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MR. MATTEO: Good morning, everybody.
I'd like to call to order this meeting of the
PPAC. Welcome to all of those of you in the room
and those of you listening online.
This is the first PPAC since the new
Undersecretary David Kappos has taken over. As in
any transition, it's a time of change, a time of
opportunity and a time of promise. I'm speaking
for myself and I think everybody at the table when
I say we're all willing to do whatever it is we
can to realize the potential in the promise.
Without further ado, what I'd like to do is have
everybody at the table introduce themselves. I
can start with myself. I'm Damon Matteo, Acting
Chair of PPAC.
MR. STOLL: I'm Bob Stoll, Commissioner
for Patents.
MR. FOREMAN: I'm Louis Foreman.
MR. ADLER: Marc Adler.
MR. FRIEDMAN: Howard Friedman.
MR. HIRSHFELD: Andrew Hirshfeld, Acting Associate Commission for Patent Examination and Policy.

MR. SALMON: Paul Salmon, Acting Director of the Office of Governmental Affairs.

MS. FOCARINO: Peggy Focarino, Deputy Commissioner for Patents.

MR. BUDENS: Robert Budens, President of POPA.

MR. PINKOS: Steve Pinkos, PPAC member.

MS. TOOHEY: Maureen Toohey.

MR. KIEFF: Scott Kieff.

MR. MATTEO: Thank you, everybody. As is custom, what I'd like to do is start off the meeting with the gentle reminder to everybody that when we sit at this table and when we act on behalf of PPAC, we leave our corporate affiliations and our other hats at the door and we speak only with the best intentions and best objectives of the United States Patent Office in our minds and in our hearts.

With regard to public questions, we have
several people in the audience and we can field those questions I think effectively here. We also have an email address to which people online can send questions, and I believe that is ppac@uspto.gov. It's not going to be possible to field real-time questions, but what we're doing is we're having somebody handle the email and other questions and they'll be sorting them and filtering them and bringing them up to us. What we'd like to be able to do is handle some of those at the break so that to the extent that you have questions, feel free. What we'll try and do also is keep that PPAC email address open after this meeting and to the extent that questions come up afterwards, we'll get those and we'll deal with those as best we can.

In terms of housekeeping issues, for those of you who aren't familiar, please remember to push your button. This is being webcast so I don't that everybody will be able to hear you without that. I will be proactive but not aggressive in terms of keeping us on schedule and
timing. I won't cut off conversations that feel productive, but I also don't want us to bleed into tomorrow with this meeting as well. We'll try and keep this on schedule. It wouldn't actually be a PPAC meeting without a last-minute schedule change, so as not to disappoint everybody, we do in fact have one of those. If you look at your agenda, what we will probably be doing is swapping out the 12:35 discussion on the account system, we'll be having that at 9 o'clock instead, and we'll be swapping the financial update into that 12:35 slot. It's also likely that the OCIO update will be done later in the afternoon or pushed back by about 15 minutes. Unfortunately, we'll be dealing with that in largely real time.

I started the conversation with discussions of change and transition. What I'd like to do now is turn to my left and introduce a brand new change agent, brand new to the role, not brand new to the Patent Office, Robert Stoll who is the new Commissioner for Patents and he's going to be telling us some of his thoughts and
impressions, et cetera.

MR. STOLL: Thank you, Damon. Good morning, everyone. Welcome to the PPAC meeting. I think you're going to have a lively meeting with a lot of information being exchanged.

I am the new Commissioner for Patents. I am so new that it's a little bit unusual for me to use that title, but I'm really enjoying it already, although the hours are significantly lengthened for the amount of work that's coming down the pike. I am uncomfortable going into my background, but I've been told that there are many people who don't know who I am, so I've been asked to say a little bit about myself. I am an old examiner from Art Unit 113, the chemical art, and I was an SPE in Group 220 which was the security cases. I handled radioactive biotreating compositions. After that I was chief of staff for an undersecretary here, and I was the Administrator for External Affairs which I hope at some point in our near future the name goes back to being OLIA because I really like the acronym a
lot better. I am now over here as the Commissioner. I have only been in it for one week, but I am very excited and I think that there are a lot of things that we can do together to improve the system.

Damon, I want to thank you and the PPAC for your service to the Patent and Trademark Office, and I'm looking forward to a very collaborative effort. I expect that we're going to be continuing our work together because we've already started, and I think it's gotten off to a great footing. I know you people are not doing this for the money, so I'm very grateful for all of the efforts that you've taken already and that I will expect that you'll be taking in the near future.

We've got a lot of things on the plate right now. The most recent I hope success, and I'm looking around the corner of the room, is the count system being led by Peggy Focarino, Deputy Commissioner for Patents, and Robert Budens the head of our POPA representatives, and I think they
did a phenomenal job coming up with a very reasonable package that I believe will help everyone. In the spirit of that package, let me just say that what I expect to be the major changes here, major change, is not so much the systems, although I think that you're going to see a significant change in the system, but what we're looking to do, what Dave Kappos wants to do, is to change the culture at the Patent and Trademark Office. What we think is important is a more collaborative, cooperative culture, that we work more together amongst ourselves and with our patent filers. I think you're going to see the tone of things changing significantly and I bet many of the practitioners have already started to see some change and that should be evidenced by just about everything that we do.

So I really hope that we can actually continue this and progress as we work together. I want to stress where we are going is to be a kinder, gentler Patent and Trademark Office, we are government employees here and we are here to
help you, and I really think it's important that there be the focus of the Patent and Trademark Office. I think you're going to find things improving dramatically here.

I am hopeful we're going to get your cooperation. I think you're going to find that things are going to be very much improved here.

In addition to the culture change, the second major initiative which again is not what I think is a structural initiative is transparency. Dave is very committed that you understand where all of our data comes from, where all of our information comes from with all of the tools that we collect to actually arrive at this conclusions. I think that you're going to find that we're going to be very transparent. How we measure pendency will be very clear. We will be moving forward using the old methods and sitting right next to them new methods so you can compare what the improvements were based on the old methods and see how things are calculated in the future. I think you're going to be very happy with the transparency.
you're going to see at the Patent and Trademark Office.

In addition to the great improvement I see with respect to the count system, we're going to have a lot of other initiatives. The major is one by the Secretary of Commerce which leads us to 10-month pendency to first action. That is a very, very difficult goal and it's going to take a lot of work to get there and there are going to be major efficiencies gained to get there, but I think one of the things that are critical in order to obtain a goal of this nature is that we have access to the funds that we need to be able to improve the IT systems, to be able to hire the examiners we need and to be able to use overtime to the degree we can. I believe that we're going to be seeking help from PPAC and probably from all constituencies by just allowing them to recognize what can be done if we have full funding at the Patent and Trademark Office.

Part of our goals are going to be to improve training because we think that that will
be helpful with respect to interactions between attorneys and examiners, and we're looking at things like interview training because we believe that if we train our examiners in proper methods for arriving at conclusions in interviews, we'll be able to increase the swiftness to which decisions are made with respect to patents so that compact prosecution and anything surrounding compact prosecution will be a goal of the Patent and Trademark Office to come to conclusions quicker.

