October 2nd,  
12 a number of patent holders opted to pay their  
13 maintenance fees early to take advantage of the  
14 lower maintenance fee rate before the fee increase  
15 went into effect.

16 And that, in turn, resulted in a large  
17 deposit into the Patent and Trademark Fee Reserve  
18 Fund. This is essentially the holding account for  
19 fees that occur in a prior year. And we are in  
20 the process of working on a reprogramming to make  
21 those fees available to the agency.

22 So this is just a governance note for

1 transparency that those funds are still in the  
2 Patent and Trademark Fee Reserve Fund, but we are  
3 in active conversations with Congress right now  
4 and expect to have approval of those soon.

5           Next slide please. (Slide) I'll spend  
6 a little bit more time on this slide. This  
7 provides the FY 2021 status on the Patent  
8 Financial Outlook. This is what we plan to  
9 collect, what we have already collected, and the  
10 amount that we plan to spend.

11           So let me just quickly walk you through  
12 the table here. You'll notice that there are two  
13 columns here: One that's labeled USPTO; and one  
14 that's labeled patents. The one that's labeled  
15 USPTO is the entire agency, which would include  
16 trademarks. And, of course, the patents column  
17 are just those revenues and costs that are related  
18 to the patent function, which is the majority of  
19 them.

20           As we move down this, as I already  
21 mentioned, we had \$3.695 dollars appropriated to  
22 us. And the reason that that's important is



1 because we only expect to collect \$3.516 billion  
2 for the year, and of that about \$3.073 billion of  
3 it is in patents.

4 So the appropriation just says we have  
5 more than enough authority to use all of the fees  
6 that we collect. We don't expect to collect more  
7 fees than the Congress have authorized.

8 Moving down this table, it's called  
9 "Carryover and Other Income." What this just  
10 means is we know the amount of reserves that we  
11 started the year off with. And for those of you  
12 who are in the private sector, you might think of  
13 this as retained earnings.

14 We had \$563 million in the bank when we  
15 started the year, as an agency, and \$440 million  
16 of that was in patents. So the operating reserve  
17 in patents was in very good shape. And this  
18 totals up to we have, at the beginning of the  
19 year, we had more than \$4 billion available to  
20 spend and to finance the operations, and of that  
21 about \$3.5 billion was attributable to patents.

22 (Slide) So the next slide is, well,

1                   what do we

2                   Plan to spend in FY 2021? The planned  
3                   spending for the agency is 3. -- don't advance yet  
4                   please. Please go back to the prior slide. Thank  
5                   you.

6                   So what we plan to spend this year is  
7                   \$3.8 million of which 3.4 million is in patents.  
8                   We have more than sufficient funding available for  
9                   those spending levels. The end of year reserves  
10                  without the reprogramming that I had referenced a  
11                  moment ago in the Patent and Trademark Fee Reserve  
12                  Fund are 251 million for the agency and \$98  
13                  million for the patent organization.

14                  That's significantly below the \$300  
15                  million minimum that we tend to operate under for  
16                  patents. However, not to worry, once the  
17                  reprogramming request is approved by Congress --  
18                  again, hopefully, in the next several weeks or  
19                  less -- those reserves will be back up above \$300  
20                  million and put us into our comfort zone.

21                  So that's the spending outlook for FY  
22                  2021. I know that's a lot of information, but

1 that really is the nuts and bolts of what we plan  
2 to collect and what we plan to spend. Let's jump  
3 forward two slides please. One more. That's  
4 good, yeah. (Slide)

5 This is just a pictorial of our spending  
6 to, I think, visually display what I just  
7 described. Let me first acclimate into the chart.  
8 So this is our revenue and spending all in one  
9 chart. The Y axis is in millions of dollars; the  
10 X axis is in months of the year.

11 The blue bars, whether they're dark blue  
12 bars or fuzzy blue bars, are the amount that we  
13 either already have spent, or if they're fuzzy  
14 it's the amount that we're projected to spend in  
15 the months ahead.

