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MR. DOLL: Okay. Are we ready to proceed? All right. So we're back on the record on the Public Session of the Patent Public Advisory Committee meeting for today, on Friday, August 8. And I think the next topic on the agenda was Pendency, Quality and Retention Updates from Peggy Focarino, the Deputy Commissioner.

MS. FOCARINO: Does everyone have handouts? Because I apologize, my slides weren't loaded. Okay. So we'll just talk from the - But anyway, I just wanted to give you a look at where we were at the end of last year compared to where we were at the end of the third quarter. And as you can see by the first bullet there, we've grown the backlog of applications waiting for Jackie, which we expected to happen.

We have more members on board. Actually, we are approaching probably by the end of the year about 6,000, just under 6,000 patent examiners. Increasing the number of managers goes a long way to increasing the work force. And
we've gotten approval for more group director positions; as a matter of fact, I've got three vacancies right now that Steve Smith alluded to that I'm trying to fill hopefully here within the next few weeks and get the new directors into place, so that will bring out almost 30 directors. Pendency to first action, some of you, we give an average pendency, which you can see at the bottom, but it's always interesting to look at where we are in the different disciplines.

And, you know, most of the areas have grown since the end of last fiscal year, but - actually gotten better, I think 2600 is one of the - actually gotten better since last year, and you know, that's really because of the hiring - place large amounts of hires in that area, 2600.

And the plan is for October, to actually take some art from 21 to 2600 and form a new technology center. So we'll have every technology center, 2400, the next time we meet, and that will be network, small - cable and internet - So we're hiring examiners right now in groups from - to -
technology and training them to examine - so that's the plan.

Our target for fiscal year '08, I believe, and correct me if I'm wrong, is 26.9 months, right, pendency to first action, or total pendency.

MR. HUDSON: For when?

MS. FOCARINO: Pendency to first action, 26.9, is it?

MR. HUDSON: Need glasses.

MS. FOCARINO: But I believe it is, yeah.

MR. SMITH: The target is 26.9.

MS. FOCARINO: Right, 26.9. So it looks like we're going to make that goal, which we haven't made in the last couple of years, so I hope we continue to, you know, focus on that goal.

The next slide, you can take a look at the total pendency, again, by discipline. Some areas have decreased slightly from the end of last fiscal year and others have increased.

You notice in the mechanical area, 3700
has gone up. They experience a higher attrition rate, particularly in their - area. They just had a lot of hires, too, in the last couple of years, which is - the mechanical areas aren't quite, you know, they hadn't hired - hiring or slight decreases in hiring for quite a while. So now because of the growth in those areas, the - you know, filings are increasing, too, so you can see some growth in pendency there.

We talked earlier about hires and attritions, but just to give you a look, our goal actually was 1200 and we hired a little bit more than that. And this year our goal, again, is 1200. We have 920 on board, and we're going to - it looks like we're going to make - Steve, right?

MR. SMITH: I think we're going to make it. As of yesterday, we project 26 short and --

MS. FOCARINO: Right; we have 194 accepted offers waiting to start our training academy, and so they'll come in in the next two training academy classes. And we're getting - continuing to get very good caliber hires, so
we're pleased about that.

The quality, if you take a look at the next slide, our goal last year was to have 96 percent or greater allowance from clients, and 90 percent or greater in-process. And you can see where we finish, we exceeded our allowance compliance rate, and we also came in at over 92 percent in-process compliance rate, so, you know, we improved from the previous year.

And then our 2008 goal, again, 96 percent or greater in allowance compliance rate, and then we upped our in-process compliance rate to 92 percent based on the previous year's achievement. And so in the third quarter, you can see that we're, again, exceeding our allowance compliance rate and also our in-process compliance rate. This is one with the massive hiring, you know, all of our focus on quality initiatives and everything, I think it's, you know, a real good sign. And some of the other indicators that we look at also just kind of validate - to be tracking at a similar rate.
And then, let's see, the third quarter results, just basically by discipline again, I broke it down that way so you could get a look. And the different areas where we are in terms of the allowance compliance rate over the in-process compliance rate.