We're looking to measure quality in a manner that educates and doesn't punish so that I think you're going to see some improvements with respect to how we're looking at quality and how we can help examiners to improve their quality. We're looking to expand pre-first-action interview pilots so that we can discuss with the applicant the nature of the claimed invention and see if we can't reach a conclusion quicker. Many, many, many of the processes we're doing as to move to compact prosecution, but they're also to show a
collaborative nature and to show a culture change. You're going to hear about that throughout the day today because I think everyone here is on board with Dave Kappos's mandate to improve the culture here, to be more transparent, and to work together to see if we can't come to conclusions quicker and more effectively for everyone, both the examiner and the applicant. Thank you for listening, and if you need me anytime during the week, I will be happy to help. Thank you.

MR. MATTEO: Thank you very much, Robert, and apologies for the cell phone. You can throw mine across the room if you like. All very laudable goals, and we'll be hearing more about them when Dave Kappos joins us later this morning. What I do want to do is complement and build upon the comments you made about being open and collaborative because you're right, PPAC isn't here for the money. We're actually here for the fame and glory. No, what we're all here for is what we've already discussed, it's to roll up our sleeves and to contribute in a positive,
constructive and collaborative way so that you can count on everybody at this table to exactly that enthusiastically and fully. I feel I'm speaking for everybody at the table when I say that. I'm getting lots of enthusiastic nods, so I'm sure that I am.

Why don't we move on? Our next topic is a legislative update, and Paul will be leading us through that. If you would, please. Thank you.

MR. SALMON: Thank you very much, Damon.

Good morning, ladies and gentlemen.

This morning I'd like to give a very high-level overview of our top legislative priority, namely, that is patent reform. It's been in the news a lot lately. This also includes funding issues that Bob touched on as well as telework issues.

As you may have heard, it looks like Congress may be staying in quite late this year, in fact, possibly past mid-December. They have a lot of things on their schedule including health care, the appropriations bill, but we hope that
there is good chance that patent reform might
actually pass this legislative session. While
previous efforts have gotten close, the
Administration believes that the time is right now
to move on patent reform.

As you know, the Senate bill has been
moved out of the Senate Judiciary Committee with a
good compromise that has the hope to bring all
industry sectors together around a package that
could ultimately be passed as legislation. The
next slide will show you the traditional route of
a bill through Congress, through a House bill and
a Senate bill and then conference. This is not
likely to be the case if patent reform moves this
session. What's happening is that the Senate and
House are working diligently to try to find a
compromise, a preconference if you will, that
could be then voted out of both houses without the
need for a conference.

Secretary Locke and Under Secretary
Kappos have made passage of the patent reform bill
a top priority. Why are they doing this? Because
a well-functioning patent system is critical to economic growth for the United States, and the patent reform bill is a critical piece of this. We think that the letter that was sent to the Hill last Monday, the views letter signed by Secretary Locke, may actually give a shot in the arm to the efforts to pass the bill. In particular, we support the bill's provisions on fee-setting authority. That authority will go a long way to helping out the Patent Office on a sustainable funding model. The views letter also recognizes and promotes the authority for limited fee adjustment on current patent fees. I'm sure we'll more about this from our Deputy CFO Mark Olechowski, but we do face a critical funding shortfall for next year and so we do hope that the Congress will be able to pass an interim fee surcharge.

The views letter also goes on to support the compromise damages language, substantive and procedural rule-making authority and the orderly transition to a first-to-file system. The letter
also indicates support for the establishment for a phased-in approach for postgrant review procedures, and phased-in charges of inter partes reexamination. We don't want to take on more than we can handle.

On point of opposition to the language is the bill is the language relating to search and examination duties, the so-called sovereign function provision. We're concerned that that language may serve to limit the benefits to be gained from the negotiation of work-sharing agreements that hold the promise to help reduce the backlog. There are also a number of technical issues that we would like to see ironed out before passage.

It's our understanding that Judiciary Chairman Leahy has asked Majority Leader Reid for floor time for the bill and there may be a window between health care and the appropriations to get something done, but as of yet, no date has been set for floor time.

We do recognize that there are concerns
that continue to various industry sectors. We fully intend to be there to provide any technical assistance that's required to help iron out these differences. We're working very closely with the department, with OMB and with the staffs of the committees in the House and Senate to find language that's acceptable to all.

Now a few words with regard to telework, and I have my colleague if there are questions on telework behind me, Judy Grundy. We think telework is a very important component of where we want to go with the Patent and Trademark Office. For over a dozen years the USPTO has incorporated telework as a business strategy and human capital flexibility that has helped us support the agency's mission and achieve our goals. The telework programs have received a lot of praise as a leader throughout the federal government, but their future success will require changes. We're watching legislation that will provide greater flexibility with regard to travel requirements. Currently employees are required to physically
come to the U.S. Patent and Trademark Office two
times per buy week. Two provisions in telework
legislation that are currently considered in the
Senate would provide greater flexibility regarding
the travel requirements. The Senate reform bill
also has a telework pilot program that allows for
greater flexibility.

If any of these provisions were enacted,
an employee may eventually choose to live anywhere
in the United States in exchange for a willingness
to return on a limited basis to headquarters in
Alexandria at their own expense and on their own
time. Also the USPTO would require a cap on the
number of times the office would require the
employee to return to Alexandria after which the
office would pay for travel expenses and provide
time. We fully support further flexibilities as
long as we can support a nationwide workforce and
telework both financially and with improvements in
our IT systems. Again, this gets to the funding
issue which is critical to all of our efforts.

While patent reform including funding
and telework are key legislative issues, we're keeping an eye on other bills relating to intellectual property and weighing in as appropriate. Thank you.

MR. MATTEO: Thank you very much, Paul. If I may, just a quick question. With regard to the search, you seem to suggest that there was some resistance. Do you think that's a function of developing an understanding of what the potential implications are for example vis-à-vis the efficiency gains of work sharing or is it a more substantive objection to the notion of it even with an understanding of the implications and the potential value?

MR. SALMON: It may be a function of both. I think some greater understanding on the actual benefits of work sharing to the office and to the examiners would help break down any resistance to it. But I'd refer to my colleague representing the union for his views if there are more fundamental concerns with regard to that.

MR. BUDENS: I think there are
fundamental concerns. It's been a position we've
had for quite some time that we need to be very
careful about where we go with work sharing, with
outsourcing searching and what have you, that we
do believe that this is ultimately a situation
that needs to remain within the purview of the
examiners at the U.S. Patent and Trademark Office.
Our decisions result in the granting of property
rights to people throughout the world and that we
believe should remain ultimately a sovereign
function of the U.S. government. That's not to
say that we're categorically opposed to looking at
work-sharing situations and possible ways that we
can utilize those in being able to work on
examining patent applications, but that the
ultimate decision of what is good art and what
gets searched in a U.S. application needs to
remain with the examiners at the U.S. Patent and
Trademark Office.

MR. MATTEO: Thank you very much,
gentlemen. Moving on to our next topic we have
Nationwide Workforce and that will be led by Fred
Schmidt and Steve Smith.

MR. SMITH: Good morning. I'm Steve Smith, the Chief Administrative Officer for the Agency, and among other things I'm responsible for telework coordination and for our facilities, and I was asked to address the status of nationwide workforce planning and we are as an Agency at this particular point.