16 And the red bars, if they're dark red,  
17 it's the money we have already collected. And if  
18 they're sort of fuzzy red, it's the amount that we  
19 plan to collect for the remainder of the year.  
20 And that green bar running across the top is the  
21 total amount that we expect to spend.

22 The big takeaway here is what I

1 presented on the prior slide and that is we're  
2 going to spend more this year than we collect and  
3 we anticipated that. And the reason we are going  
4 to spend more this year than we plan to collect  
5 then because we collected those maintenance fees  
6 early last year.

7           So, if they were early payments, they  
8 weren't extra payments, they weren't in addition.  
9 And when you add those to that red bar, you  
10 actually have more revenues than you have expenses  
11 for the year. So nothing to worry about, but just  
12 for transparency, that's why spending is higher  
13 than revenues in FY 2021.

14           Let's go to the next slide and take a  
15 look at our revenues. (Slide) As you know, from  
16 our PPAC meetings that we had last summer with the  
17 economic downturn and then the stimulus and the  
18 upturn after that, and all of the ups and downs we  
19 had with the economy last year, I'm happy to  
20 report that it's not nearly as exciting this year.  
21 The revenue projections are actually holding up  
22 reasonably consistent with what we forecasted.

1                   Again, let me quickly acclimate you to  
2                   this chart so you know what you're looking at.  
3                   This is the FY 2021 status of our annualized  
4                   revenues, the total revenues for the patent  
5                   organization. Again, the Y axis is in millions of  
6                   dollars; the X axis is in weeks of the year.

7                   And what you see here are two lines:  
8                   The blue line is the 25-day moving average; the  
9                   pink line is our end of year projection; and the  
10                  green horizontal line that runs across the entire  
11                  chart is the forecast. So if you're above the  
12                  green line, you're ahead of your forecast; if  
13                  you're below the green line, you're a little bit  
14                  behind your forecast.

15                  And what I can report is, when we look  
16                  at the 25-day moving average, we have actually  
17                  seen revenues in patents move up a little bit, the  
18                  last month, or so, and that's good. We're  
19                  currently tracking at about \$3.2 billion in  
20                  revenue which is \$142 million above plan.

21                  It's probably too soon to draw any  
22                  conclusions off that, but that's not a bad place

1 to be. When we look at all of the empirical data  
2 that we have collected for the year so far, that  
3 which is the pink line, we're actually a little  
4 bit below the forecast but not by much.

5 That's the entire year dataset suggests  
6 we're about \$39 million below the forecast, but  
7 that's only about one percent. That's not a  
8 material amount. So the bottom line is that the  
9 forecast for patent revenues this year is holding  
10 up reasonably well and we'll have more of a sense  
11 of it at the next meeting, see if it continues to  
12 hold up. But right now I think is great news.

13 Okay. Let's advance a few slides. I'm  
14 not going to go through all of these today. Go up  
15 to the one that says FY 2022 budget. One more.  
16 One more. There we go. (Slide) Okay. Now, right  
17 now, the USPTO is finalizing our requirements for  
18 next year's budget and that is what is called the  
19 President's Budget Submission.

20 Generally, in a normal year, we submit  
21 the President's budget on the first Monday in  
22 February. In fact, I think that's the statutory

1 requirement. However, this is a year where they  
2 have changed Administration. And so the actual  
3 submission of the budget is being delayed until  
4 the Biden Administration has a chance to take a  
5 look at the budget and make sure the things they  
6 want in it or in or out.

7           At the end of the day, the PTO is  
8 largely unaffected by this delay. There is not  
9 really any policy issues in our budget that rise  
10 to the attention of major policy issues. So for  
11 us it's more of a timing delay. We expect that  
12 the budget will probably go forward some time in  
13 mid- to late-spring; we're hearing maybe some time  
14 in the April/May timeframe.