One particular area I think you'll hone in on is the computer area, 21 and 2600, this has some difficulties in our in-process work. And I know at mid-year they put a lot of initiatives in place to try to focus in on the problem areas, and that area is the area that has the greatest burden of hiring, you know, there's struggles there and a lot of new or less experienced managers, so --

MR. GRANT: Is it your experience that most of the in-process error rate comes from the newer examiners?

MS. FOCARINO: A lot of it does; but, you know, there's a lot of one on one issues in these areas also, and we've done a lot of training, and there's still some cases out there that we're waiting for decisions on, but that does
represent - the one on one issues represent
probably a large percentage of the errors in those
areas. And then the next slide just gives you a
look of, you know, what I showed you - except it
goes back earlier, to the year 2000, to kind of
show you where our error rate has been.

In 2004, right before John Doll came
into our positions, we were not making our quality
goals, and you know, got together with the group
directors and we made some decisions on some
things that we probably need to do to take a
closer look at our following. I think, you know,
they paid off a lot and hopefully we can continue
to keep the error rate where it is.

MR. GRANT: And just so we - the hiring
- the error rate, the heavy hiring started right
around 2005 also, right?

MS. FOCARINO: Right, exactly. We
didn't hire much in 2003 and 2004. And then,
again, the allowance rate, we talked about that a
little earlier today, but you can see that, you
know, we were almost at 71 - 72 percent eight
years ago, and now we're down to 43.2 percent at
the end of the third quarter, so we'll see where
that goes. You know, we were projecting - I think
at 50 percent last - tack on our fees, but that's
been an interesting thing to look at. A lot of
you know we have certification examiners that have
to pass this exam - grade 13. It's modeled after
the patent bar exam. And when we started it in
2004, you can see what the - and since that year,
we've gotten better focused, a lot of sessions,
training sessions for examiners on the exam and
the questions, and so we've seen an increase in
the number of examiners who are passing that exam,
so that's really good news, too.

Obviously, we can get examiners up to
the primary examiner level, which is more
productive, and they can train our junior
examiners and the - examiners, and so that's a
good sign, too, to do that.

SPEAKER: Peggy, sorry to - but can a
GS-9 get to a 13 pretty rapidly through --

MS. FOCARINO: Well --
SPEAKER: -- you know, typically most poor performance, you've got to go like 7, 9, 11, 12, 13.

MS. FOCARINO: Right.

SPEAKER: Can they get to a 13 from like a 9 like in two years?

MS. FOCARINO: I think it's about three.

MR. BUDENS: Two and a half, if they go to the accelerated, can go from 9 to 11.

MS. FOCARINO: Right; because you can get one accelerated promotion and that's two and a half years. Okay. And then, you know, basically we have some high profile quality incidents that we'd like to talk about. And I invited Drew Hirshfield, who's one of the group directors that has oversight of a couple of them, but he's going to be talking about almost all of them.

And when he goes through these, you can see that there's a couple that have been ongoing and then one that we're just beginning to start and, you know, take a look at what the participation rate would be for that. But anyway,
let's start with the - examination initiative.

So, Drew, do you want to talk about that?

MR. HIRSHFIELD: I've got the other stuff.

MS. FOCARINO: Oh, okay. You thought I was talking about - okay, so I'll talk about -

There's a chart in there that shows you where the filings have gone since we began in August, '06, and they're increasing, so there's a number of people that are willing to file electronically and give us the closest - mandatory interview. And so we had 293 applications allowed that have participated in this program. The average number of days to complete prosecution you can see is 182, which is pretty quick. And the quickest one that we've had that has gone through has taken --

MR. GRANT: Is that right? That must have been one of yours, Robert.

MR. BUDENS: I wish I could have filed.

MR. DOLL: Actually, that was to allowance, it was 76 days.

MS. FOCARINO: Right.
MR. DOLL: To the signed patent by John Dudas.

MS. FOCARINO: Right.

MR. DOLL: Which is still remarkably fast.

MS. FOCARINO: Right; but just the prosecution and closing prosecution from one of the examiner hands it off does it go into the - yeah, 18 days, so that's pretty good.

MR. HUDSON: It doesn't speak well for the - from that time to get it published, that process.

MR. DOLL: Well --

MR. HUDSON: It has nothing to do there.