There has been renewed interest in moving out to what we describe to be a nationwide workforce, and I'd like to talk a little bit about definitions so that we're making sure we're using the right language. We tend to refer to nationwide workforce as a brick-and-mortar presence somewhere else in a regional office outside of the Alexandria campus. We have a distributed workforce philosophy where people use the hoteling process and that was Paul was referring to earlier where we would envision having employees having the ability to use collaborative tools over the internet to work from home as their duty station anywhere in the United
The two are not incompatible with each other and often are complementary, but it's often I think to understand the distinction. As we look at the nationwide workforce, there are lots of advantages for doing something like this and the interest is reasonable. Certainly it could improve our recruiting capabilities. We tend to focus on Eastern schools and Southern schools for the bulk of our recruits that we've been hiring. We have hired 1,200 a year for about 4 years in a row. We've been able to meet those goals but we are not seeking or recruiting the best students or second-career individuals elsewhere in the United States who may not wish to move to the East Coast so that a regional office elsewhere might be a very useful thing in attracting those types of employees to the Agency.

The use of regional office or a regional office elsewhere might employee retention. If we have employees who would prefer to stay with the Agency but need to move back to the Midwest or some place like that, we could facilitate that and
allow them to work out of a regional office elsewhere, and potentially reduce costs for real estate. Obviously we pay a fairly steep price for leasing space here in the Alexandria/Washington area. If we had a regional office in the Midwest or somewhere it's conceivable that those lease costs could be less than we encounter here, and if we could trade off space here for space that would then acquire elsewhere in the country, there could be some savings there. That's not necessarily the case. There are some higher-lease regions in the country where costs could actually go up, but that's a potential area for savings. Another advantage is of course our ability to reach out to our stakeholders to have opportunities for stakeholders to go to closer locations for meetings or for opportunities to submit paperwork and so on.

There are some potential issues and concerns. One principally that I'm concerned about right now is need. We have a substantial presence here in Alexandria with 2.7 million
square feet of office space that reasonably
accommodates our current workforce. Given our
routine growth as it was projected several years
ago, we have permission from the Congress to
acquire an additional 325,000 square feet which is
something similar to the Remsen Building that we
have out here right now for additional office
space by 2013 and the efforts to move forward with
that are in train with GSA right now. That will
accommodate approximately another 1,000 personnel
or employees. If we hired at our previously
expected levels of 1,200 a year, we would run out
of space in terms of what we are contractually
obligated to provide our employees through our
collective-bargaining agreements by late-2011 or
early-2012. We have the ability to double up
people in offices because we were anticipating
that requirement and put additional
telecommunications links into offices and so on,
but we would not to stay in that configuration any
longer than necessary, and the 2013 building would
allow us to then return to our authorized
configuration of space for our employees. With current reductions in resources, with projected changes in how we go about doing patent examination, there are significant changes that are going to be confronting us and we don't know what our long-range workforce structure is actually going to be. I'm also concerned since I'm responsible for human resources that I may hire more examiners than I will require in the out years once we reach the required number to bring pendency down to a particular level and I don't want to have a thousand extra examiners that I have no longer have work for once we reach that sustainment level of pendency. So we have been working with Fred Schmidt over in Patents as they examine models into the out years to see just what our workforce requirements are going to be to achieve what we think will the long-term sustainable pendency per examiner and that will then be compared against our existing facilities and projected facilities here to see what workforce then could conceivably be placed out in
the country without them leaving them an excess of
facilities here which we would have to depose of
and we have long-term leases on the space here.

There are other issues related to this,
potential costs, and there are different ways that
we can acquire space either through GSA or through
our own delegated authority and there are
advantages and disadvantages to either side.
There are IT-related issues in terms of long-term
leases for dedicated lines and our capacity to
sustain that over the long-term and when will be
at that level. But all of these things need to be
balanced against their projected requirement and
Bob Stoll has been very cooperative and supportive
of having his folks do the modeling so that we can
begin to see what are the left and right
parameters of what our workforce requirements are
and our projected impacts of the various
initiative that we want to do so that we can
define what we will actually need out there in the
out year.

For now we are continuing to work on the
modeling. We are examining our current capacity. We're even looking at whether or not we requirement 2013 building depending on if we can push that back, and we're very close to the drop-dead date on those decisions with GSA right now because we are underway in that acquisition process with GSA. We will be continued to work detailed plans with cost estimates if we begin to determine that we want to look at a regional office and there are other alternatives to a large brick-and-mortar facility. We could have storefront operations out there that satellite on our PTDLs for instance and allow for prosecutors to come there and do interviews so that there are other alternatives that we want to look at once we begin to define the actual requirement. And of course we'll be looking for the legislation and other resources that we may require to accomplish this because there could be a nontrivial cost associated with doing that.

I want to assure you that we are in fact looking at all of these pieces. The cooperation
within the organizations has been very good.

There is some talk of legislative language going
into the patent reform bill which would require us
within 120 days of passage of that legislation to
make a report to the Hill on what our intentions
were. That could have an advantage if we do that.
It would allow us to say, yes, it looks like a
reasonable expectation but there is a cost to that
and we don’t envision our being able to handle
that cost for some years and perhaps we could get
some assistance in that if there is in fact a
cost. The answer may be that we don’t envision
requiring it for several years. Largely I think
this is going to end up being a political decision
as much as anything else as we balance the desire
and inclination to reach out to stakeholders and
to expand our recruiting efforts with our actual
needs and trying to do what makes sense as we
balance those interests. Fred, did I forget
anything in that?

MR. SCHMIDT: No, I think you’ve got it,

Steve. What I’d like to do now is put things in
the context of our current hoteling program that
we have in the patent business which is a very
successful program that we've had running for 4
years. We have about 1,650 patent examiners right
now who are hoteling. Ninety-two percent of those
examiners who are participating in the hoteling
program currently reside in either Virginia,
Maryland or the District of Columbia. The other 8
percent are actually distributed if you will
across the United States. We have examiners who
are participating in our hoteling program who live
in California, Nevada, Washington, Texas, Florida,
a smaller number of course, but they are
effectively working right now in our hoteling
program from all across the United States.

As was mentioned earlier, just this June
the patent business changed the requirements for
coming in to the office from once a week to twice
a pay period, halving the number of times that
these hoteling examiners have to return to the
main campus here in Alexandria. Of course we are
eagerly anticipating some sort of telework
legislation to give us even further freedom to expand and work on this distributed workforce across the country reducing still further the requirements to come back here to our main campus.

In addition to patent examiners we have our administrative staff, our technical support staff. Approximately 150 of our technical staff are hoteling also. We also have hundreds of our managers who are on a more limited if you will work-from-home program where they can work up to 16 hours every pay period from home. Working from home or working remotely is a part of the patent business now. It's been very successful. We've found looking at the performance of our examiners in the hoteling program that there has been no loss in quality, productivity or turnaround of work for our employees on the hoteling program over these number of years. We have also expanded the eligible pool of examiners from the initial most-senior GS-14/15 examiners down now to include GS-12 journeyman level patent examiners so that there has been a continual broadening of the
eligible population in the patent business.