15           Before the budget goes forward, we will  
16 provide the final draft documents for PPAC to take  
17 a look at. They should look very similar to  
18 documents you have already reviewed heading up to  
19 the OMB submission to get your feedback.

20           We do expect that there will be House  
21 and Senate hearings on our request. They may not  
22 be specific to PTO. They're probably going to be

1 at the DOC level. We, typically, don't have a lot  
2 of questions that surface in that. But with Kim  
3 and her team, we'll certainly be monitoring that  
4 for any issues that might come up.

5 Next slide please. (Slide) Fee  
6 setting. So another thing I wanted to mentioned  
7 today is that we do plan to monitor the impact  
8 that the most recent fee rate increase has on our  
9 revenue collections, as well as, it's impact on  
10 Applicant behavior.

11 Right now, you know, the fee increase  
12 just went into effect in October. It's really too  
13 soon to tell what the impact is. We also know  
14 that some more recent change to behavior could be  
15 attributed to the current economic environment  
16 related to the pandemic. And we have heard  
17 anecdotally that some budgets are being adjusted  
18 in the private sector for IP, so we're also  
19 monitoring that.

20 One key thing that we are watching is to  
21 see if the FY 2021, we are going to get the  
22 maintenance fee payments that we did not see come



1 in as early as expected. If you remember, in our  
2 last PPAC meeting, I had shared with you that we  
3 had projected that we would receive \$445 million  
4 in maintenance fee payments prior to the fee  
5 increase going into effect.

6 Now, in actuality, we only received \$291  
7 million of payment. That's a fairly significant  
8 difference, you know, we're talking about \$160  
9 million. As we looked at the reasons why, at  
10 first we were somewhat concerned.

11 But as we started to look at the reasons  
12 why, we realized that the behavior that we modeled  
13 the forecast on was premised on the 2013 fee  
14 increase. And the 20103 fee increase for  
15 maintenance fees was significantly more than the  
16 fee increase that just went into effect.

17 A couple of numbers for you: 2013, the  
18 second stage maintenance fee increased by 24  
19 percent; third stage maintenance fee increased by  
20 a whopping 54 percent. In 2020, for the fee  
21 increase that just went into effect, second and  
22 third stage maintenance fees only increased by

1 four percent, significantly less.

2 And so our hypothesis was, you know,  
3 because the increase was not that large, it may  
4 not have been enough of an incentive for some  
5 patent holders to pay their maintenance fee early.  
6 They might have just decided, you know, we'll just  
7 wait and pay it later or pay it on time.

8 And so, we developed analytics to track  
9 that hypothesis. And I'm happy to report that  
10 that is, in fact, exactly what we are seeing. So  
11 if you go to the next slide I can show you that.  
12 (Slide) So another quick picture, what this shows  
13 you is this is a fee setting accelerated  
14 maintenance fee tracking. Just to acclimate you  
15 to the chart, it summarizes maintenance fee  
16 payment behavior for patents holders that have the  
17 ability to pay without a surcharge before or after  
18 the fee change.

19 What the blue bar is is the total plan  
20 renewal; and the green bar are the actual  
21 renewals. The Y axis is the count of renewals;  
22 and the X axis is the weeks until the surcharge

1 period ends.

2           So the way you read this charge is  
3 actually very simple. If the green bar matches  
4 the blue bars, you go across, things are happening  
5 according to expectation. And that's exactly what  
6 we have seen throughout the year that maintenance  
7 fees have continued to track at the expectation  
8 despite the fee increase.

9           As a result of those patent holders  
10 deciding to wait and pay their maintenance fees  
11 later, interestingly, will actually end up in a  
12 stronger revenue position. We anticipate that  
13 we'll collect about \$22 million more in  
14 maintenance fee revenues than we otherwise would  
15 have collected had those maintenance fee holders  
16 decided to pay early.