MR. DOLL: -- well, when we get the push button publication, when we actually have the tagged data, we can just push a button and it publishes it, but that's part of PFW also, so you're absolutely right there. It is a little embarrassing when you're going to allow a patent in 18 days and then it takes another 60 days to get it issued.
MR. SMITH: It leads to --

MS. FOCARINO: Exactly, that's what I was thinking - but we've had just under 200 patents issue, and the - of this program has been very positive, and you know, we've learned a lot in the program about holding interviews, and so we're working a lot on promoting interviews and training our examiners on how to - interviews either in person or - and do it before the first action.

You know - in the case, and hopefully, you know, have a good understanding earlier from the application. And, you know, also the - I think the claims of these applications, if you talk to our examiners, the claims are getting narrower and more focused, and the applications could have been written a little better, at least from the examiner's perspective, so it's been a real good program.

MR. DOLL: Are you still on there, Scott?

MR. SMITH: I think he left.
MS. FOCARINO: I think he left, yeah.

MR. DOLL: My hunch is, he's not going to - you can explain this - explaining this for a long time.

MS. FOCARINO: Right, he'll be explaining this for a long time.

MR. DOLL: Buy my way out.

MS. FOCARINO: Okay. The next program, we'll turn it over to Drew, but this peer review pilot, and I know you've read a lot about this and heard a lot about it, but this pilot recently was expanded to the business method, so I'll let Drew talk a little bit about that.

MR. HIRSHFIELD: Thank you. Peer review pilot basically gives applicants who join a chance to have members of the public look at their applications and then submit prior art. They can have people reviewing applications in the public and get up to ten references, they can submit it to the Patent Office for review by the examiner.

And the hope is that the best prior art gets in front of the examiner, of course. And as
Peggy mentioned, the expansion is the business method. Originally it was only a TC 2100 - and now it's the business methods, where you have - of literature - that this program can get the best art in front of the examiners.

MR. GRANT: What would need to be required to change it from a voluntary program to a program that, you know, basically was open for the public to submit whatever they wanted to the PTO and all applications; is that something statutory or --

MS. FOCARINO: Well, my legal people --

MR. DOLL: There's a certain time period in which you can file comments, you can file prior art, and there's a very narrow window after an application publishes, when you're - you have the ability to submit comments. In the peer review, applicant has to come in and specifically waive that part of the statute so that we have the opportunity to accept the comments.

MS. FOCARINO: Andy can tell you.

MR. DOLL: Oh, okay.
MS. FOCARINO: -- have to do with rule 199.

MR. FAILE: Yeah - part of the - PPAC outreach, there was a number of comments within the period for rule 199 - two months - within two months publication. There are a number of comments to extend that to the labor of two months publication or the first issuance of a - action. That's not something we do - that was a suggestion --

MR. HIRSHFIELD: Examiners in - cases, they do - that they normally would otherwise, it's just now they also have a - of getting - And so far there's been 40 first actions that have been completed, and out of that 40, there's six applications that the art used, and the first action was solely from the public submission, the examiner did not - 15 percent of those cases.

MR. GRANT: Well, why on earth would the applicants waive that? I mean are they just good will and they're trying to - you encouraged them to help out on a pilot program? I mean it seems
like it would be adverse to their interest,
arguably.

MR. HIRSHFIELD: I think it's actually -
I think, you know, to have the right art and to
get the best claims that you can gives you the
most - so I think that the idea is, they want to
maximize the value of the patent, and knowing all
the issues up front, it's best.

MR. DOLL: Okay, thanks.

MS. DOUGHERTY: For those applicants
that - application out of turn, so for many of
them, particularly like the computer architecture
area, their application is being --

MR. GRANT: Thanks.

MR. HIRSHFIELD: Out of the 40
applications, eight of them, the art that was
used, was found by both the public and the
examiner, and the rest of those cases were - about
26 cases found by the examiner and not the public.
So I think with the expansion into business
methods, where you have extensive - literature,
I'll be very interested to see what happens to
those - and that's all on the peer review. Does anybody have any questions?

Another pilot program, it's the first action interview pilot program. This - the idea of this pilot program is to put the application or their representative and the examiner in contact with each other very early in prosecution.

Statistics show that the allowance rate, the speed at prosecution is much greater when they have an early interview.