We are presently looking at different options for potential satellite offices as Steve mentioned. We are really pursuing two different approaches. One is the storefront approach and offering of patent business services such as possibly electronic business center services to assist people with electronic filing and electronic submission of documents and inventor assistance support that could be located remotely, a service-oriented locale throughout the country.

The other model would include in addition to this the physical presence of patent examiners and possibly management staff. We're scoping out those two broad perspectives and then we'll offer up the results of this proposal to Bob and Peggy for discussion with Mr. Kappos and see which way we want to go. Of course the more elaborate program you get for the satellite office the more expensive it gets and the more complicated it gets dealing with issues of travel, et cetera, but we are exploring and are open to
those different options at this point in time.

That's the status of where we are in our current

hotel program that as I said a very, very

successful program. And to give credit where

credit is due, I should say that Patents has

modeled itself largely on the Trademark model.

Trademark have been the pioneer for us in

teleworking and hoteling and so we've had lessons

learned that have greatly assisted us from our

Trademark brethren.

MR. SMITH: We have strong anecdotal

evidence that a lot of our employees would like to

partake in a distributed workforce and if it were

offered that we would see increasing numbers of

people wanting to participate if they could move

out of the region. That's as Fred noted a large

factor in our space requirements right now. The

1,700 employees who are hoteling save me an entire

building which works out to be about $10 to $11

million a year in least costs right now that I

don't incur right here. If we couple the

distributed workforce legislation with our new
initiatives and so on, that may increase the number of people who are teleworking, reducing further my physical footprint requirements which is why I'm concerned about making sure we have a pretty good model on what we think is going to happen in the future before we commit to procuring additional space.

MR. MATTEO: Thank you very much, gentlemen. This appears to be an exercise in understanding, well underway, but still an exercise in understanding and reconciling disparate needs for people and various different models for exploiting those needs. Can you share with us your at least current sense of the trajectory?

MR. SMITH: I would hate to commit to that one way or the other because I haven't seen the new models. One model that I had actually showed a level of long-term examiner requirements that I could physically meet completely with my existing facilities right here and the new building that comes online in 2013. So that was
the initial red flag that went up as we began
looking more deeply into a nationwide workforce
about the need for putting a large facility
somewhere else in a regional office, and of course
there are other issues associated with that as
well, how many are you going to bring in, are you
going to train them there, are you going to
continue to recycle that group, because every 3 to
5 years they're going to eligible for teleworking
themselves, or am I going to bring in classes
every year at that facility which means I need an
incrementally increasing size of space out there?
It becomes very, very complex and so we're trying
to narrow the options as best we can so we can
make an informed decision.

MR. MATTEO: I very much appreciate
that. As I mentioned, and probably didn't fully
suggest, it sounds to me as though this exercise
I'm understanding is not only well underway, it is
well understood and well crafted so that is indeed
quite impressive. It seems as though all the
appropriate pieces are in play and being
comprehended and the analysis, so kudos for that certainly. Does anyone else have questions or comments?

MR. PINKOS: Thanks, Steve and thanks, Fred. Much appreciated. Two questions regarding the costs of a distributed workforce. I know that you're continuing to analyze that. One is, let's say a primary examiner is distributed, what's your current estimate on how many times a year they would have to come back to the PTO? Secondly, with the IT costs, what are the current hurdles that you're talking about? Obviously you mentioned there is the Trademark example. There are certainly different tools that they use, et cetera, but they've dealt with IT issues, and of course you have the laptop programs and there were IT issues encountered there and dealt with. What are the current hurdles that need to be overcome on the IT issue for a distributed workforce?

MR. SCHMIDT: Steve, relative to the number of visits, that's something that's current under discussion. It's something that I can tell
you that Patent management takes very seriously and is not interested in just casually calling people back to the Alexandria campus. Our experience with computer-based training over the last couple of years has given us increased confidence that more and more training can be done remotely. Our experience with our current hoteling staff has shown us that managers here can manage people effectively remotely successful through the career track and have them get promotions. So the need to come back here physically to the Alexandria office, we're checking box after box saying we can do this effectively remotely. Again I think our telework experience currently is building our confidence that it would be a minimal number, however, it is under discussion right now and ultimately it will be a decision that Bob and Peggy make. I think that's the answer, Bob. Right?

MR. STOLL: Right.

MR. SMITH: John Owens is sitting in the back over there so I won't presume to talk for
him, but I know there are issues related to our
eexisting capacity here to receive additional
growth in our hoteling or distributed workforce
efforts until such time as some of those repairs
and replacements have been made, and I won't
presume to judge the cost on that. John can talk
to that. There are IT-specific costs if we're
going to put a regional office in in terms of
leasing specific lines, and of course there is
always what they call the flip-rate problems, the
farther away from here you get, physics slows
things up. So there are issues that would all
have to be wrapped into the decision on how large
a facility we would have out there.

MR. BUDENS: Once again I need to raise
a question because one of the things I'd like you
to answer for us why we are holding off on a great
number of people who we could not require to even
come in to the office now? For any people who
aren't familiar, there has been a lot of talk
today about the legislation for telework and that
is only required for people who want to live
outside the commuting area of Washington, D.C. In other words, outside the Alexandria area and the metropolitan Washington area. For those people who live within this area which roughly from your numbers is about 1,500 people, you could change their duty stations right now today at no cost to the Agency still being able to require them to come without having to pay their travel costs that they have to assume as a commuting cost and we could make that change right now today and about 1,500 of these people wouldn't have to come in twice a buy week.

My question is, why hasn't the Agency at least gone forward and done that for the 92 percent of these people who are still in metro D.C. and then we continue the fight with Congress in the things we need to do to change the laws to allow more of a nationwide distributed workforce as time goes on? I have no problems continuing that battle to get those, but I don't understand why we haven't already made the change for the 1,500 people who are living here in Washington,
relieving them of the single biggest burden of the
hoteling program.

MR. SCHMIDT: Bob, I can tell you that
what appears to be a very simple issue is not as
simple as it first appears. We are working with
legal counsel, but there are no standard
definitions quite frankly that we've found of
commuting area, local commuting area, metropolitan
area, even the 50-mile radius that is sometimes
thrown out there, there's a series overlapping and
possibly conflicting standards as to what
authority an Agency would have. We do have legal
counsel looking into this issue. We are getting a
variety of opinions and it is something that will
be offered up for consideration. So there is that
question right there, the legal question of
authority and definition.

In addition there is the apparent
conflict in letting local people not come in and
requiring your folks who live in California, Texas
and Florida to come in to the office. There is a
certain logical inconsistency there that, Bob, you
may want to elaborate on.

MR. STOLL: Only to say that I have discussed this with Dave Kappos and I know that he is interested in moving forward on this. With respect to the disparity issue, he believes that he will do what he can so that if we are still required to have the 8 percent come in from far away, that's something that's outside of his purview, but if he finds that it's within his purview and he discussing it with legal counsel to change those requirements with respect to the 92 percent who reside within the 50-mile radius, I believe he will be anxious to do something in that direction.