17           So, generally, a good story there.  
18 Let's go to the next slide please. (Slide) I  
19 know we just went through a fee section. We are  
20 continuing to evaluate proposals and conducting  
21 analysis on potential adjustments to current fees.  
22 And the reason we do that is that, as you know,

1 from having just gone through the fee setting with  
2 us, it takes a couple of years to get through the  
3 entire process.

4           So we're at the very front-end of that  
5 now, and we are starting to do some analysis.  
6 We're just barely into it, no decisions have been  
7 made. But we are looking at proposals and we are  
8 looking at proposals and we are looking at  
9 analytics trying to decide what the right thing to  
10 do is. So we'll obviously be bringing that to the  
11 PPAC, as we have something more concrete.

12           I'm just going to share with you one  
13 last slide that we went through the subcommittee  
14 that the group thought would be of interest to the  
15 public session. Can we advance two slides please?  
16 One more. (Slide) Okay.

17           So, you might find it interesting that  
18 there are 365 patent fees out there. And that's a  
19 lot. There is 162 large entity fee codes; 103  
20 small entity fee codes; and 100 micro-entity fee  
21 codes; that, all told, there are 162 unique fee  
22 codes.

1                   It's a last patent fee setting we  
2                   adjusted 296 of those fees. It's mind boggling  
3                   really. So there was a lot of adjustments.  
4                   Right? However, what this chart shows is  
5                   something I think that's very interesting, as we  
6                   start thinking about what the next set of fee  
7                   settings can look like.

8                   But the pie chart here shows our top  
9                   revenue generating fee categories. And if you  
10                  look on the right-hand side of this pie chart, I  
11                  think it's very telling that first, second, and  
12                  third maintenance fees account for 50 percent of  
13                  our revenue, just those three categories.

14                  Think about that, you know,  
15                  300-and-some-odd fee codes. Now, granted, they're  
16                  small, and micro, and things like, but 50 percent  
17                  of our revenue from three things. And, in fact,  
18                  it's just a handful of categories that comprise 84  
19                  percent of our revenue, when you add utility  
20                  issue, serialized filings, RCEs.

21                  Just those -- what do we got here --  
22                  one, two, three, four, five, six categories

1 account for 84 percent of all of our revenue, even  
2 everything else accounts for just 16 percent of  
3 our revenue.

4 I share this with you for a couple of  
5 reasons, one, as we get into adjusting fees, you  
6 can very quickly overwhelm yourself with a lot of  
7 detail and we certainly have done that. But, at  
8 the end of the day, there is a few major levers  
9 that really impact the revenues at the agency.

10 And, as we look at the cost structure,  
11 the last point that I'll make is, the agency for  
12 the most part breaks even on a total cost basis at  
13 the second stage maintenance fee. So we don't  
14 really recover all of the costs to analyze and  
15 issue adjudicated patent until we get to the  
16 second stage.

17 And so there is no decision that we're  
18 looking for today, but I thought it would be good  
19 to at least start the acclimation process today  
20 before we get into the fee setting in earnest.

21 So I'm sure that you would love to see  
22 or 20 more slides, but I'm going to actually pause

1       there and see if there are any questions. I think  
2       we're last. So I'm sure people are wore out, too,  
3       but I'm happy to stay on and visit with you if you  
4       have any questions for me.

5               MR. CASSIDY: Thank you, Jay. Are there  
6       any questions?

7               MS. MAR-SPINOLA: Yeah. And so, thanks.  
8       Barney. Thanks, Jay. I am not money person, to  
9       say, you know, but I'm always interested in your  
10      slides. The last slide is very interesting to me  
11      that you had with the pie chart.

12              So did I hear that right that after the  
13      second stage of fees the Patent Office breaks even  
14      so that means the rest of that pie chart is  
15      profit?

16              MR. HOFFMAN: Well, we don't use that  
17      word. But, essentially, those would be funds,  
18      generally speaking, that would be bolstering the  
19      reserve. Right? So after we reach that breakeven  
20      point for any particular issue, any funds in  
21      excess of that would be supporting the operating  
22      reserve.