So in this situation, in this type of program, what we have is, the examiner will do the search, just like in they normally would in traditional prosecution, and after they search, instead of sending a whole office action, they send out a short - a shortened office action. The office action indicates the references that are going to be used, it'll indicate a brief description of what the rejection would be if it were a - At that point, when the application receives that shortened office action, they have 60 days to have an interview with the examiner.
And it's with hopes that you can create interview reaching an agreement, hopefully a notice of allowance, and of course, I neglected to say it, but if they have an allowance at the beginning, right away, of course - but if they proceed to the interview and you can reach an agreement on allowance, that's the best for both worlds; if we can't have an allowance, then at least the hopes is that the interview will lessen any of the issues that should arise later on in prosecution, you know, increase the speed at which we can prosecute.

So after the interview, there is - another office action will be sent, and that office action can be very similar to the first one, it's also a short one, but it's to resolve any issues that came up at the beginning.

At that point in the prosecution, under the pilot program, you're now at the equivalent place and traditional practice as the first action being sent out, so - argue. There has been a huge amount of interest in these programs. We've had
over 400 applicants have joined the program. But now we're still very early in the stages. Unlike the peer review, this is not - the applications aren't taken out of turn; rather, though, the criteria for joining the program has a filing date criteria, as well, so applications that are in the program are those that have to be examined in the near future. So right now we've had about 50 pre-interview communications go out, and we're still waiting for most of those to have interviews, so the jury is still out on the effects of the program.

It's being piloted in the TC 2100, in two work groups, and will extend through the end of October, where people can join, obviously. The examination will take place after October for many of these cases, but they can join up to October.

MR. GRANT: And, obviously, part of the analysis process is conducting interviews with the examiners who are conducting the interviews with the applicants?

MR. HIRSHFIELD: Yes; you have a
pre-interview communication, that's the short
form, then you have the interview, and it's at
that point you have 60 days to interview --

MR. GRANT: No, I mean your and the
PTO's analysis for the pilot, in addition to
looking for the data and the likelihood of -
comparative likelihood of processing on the first
- you'll interview the examiners and figure out
whether they thought it was --

MR. HIRSHFIELD: Yes, right. Anybody
have any questions - and the last pilot --

MR. GRANT: I was just going to say,
Bob, what's the view of the examiners on it, too
early to tell?

MR. BUDENS: I think it's too early to
tell. I mean we have worked closely with
management on this one, we actually have reached,
you know, we reached agreement pretty quickly on
going forward with the pilot because - is
interested - agency is.

MR. GRANT: Great.

MR. BUDENS: And I think it - to be
perfectly blunt to some extent, I'm hoping that it
will be an offset to the feedback from the
outreach program, and everybody wants to have
that, you know, that early first action interview.
I don't think - have been done yet to get a feel
for how much impact is going to be on the
examiner, but we are looking forward to the data.

MR. GRANT: Great.

MR. HIRSHFIELD: I think that, from my
standpoint - talk to people on the outside about
it, talk to a lot of examiners, it really seems to
be that this is truly a win win for both sides,
potentially it could be a win win, where the
examiners, you know, they want to get the quick
resolution - as well, so if they can do that,
they're benefiting greatly, and of course, we
don't need to talk about - there are great
benefits to the people on the --

MR. GRANT: Terrific; when do you think
you guys are going to have a view of the results
of the filing?

MR. HIRSHFIELD: I think very shortly.
I - this morning, so I'm on top of, you know, when
the - is taking place. We're just now getting
into the - for those 50 plus applications, we're
now getting into any of these - so I think we'll
see --

MR. GRANT: You think March or so,
something like that?

MR. HIRSHFIELD: I would say --

MS. FOCARINO: Before that.

MR. HIRSHFIELD: -- yeah, even before
that.

MR. GRANT: Before that.

MR. HIRSHFIELD: I would say much
earlier, probably within the next couple of months
we should have sufficient data to have a good
preliminary indication.

MR. GRANT: Terrific.

MR. HIRSHFIELD: Anything else --

MR. GRANT: Thank you very much.

MR. HIRSHFIELD: You're very welcome.

The last pilot that I'll discuss is the
experienced IP hire pilot. And basically the
intent here is to bring in candidates as new examiners that have some extensive prosecution experience. We would bring them in as GS-12's. And a few minutes ago was told about how long it takes to get to a 11 or 12. I think traditionally it's been three years to get to the 12 - depending on the first promotion. But this would bring people in as GS-12's.