MR. SMITH: Just one final point on that. I've also discussed it with David and with the encouraging motion on the telework legislation, we thought it very likely that we might see some movement on that in the near future rather than having disparate policies now which will treat people different. We also thought that it might be useful to wait and see how this is
going to happen and see if we can then have a
single policy that we can apply across the
organization once the legislation passes. So I
think movement on this legislation will also be a
factor on timing on when we make the next step.

MR. BUDENS: I have two comments. One
is if there are other conflicting statutes, I
don't know why the Agency hasn't come to POPA, I
don't want to speak for NTEU, but presumably them
also and say we have some conflicting regs or
statutes with this 50-mile radius and commuting
standards and travel expenses because we'd also
like to know where legal counsel thinks that there
is a conflict and problems that arise that prevent
us from doing these other things. The last
comment to you I would say sounds to me like
you're holding 1,500 people somewhat hostage in
order to try and get a bill through, but that's
all I'll say on that one.

MR. FRIEDMAN: Speaking on behalf of
NTEU, I guess I would offer a compromise position.
We've worked very hard on the Hill to try to get
legislation passed and I do understand the thinking about trying to all our efforts toward that particularly if we're close and we've got a couple of vehicles working here both stand alone as with patent reform, so I know speaking on behalf of the Trademark attorneys that we're willing to continue to give it a go this session to see what happens over the next couple of months. We've been working people on the Hill as recently as last week to push this legislation as USPTO officials know.

That said, because this has been a 2- or 3-year project, if we don't get it done by sometime in December, I think it's vitally important that we follow the issue that the general counsel has been looking at if not for years at least months and it really is time to offer an opinion, share it with the unions, work diligently during the next 2 months while we see what happens on the Hill. If we can wrap it up on the Hill, great, and everybody will be taken care of. If we don't, let's use that as the impetus to
roll out something for people in the 50-mile radius however that may be defined.

Secondly, going back to a comment Steve said, and we're made this very clear to Meryl, Debbie and Lynne, we would rather offer something that would apply to 90 percent of our bargaining unit and take the heat for the 10 percent as odd as it may be not to offer the very benefit that it would provide the greatest benefit to, but I think we can take the heat and we can explain to those people, no matter how bizarre the legal rules may, why they're going to be hamstrung until legislation is passed and we will continue working on the Hill while helping the people who live within the local commuting area to help those who don't. So I hope we can all use this as an impetus to work toward getting the general counsel's opinion now, perhaps PPAC would like to weigh in on gently suggesting that they work toward the particular issue so that everyone knows where we stand at the end of December if we don't have legislation passed.
MR. MATTEO: Thank you very much. I can see it's a passionate discussion with certainly well-grounded positions on both sides. This is something PPAC has been looking at in conjunction with Dave and the different union representatives.

MR. KIEFF: I fear that what I'm about to say is obvious, so I don't belabor it but just pass it along on the chance that it happened to have been overlooked. For much of the discussion about workforce and much of the discussion about interacting with the public, I would suspect that the Patent and Trademark operations within the Patent and Trademark Office are not unique to the office. I suspect that other agencies and other departments of U.S. Government operations encounter similar challenges and just hope that we might all look to those other examples and precedents. I hope that everyone is already doing that, but by that I think what I'm really saying is two things. One is if it turns out someone else has a solution, let's use it. And if it turns out someone doesn't, let's sell them ours,
because if it turns out for example you're able to
find a way to get applicants and their counsel to
interact with us from afar using
telecommunications equipment, either a virtual
booth set up from their home computer or a
physical booth, I think you called it a
storefront, if either of those approaches actually
is cost-effective for us and you decide that's a
great idea, then I can imagine whatever costs were
incurred in building that could be recovered by
reaching out to other agencies that also have
people in the United States who want to interact
with them and simply being the kind of post office
if you will of USG. You get what I'm saying.
You're probably already thinking these thoughts,
but just in case you hadn't, I just wanted to
remind us.

MR. SMITH: If I may just say one thing
briefly, we in fact are looking at other
government agencies who have presence out in other
states that I think will be useful as we look at
our own planning to see what kind of costs they
incurred. In addition, we're also looking at what
vacant federal space might be out there which we
could incur or take over at low cost from GSA if
it happens to be sitting in a region that we think
would be desirable.

It would however I think be useful to
our deliberations and our analysis to learn from
the PPAC at some point just what types of
interactions you feel are useful in priority
perhaps what you would think would be the most
useful way that we could project a presence in the
rest of the country so that we could keep that in
mind as we look at all of this. We think we know
but we're not sure. Your positions would be
helpful.

MR. MATTEO: We're happy to do that both
in an individual capacity, we do represent a broad
range of constituencies individually, but also to
the extent that we have networks and contacts into
the various constituencies that the PTO serves are
also willing certainly to do that. So I would
think that one of the functions and one of the
positive collaborative and hopefully productive
functions that PPAC can fill is to act as this
sort of bridging function between the PTO and
again it's broader constituencies and we're
certainly happy to do that. I'll make that offer
just on the nature of the nationwide workforce
telecommuting but in any situation where
interaction or a bridging function with the
private sector is valuable, we're more than happy
to serve that function and gladly so.

MR. ADLER: This is a thought that came
up as Scott was talking about other government
facilities that already exist as possible places
for networking or setting up a distributed
part-time pilot. If the post office is closed on
Fridays, there are a lot of post offices that
might be available for us to consider using to
cost share or something with regard to that so
that there are other probably other parts of the
government that we could talking to on that
question.

MR. FOREMAN: Let me add to that. Most
of the focus has been on the value and the benefit
to the employees of the Patent Office, but don't
underestimate the importance to reaching out to
the constituents, the patent holders and the
inventors out there. Many inventors never have
any interaction with this office in Alexandria and
so providing some level of outreach, being able to
allow the stakeholders to interact with the office
whether it be virtually or locally would have I
think profound benefits for everyone so that I
think that needs to be factored into the equation.
Most of the emphasis has been on the benefits to
the employees which I think is very important, but
I think you can sell this at a greater value
because it benefits more than just the employees.

MR. SCHMIDT: If I could just add to
that, that's exactly what we're doing in our
service-oriented module. I think you're totally
correct that there are inventor services that we
could offer, services with our electronic tools
that we could offer and having a real presence in
different communities would be a huge benefit to
the whole user community. That's one reason why
one of the models we're looking at is more of a
service-oriented storefront model, not so much a
presence examiners physically located in a spot,
but USPTO services that could be offered at
various locations throughout the country. Again
what we're interested in from PPAC's perspective
on what would be this laundry list of services
that you think would have the most bang for the
buck for us to invest in in the different
communities would be immeasurable helpful to us.
Thank you.

MR. MATTEO: You're most welcome. Again
we're happy to do that. For those of you who
aren't familiar, PPAC has semi-architected itself
in a fashion where we're trying to align each of
the PPAC members with different topical areas,
sometimes multiple topical areas. Just by way of
example, Maureen has graciously considered to be
the human resources/human capital liaison for PPAC
so that way there is always a go-to person.
She'll be living and breathing this topic, she's
nodding affirmatively and enthusiastically as well, and will have all of the information. What I hope we can do is use Maureen as a bridging function between PPAC and this effort, but again, each of us has a different area. I'm for example working with OCIO, Scott is working with finance, Steve is working with legislative so that we've each aligned ourselves. What I'll do is as each of these topics comes up I'll point that as to who the go-to or the stuckie person is for each of these individual topics and I'm going to encourage everybody to each out to those people whenever there's a discussion or you need conversations about what the private sector might think or want.