1                   MS. MAR-SPINOLA: Okay. And then have  
2                   you found in your analyses that there is  
3                   consistency in the payments in the earlier stages  
4                   compared to the third stage? In other words, is  
5                   there some attrition rate by the time you get to  
6                   the third stage of fees?

7                   MR. HOFFMAN: There is and we'll show  
8                   you. Thank you for asking about that. It's one  
9                   of my favorite graphics actually. You know, we'll  
10                  show you that in the next session. But just to  
11                  sort of preview it, like a good movie, obviously,  
12                  the first stage maintenance fee is pretty high and  
13                  pretty reliable; and the second stage isn't as  
14                  high, but it's generally about the same in terms  
15                  of reliability.

16                  That's not the case with the third stage  
17                  maintenance fees, not only are folks less likely  
18                  to renew in the third stage, what we have been  
19                  seeing is degradation in the number of folks that  
20                  actually renew.

21                  And at first blush it's, like, oh, my  
22                  gosh, your third stage maintenance fees are drying



1 up. But that's an oversimplification of the  
2 analysis because the total universe of patents is  
3 increasing. So, even though the renewal rate is  
4 going down, the base continues to grow.

5 MS. MAR-SPINOLA: Yeah.

6 MR. HOFFMAN: So it's not a simple  
7 linear analysis. And we definitely look forward  
8 to showing you the advanced user slides in a  
9 future session that get at exactly that question.  
10 I think it's really exciting work that the team  
11 has done on that point. Even Drew is smiling, he  
12 knows it's exciting.

13 MS. MAR-SPINOLA: Yeah. I'm so glad you  
14 think it's exciting. It's definitely interesting  
15 to me. But, and then, I see the serialized piece  
16 of the pie there in green. It's almost the same  
17 size as, what, as the third stage and just a  
18 little smaller than the second stage.

19 So is there any correlation between the  
20 third stage, the grading and the serialized  
21 increasing at all?

22 MR. HOFFMAN: I haven't thought about

1       that hypothesis. I'll have to take that one back  
2       for study.

3                   MS. MAR-SPINOLA: Yeah, yeah, okay. And  
4       then, an issue that did not -- that came up  
5       earlier today has to do with a recent announcement  
6       by China that it was going to terminate a  
7       subsidizing application.

8                   Can you address that in terms of how  
9       that may or may not impact the office's revenue?

10                  MR. HOFFMAN: Sure. I can try to answer  
11       it if you can just give me one second here to  
12       bring up an analysis that I have on that.

13                  MS. MAR-SPINOLA: To the extent that  
14       that's something that you can address.

15                  MR. HOFFMAN: Sure, sure. Well, I think  
16       the simple version is that that's something that  
17       we're aware of, and it's something that we're  
18       watching. However, when we did the analysis on  
19       those subsidies, or the initial analysis that we  
20       have done on those subsidies is that it only  
21       relates to, I believe, the filing.

22                  And if I get this wrong, if someone on

1 the patent side jumps in; if I get any of that  
2 wrong, please do so. But there is no support for  
3 issue and there is no support for maintenance. So  
4 that's, I think, one key element.

5 The other thing is it's a very small --  
6 the filings that are affected are actually a very  
7 small percent of the total; it's less than two  
8 percent. So it's something that we're watching.  
9 But, based on our initial analysis, we're not  
10 perceiving there to be a material impact at this  
11 time.

12 MR. HIRSHFELD: Hay, I can jump in. I  
13 think that is correct, I mean, the amount of new  
14 filings that the removal of the subsidies will  
15 impact is not big enough to have a significant  
16 impact on us (phonetic). We would be having a  
17 very different conversation on the trademark side  
18 of the house, but that's a different issue.