The caveat here is that their experience has to be something that translates directly to the patent - so we would be looking at a minimum of one year patent prosecution experience, but it can't - has to be certain experience that qualifies you to be an examiner, who can come in as a GS-12.

We are hoping to offer a recruitment incentive, as you can see on the handout. And the hope is that, you know, the pilot can begin, you know, as early as late September, possibly with 16 candidates is what we're considering, although I do recognize that there's potential - that we might need to go through the office. The plan is
to have a very condensed four week training period. Typically right now we have a, as you know, a seven month training period. This would be a four week period. All of the TC's would participate, so some of the training would be mixed between classroom - and technology specific training in the TC.

It's considered to be a - it will be a permanent position with a one year probation as opposed to what we now have as two years. And because it's such a large transition, it could be a major transition from someone coming from private practice. We would have a mentoring program, where current managers who have their experience - by sufficient experience would work directly on a one on one basis with those people coming in.

MR. BUDENS: Run that by me again.

MR. HIRSHFIELD: Which, the last part?

MR. BUDENS: The last one.

MR. HIRSHFIELD: We would have - we were hoping to have a mentoring arrangement, where
current managers who have prosecution experience or law degrees and have been on the outside would work with - resource to help them transition from the outside to the Patent Office.

MS. FOCARINO: You know --

MR. BUDENS: I think we might have some - issues.

MS. FOCARINO: You know, Robert and I talked about this, so he and I will be talking about this particular pilot.

MR. GRANT: Well, you can't have any issues with candidates, the question is - all right.

MS. FOCARINO: Well, you know, there are many other concerns. So we have a vacancy announcement -- sit down with Robert and talk about what his concerns might be. I understand - and we have I think around 66 applicants so far.

MR. GRANT: Okay.

MS. FOCARINO: You know, it's just something else that I think we've been talking about - trying to bring in people at a higher
level, hit the ground running factor that have the
experience, and you know, hopefully we can get a
chance to try it out.

MR. GRANT: Great idea.

MR. FOREMAN: How big is the potential
pool for those candidates? I mean 66, that's
quite a few.

MS. FOCARINO: Yeah.

MR. FOREMAN: But I mean that represents
- I mean how many people out there do you think
would qualify for this?

MS. FOCARINO: You know, that's a hard
one to say. And I know we - John has heard it
many times - we don't have to have a law degree to
qualify, just prosecution experience. But, you
know, with the nation-wide work force, we can
work something out on that, I think it's a big
interest in different parts of the country, people
having law degrees --

MR. GRANT: -- a different lifestyle.

MS. FOCARINO: Yeah; like the job, so

anyway.
MR. DOLL: We also - part-time.

MR. GRANT: Sure.

MR. DOLL: Where we do hear a lot from attorneys who are getting ready to retire, but not really ready to quit, say I'd love to be an examiner, I'm not going to leave California, but if I could work part-time, sign me up. So we think there may be a fair number of people that may - we may be able to bring in, as Peggy said, limited training, hit the ground running, and --

MR. GRANT: And on an incremental basis, it could have a good impact.

MR. DOLL: Yes; I'll be looking for your application, Max. It may take more than a month, but --

MR. GRANT: A man has got to know his limitations, so where are mine?

MS. FOCARINO: Okay. So anyway, those are some of the things that we've got in the works right now, it's a little twist on what we've been doing, but - and I'll be glad to take any questions you might have on the data or anything
like that.

MR. GRANT: No, I've asked mine as we went along. Anybody else that needs -- participants or anybody else sitting in have any questions or thoughts? Okay, thank you.

MR. DOLL: So we covered pendency, we covered the initiative updates. Unless there's any pending questions or other thoughts, I want to thank you both for the input and the information. And on my own personal behalf, I want to say thank you for the small opportunity to contribute in a small way and to learn a lot. It's been my pleasure and joy to have the opportunity to learn from you all over the last three years, so thank you very much.

MS. FOCARINO: Thanks.

MR. DOLL: We're adjourned.

(Whereupon, at 3:37 p.m., the PROCEEDINGS were adjourned.)

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

/s/Carleton J. Anderson, III
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in and for the Commonwealth of Virginia

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