One of the other elements of this is what I don't want to see is a diode effect and paying us for information. The whole notion of having Maureen live and breathe this area is that she'll have all of the information that she needs to be able to give meaningful advice as opposed to just off-the-cuff advice.

MR. SCHMIDT: Thank you very much.
MR. MATTEO: You're more than welcome. I will get off the soapbox right now. It's a good time to mix things up a little bit because we're changing the agenda. Peggy and Robert are going to be talking to us about the new count system discussions that are ongoing. Thank you very much.

MS. FOCARINO: Thank you. I'll start it off and then Robert can join me in describing the efforts over the last 6 weeks to reengineer the count system.

We've done literally I think 10 briefings now with two more to go tomorrow for our examiners so that about 5,000 examiners have been briefed to date. Following the briefings tomorrow there will be a vote by the dues-paying members to ratify this package, and Robert can explain that in a little more detail.

You have a slide set in your handouts. I believe you have 47 slides total. The presentation takes 2 hours. Don't worry, I'm not going to go through all of them. Some of them are...
very detailed and related to if you're an examiner
how the credit shifts, but we'll give you an
overview of what is occurring and what we propose
to occur in the changes.

One of the things I want to share with
you is when the Under Secretary created this joint
management and union task force, he set forth
several objectives for this task force and you can
see them up there on the slide. We were tasked
with doing several things and Bob Stoll mentioned
at the outset in his talk about changing the
culture, changing the environment. The first	hing that he wanted us to do is encourage
examiners to address issues early in prosecution
and discuss issues with applicants by providing
them the time to do that. He also wanted us to
reduce rework, in other words, reduce the number
of RCEs that are coming in the door. This would
happen through a series of initiatives that are in
the package, and encourage examiners to go on and
examine the next invention rather than examining
the same invention over and over again.
He wanted the changes to be viewed as a gain for all stakeholders both internally and externally as well so that we want our applicants to see and experience positive results from these initiatives as well. We want to improve the current environment by removing some of the obstacles that examiners face every day when they examine applications and try to get credit for their work. As I said earlier, this has been a 6-week effort. Dave Kappos set forth several objectives that you see up there and those objectives framed our efforts.

The count system hasn't been changed in decades and we were given 6 weeks to literally blow up the count system. Do we think we came up with the perfect solution? Absolutely not. Do we think we made a big first step in meeting the objectives that Dave Kappos set forth in improving he culture? Definitely.

The last objective that you see up there, do no harm, was critical. That goes to making sure that examiners in the transition to
the new count system should they ratify this
package do not get harmed, that they're not going
to face a poor performance rating or not get a
promotion or not get an award because we made the
transition to this new count system. If we have
to make adjustments to this new system, we can do
so. If we find that there are unintended
consequences of this system that the team did not
foresee, we can stop it and revert to our current
system.

One of the difficult things about this
while package has been not what the count system
should look like as an improvement but, rather,
how do get there from the current system. It's
very complicated. We wanted to make sure that
each examiner was compensated appropriately, and
we had some great people on our team to lead the
effort and help in that effort. I'll let Robert
get into more of the details about how we've
shifted credit and some of the other pieces of the
package and then I'll explain to you the risks
associated with moving to this kind of system in
full disclosure so that you know if things don't
change, if behavior doesn't change, if the culture
don't change, what could be the price tag for such
a change. Robert?

MR. BUDENS: Thank you, Peggy. I do
want to say that this has been an interesting
experience. It's been very intense, but also very
collaborative. I think Peggy and I have probably
gotten to know each other better than any union
president and deputy commissioner in the history
of the Agency. We think that it's been a good
effort, and as Peggy said, a good first shot at
trying to get this system changed to where it can
be most effective.

Let me show you some of the things that
we're doing in this package and I'll go into a
little bit of detail with you. I will not go into
extensive detail on all the changes because the
math and complexity would put everyone in this
room and everybody in America watching online to
sleep in about 30 seconds if not sooner, but we
will give you kind of an overview of what we're
A quick overview. One of the first things we're doing is we're putting more time into the system, putting more time into examinations so that examiners will have more time to examine the applications and be able to focus on the areas that take the most effort. We're going to be realigning the count system, the system that gives examiners production credit or work credit throughout the course of the examination process to bring that more in line with when the work is actually done by the examiner. One of the ways we're doing that is to put more time up front into the first action on the merits. That's where the search is done, where the first action on the merits goes out to the applicant, we want to enhance compact prosecution, so that we're going to put more time into the case and more credit up front because that represents the biggest single piece of work in examination.

We're also going to start providing time for examiners to do examiner-initiated interviews.
Up until now we've been giving time for applicant-initiated interviews when the applicants phone in and want to talk with us, but we haven't been giving time when we've felt like we could reach out to the applicants and try and get to allowable subject matter at an earlier time in prosecution so that that will now be available.

One of the objectives of Mr. Kappos was to diminish the credit for RCEs in an attempt to try and disincent those kinds of applications and get prosecution done as early as possible and get to allowable subject matter, so I'll explain to you some of those changes and that's where things get a little complex. Another problem that we've tried to solve is the issue of what we call inherited amendments. As you know, over the last 10 years or so or actually longer, the Agency has had a bit of a problem with attrition and when an examiner leaves the office, all the work they were doing has to be picked up by somebody else and for a long time there was never any way of consistently giving the examiner who inherited
those cases consistent work credit. Sometimes
they got nothing at all, they just had to pick
them up and do them and then offset it with
additional work to make production. We're getting
away from that. We're putting a consistent amount
of credit in inherited cases now so that examiners
will have the time to pick up those cases and act
on them accordingly.

We're revising the production award
program to put more incentives in for examiners to
be more productive. We're putting more intervals
in the places where they can get awards and we've
raised the top end to 135 percent now from 130
percent, so hopefully that will provide more
incentive for productivity. We're also changing
some of the processes. We're increasing work
credit certainty. One of the problems we've had
in the last several years or so is examiners
having problems getting their cases counted and
getting credit for the work they've done when
they've done the work has been a source of great
annoyance in recent years and we've tried to fix
that problem. We're also going to try and make
sure to increase fairness to our stakeholders, to
our applicants, by making sure that cases get
picked up in as close to a first-in/first-out
order as we can make while still allowing
flexibility for examiners to be able to make
production.

Finally, we're going to try and balance
the workload on the IT systems by changing a
little of bit when our deadlines are for finally
turning in work. In case any of you are not
aware, our IT systems are a bit of an issue these
days and we're trying to lighten the load on those
so that we don't have small periods of times with
intense activities that could risk slowing the
system down or bringing it down.

Then we're going to improve working
conditions. We've taken some actions to try and
reduce the fear in the examining corps and
management of getting to allowable subject matter
and seeing if we can't get back our percentage
allowance rate back up some. We want to get to
allowable subject matter as early as we can.