19 Regarding the subsidies, I believe the  
20 subsidies are still continuing for issuance and  
21 maintenance so that could still spur filings but  
22 they have -- they are being phased out or removed

1 for new filings of application. I just, I also  
2 wanted to mention --

3 MS. MAR-SPINOLA: Thanks.

4 MR. HIRSHFELD: -- and go back to a  
5 previous question that you asked, Julie, about the  
6 second stage and breaking even. And I'm just  
7 highlighting the fact that this is also an area of  
8 great focus for us.

9 What's behind these numbers is the whole  
10 premise to the patent system of maintenance fees,  
11 to begin with. That's the whole idea of the  
12 maintenance fees is that you are using the  
13 maintenance fees to offset the early stage fees so  
14 that you have a lower barrier to entry so people  
15 can use the system much more.

16 And you can imagine that during -- when  
17 you are so heavily weighted on these maintenance  
18 fees, and during this time of uncertainty because  
19 of the pandemic, can you imagine the impact if  
20 people's budgets were cut to the point of very  
21 significant impacts to maintenance fees we would  
22 be in a very dangerous place.

1                   We're not there, but that is something I  
2                   think this, quite frankly, this pandemic has  
3                   helped spur the conversations about our entire fee  
4                   structure and what is right for moving forward.  
5                   So, Chan and his team, and others, are doing a  
6                   very deep analysis on this exact issue.

7                   MS. MAR-SPINOLA: Thank you. I think  
8                   we'll all be very eager to hear or see that  
9                   analyses. Thanks, Drew. Barney?

10                  MR. CASSIDY: Unless there is other  
11                  questions, I think we can wrap up.

12                  MS. MAR-SPINOLA: Drew, do you have any  
13                  closing remarks, since we have some extra time  
14                  here?

15                  MR. HIRSHFELD: I won't be staying long  
16                  between the end of the meeting and now. So, let  
17                  me just say thank you to everybody. I do think it  
18                  was a great meeting.

19                  Barney, I appreciate your comments  
20                  earlier about the heart that people showed in  
21                  putting into their jobs. And that is very  
22                  apparent across the board for the PTO and PPAC.

1 So thank you to everybody for all of your great  
2 effort.

3 MS. MAR-SPINOLA: Thank you for that.  
4 Since I think this is the first that we are  
5 adjourning a little bit early, in fact, almost 20  
6 minutes early, do I have a motion to adjourn? (No  
7 response) PPAC do you still want to go on or do  
8 you want to vote to adjourn?

9 PARTICIPANT: Yeah, so moved.

10 (Laughter)

11 MR. HIRSHFELD: Move to adjourn.

12 MS. MARSPINOLA: And does anybody second  
13 that?

14 PARTICIPANT: I'll second.

15 MS. MAR-SPINOLA: All right. Thank you  
16 very much. Thank you, everybody. We look forward  
17 to the next quarterly meeting, a lot of progress  
18 has been made. Thank you for the panelists  
19 transparency and willingness to answer some of our  
20 questions. Some of them may be a little sensitive  
21 or tough to answer, but we appreciate the effort.  
22 And, more importantly, you know, we appreciate the

1 cooperation with PPAC. And we look forward to  
2 being able to work through this time period.

3 MR. HIRSHFELD: Thank you.

4 MS. MAR-SPINOLA: And, particularly,  
5 under your leadership, Drew.

6 MR. HIRSHFELD: Thank you, much  
7 appreciated.

8 MS. MAR-SPINOLA: Okay. All right.  
9 Good night, everyone. Take care.

10 PARTICIPANT: Thanks, everyone.

11 PARTICIPANT: Thank you, take care.

12 (Whereupon, at 4:13 p.m., the  
13 PROCEEDINGS were adjourned.)

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## 1 CERTIFICATE OF NOTARY PUBLIC

## 2 COMMONWEALTH OF VIRGINIA

3 I, Thomas Watson, notary public in and  
4 for the Commonwealth of Virginia, do hereby certify  
5 that the forgoing PROCEEDING was duly recorded and  
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