We're going to reshift some of the resources we've been using in observing and testing quality by getting rid of the recertification program which was very resource intensive but didn't really bear any fruit with noting and so we're getting rid of that program. We will continue to maintain the certification exam for examiners. There was a lot of input from the Agency and from the applicant community that that's a very good thing that they appreciate and so we are keeping that in place.

Let me tell some details of what the changes are. The first one we're going to deal with is the revisions to the count system because those are the ones that most people are interested in and directly impact the examiner's daily lives. I'm not going to get into the math, but let me explain to you what we did in a nutshell.

Director Kappos gave us an objective to reduce the amount of work credit available in RCE cases. We looked at that and he wanted a small reduction in the first RCE after the parent application and
more significant reduction in work credit in second and subsequent RCEs again to try and incentivize both the examiners and the applicants to get to allowable subject matter more quickly.

As we went through making those changes we then realized we were going to have to make some adjustments to compensate examiners for what was in essence a reduction in the amount of time they would have to do certain cases so we have gone in and developed a rather complicated mathematical set of formulas that is going to add a fixed amount of time to each examiner and then in addition adjust the hours they have to act in each case by a little more depending on how many RCEs they have on their dockets and what the percentage of that ratio is of those RCEs so the new cases they're doing.

Let's take a look at what we did. In this slide, the top diagram shows the system as it current exists. What it shows you is how we get our production counts and we get a count or work credit when we do the first action on the merits.
in an application, and then we get no more work
credit in that application until we get to the
point of final disposal of that case, whether it's
allowed, abandoned, set up to the Board of Appeals
or Interferences so that we have no credit for
final rejection, we have no credit for any
prosecution that goes on between the time we do
the first action and the time we finally dispose
of the case. You'll notice that that's the same
for first RCEs and for second RCEs. In other
words, every new application or RCE has to counts
in it available to the examiner for work credit
toward their production.

If you look this box now, this shows you
the system and what we're moving to. What you'll
see is in an original new case, instead of having
just one credit for the first action on the
merits, we're now going to have 1-1-1/4 counts
for the first action on the merits, we're going to
have a quarter count for the final rejection, so
now in times when we've got loads of amendments
and responses that we have to do, we're going to
at least get some work credit because final
rejections can often times take as much work as
first actions. Then we're reducing the amount of
credit for the disposal count, the allowance or
abandonment. There are still two counts remaining
in the case, same as in the original, but we're
redistributed when the work credit is provided to
examiners.

    In the first RCEs, you'll notice that
now instead of getting 1-1/4 count, you're only
getting one count for the first action and you get
the same for the final and the allowance, 2.5 for
the final, .5 for the abandonment. You'll see
this is maintained throughout the system. Now
finals will always get a quarter count,
abandonment and disposals will get a half count.
Then for second and subsequent RCEs, you'll notice
we've reduced another quarter count off of the
first action on the merits. The original new
cases stay the same at two, the first RCE goes to
1.75, and the second and subsequent ones will be at
1-1/2 counts. This here shows you that there was
a reduction in time to examiners that we needed to compensate for.

Let me show you quickly how that happened or what we've come up with. We even put the computer to sleep. I told you that the math was going to rough. How did we figure out these calculations? In order to make sure that people got at least some credit, everybody got some credit, the first thing we did was add 2 hours to everyone's current hours per goal and that's indicated right there. This is where we're currently at, this is the 2-hour addition. You'll see that there's something here called the 1-hour floor that we'll talk about. That was what we set is a minimum, that everybody should at least get to the 1-hour floor.

Because of the loss in RCE counts, what happened is that for people with a lot of RCEs, they're going to lose a certain amount of work credit because of the reduction in counts and that's represented by that red arrow. So we needed to make an additional adjustment to the
addition to the 2 hours to at least bring the
people up to the 1-hour floor and that we refer to
throughout here as the RCE adjustment. So what we
have to do is figure out how hard are people
impacted by the change in RCEs and then add
additional time to at least them up to the 1-hour
floor. People with fewer RCEs like new examiners
or people who are just in dockets that don't have
many RCEs, if their effect is less than 1 hour,
then they don't get an RCE adjustment, but they
have the additional benefit of the extra time they
have.

I don't know if you even want to go
through this much math. The bottom line is that
by going through the counts that we have, you'll
see that under the old system that an examiner
might have 100 counts in a set of cases and that
same amount of work under the new proposed count
would only provide 95.31 counts. However, because
of the adjustment in time, their production would
actually go from 100 percent, in this particular
case the person would get a 2.08-hour adjustment,
2 hours for the time and then .08 hours for the RCE adjustment, and that would bring their productivity up to 103.9. By going through all these machinations we were able to put more time in the case while still reaching Director Kappos's goal of reducing RCE time.

This goes into more math. You don't need to know that. It'll just hurt. This is a quick slide. These are the kinds of machinations that we have to go through for each examiner, to look at what their basic goal is now, add their 2 hours, figure out their RCE adjustments, how much we have to adjust for their time and then add in the amount of time to their goal to come up with their new expectancy. Again if the RCE ratios are low enough, they don't need any adjustments to come up to at least 1 hour so that these people got 2 hours of time. If their ratios of new cases to RCEs gets up high enough, then we have to start making adjustments and that's these examples here. This colored example is the one we actually just looked at on the previous slide where you see the
25.08 adjustment and these people have even more RCEs. We can pretty much bore you to tears. We've given the examiners a number of tools so that they can go back and calculate some of their production based on their fiscal year 2009 work and be able to know where they're at and determine and what the effects are going to be for them.

I mentioned also that one of the things we did was to put a standardized amount of credit into inherited amendments. What we did was depending on the status of the case, if it was a new case that's had a first action and an applicant has responded but it's just a new case and it doesn't have a lot of prosecution history, you'll see that we've treated those by putting 1-1/2 counts in the case available to the examiner who inherits the case. We've also done similar changes to RCEs that get transferred, and what we've done there because RCEs tend to have more prosecution history and need more time for a new examiner to pick up the case, review it and decide where to go with it, we've handled those by
putting in 1.75 credits in each of those cases.

We think that's a great boon to examiners because there have been a lot of examiners that when you got an inherited case sometimes you were talking -- beginning for a couple of hours or an abandonment or something to offset the work you had to do in the case, a lot of examiners got nothing at all, and that created a lot of burden so that this is one thing I think that really is going to be good for examiners.

As I said, another thing we're doing is putting time available now for examiner-initiated interviews. If the examiner if they're working on the case and preparing it and they realize that there is some material in there that they could to allowable subject matter, they're going to have the time now to be able to call up the applicants and approach them and let them know what they think and where they're willing to go and let the applicants make a decision. We think that this will be a great opportunity for both the examiners and the applicants to try and begin interactions.
earlier in the case and to try to get to allowable
subject matter as quickly as possible.

I've already mentioned that we're
keeping the certification exam, but we're getting
rid of the recertification processes which was
very resource intensive and not worth a whole lot.
We've made some changes to getting cases. I'm not
going to bore you with the details. We've made a
lot of changes that will now allow examiners to
turn in their cases and get the cases counted for
production credit and then if necessary return for
correction after the counting has been done. This
has been a source of great frustration for
examiners over the last several years as we've
moved to electronic processing of applications,
and we've hopefully solved that issue.

Let's talk about the patentability
determination. Patentability determination is one
of the performance elements of primary examiners,
as in did you make the patentability
determination? Did you allow a case properly or
you allowed it improperly or you didn't reject it
properly? One of the problems is with the low allowance rate the numbers were so tight that examiners were in a situation where if you made one error in patentability determination, you could be in performance trouble and be on the slippery slope out the door. We have worked together with the Agency now to come up with a system that will solve that. It doesn't mean that we can now go out and wantonly mess up the production, believe me the performance element is still wrapped tight as a drum, but this at least gets away from an absolute certainty kind of issue.

We've had a lot of talk about telework this morning. Because of the rules of telework, generally a hotler has to be at least at the fully successful performance rating. If they came in below that rating, they could be pulled back from hoteling and told to come back to the office and report back to work which is an incredible burden on the examiner especially if they've moved outside of the commuting area. So what we've done
is created a grace period with the Agency where they'll have an opportunity to try and improve the performance and show that they can perform at the fully successful level. If they're successful in doing that in that grace period then they won't be pulled back from hoteling so that this is a good move to lighten up on examiners that way.

We are changing dockets a little bit. Some of you who have prosecuted with us for a while have probably heard of count Mondays. Count Monday has been an incredible burden on the IT systems of late because we get all of our cases turned and they have to be processed in a very short period of time so that we're spreading out the prosecution of those cases, and we're also moving to more of a first-in/first-out kind of system. We want to get examiners turning work in when they finish it so they can be reviewed and counted throughout the buy week and we want to make sure that applicants are being treated fairly also. We don't want to see a situation where an applicant gets a case picked up that was filed
very recently and another applicant is sitting there and has had their application in here for 3 or 4 years and is still waiting for an action so that we've tried to get around that problem.

Another thing that a lot of people will be interested in is one of the changes we're making is we're taking RCEs which since their inception have been treated as amended cases which means they were put on examiners' amended dockets and they had a 2-month time limit from the time it was put on our dockets for us to respond to it.

We are changing that and taking them off of the amended docket and they'll be put on the special new case docket so that it will be treated as other continuing cases or divisionals and that's a change to help manage the reduced counts.

The next slide shows the changes in the production award system. We used to have just 110, 120, 130 awards and now we've created 115 and 125 and we've created a higher amount at 135 that will allow examiners to get more money in the form of bonuses.
A couple of important pieces include transition issues. We have transition proposals that will deal with moving the RCEs to the new document. Currently filed ones will still remain on the amended docket because applicants had filed those under a previous set of standards and so those will stay, and then we'll move new ones in the future when the program goes into effect onto the special new docket. Examiners will also be provided with their new hours per their expectancy, how many hours they have for a case before we transition to the new case. This is a little bit of a new paradigm for us because we really truly have worked as a collaborate task force here and we recognize that we may not have thought of everything. This is a pretty complicated set of changes. We have even what I call an elastic clause that will say even if there are things that we haven't figured out, then we will come back as a task force both POPA and management and we will try and solve those issues. Those are some examples we were giving
to employees in the briefings which is one reason
why they take 2 hours and we're doing it in 20
minutes and I'm getting talked out here. The
thing is we've created a safety net. As Peggy
said, these are the first changes to this system
in 33 years and the first really significant
substantive change to this system since its
inception in the 1960s. So obviously examiners
are concerned, I think management is concerned as
to are there unforeseen circumstances and what
could happen. We've created a safety net that's
going to allow us to look at examiners' work under
the new system and calculate their production both
under the new system and under the old system and
then they will get the benefit of whichever
numbers give them the best outcome. So by putting
this safety net in place, it's allowed us to
create a system where we can go out and we can put
in place and we can test and we can try and tweak,
and if examiners do turn out to be somehow
negatively impacted from circumstances we couldn't
foresee or miscalculations of their RCE
adjustments or whatever reason, we can go back and
look at their work under the old system and
you'll get the benefit of whichever calculation
gives them the best outcome. We've worked closely
with the Agency, and even through the process
we've been going through with the voting and
everything, tweaking and modifying the system so
that at this point no matter what happens with
this program, examiners will not be worse off than
eye would be under the system, and I think that's
a very key point.

I think I'm about talked about and I'm
going to turn it back to Peggy for a minute.

MS. FOCARINO: Robert always wants me to
talk about the risks, the big two right there,
increase in pendency and decrease in revenue and
how does that happen? This package results in an
average of between 1 and 2 hours of additional
time per case for each examiner. What does that
mean in terms of production? If I'm at
100-percent production today as an examiner, I'm
responsible for doing a certain amount of
production units. Under the new system because I
would have more time, I would maintain my 100-
percent level by doing fewer production units.
That also leads to a decrease in revenue because
once the filing fees are submitted and the case is
waiting for action, an examiner picks up the case
and then begins to generate future fees because
short-term and long-term in issue fees, extensions
of time, PG pub fees and maintenance fees if the
case should be allowed so that if the case is just
sitting and waiting for an examination, there are
future fees that would not be collected.

How do we feel that we can mitigate
these risks by this package? A couple of big
things. We think the package overall is really
setting the foundation for long-term pendency
improvements. We're going to focus on quality up
front by giving a count and a quarter in the first
action, we should seeing more thorough searches,
more time for the examiner to engage in the issues
and hopefully with an increase in customer
satisfaction. We believe that the examiners will
have the opportunity to identify allowable subject
matter if there is any earlier in the prosecution.
They will be reaching out to applicants more
because they will be getting time for
examiner-initiated interviews. We think this will
lead to a decease in actions for disposal which
has been on a steady rise over the past few years.
We think this rebalances the incentives both
internally, and you saw how the credits would
shift for RCEs, and externally we may see some
disincentives in the form of fee increases for
RCEs.

We want to support examiners' ownership
of transferred cases by giving them a certain
amount of credit so that they know that they are
going to get the credit that they need to spend
time when they get cases from an examiner who's
left the Agency. Overall we think the package
will lead to an increase in morale and hopefully
reduce our attrition rate which is pretty low
right now but as the economy picks up we tend to
lose some of our examiners to the outside. So we
think that with the package as a whole behavior
will change and we can mitigate those risks that I
showed you that would occur if no behavior change
occurs. That's it. I'll let Robert talk to you
about the vote process.

MR. BUDENS: Thanks, Peggy. We're not
quite done with all of these changes yet or with
this process. There are still a few things we
need to go. As Peggy said, we have to complete
the briefings. We have two more tomorrow, and
then those will be done. We also have to complete
the POPA vote. The POPA executive committee
determined that because of the scope and magnitude
of these changes that we would be putting this out
to vote of the POPA bargaining unit of the POPA
dues paying members, and that's been going on over
the last 2 weeks as we've had these briefings.
That will conclude tomorrow at 4 o'clock and we
will hopefully know whether the examiners have
chosen to accept this program or reject it by
sometime tomorrow evening, and we'll let
management know at some point in time. I know
they're not really interested in the outcome.

We're all interested in the outcome of it.

If it is accepted, we will be looking at

a two-stage implementation of this that

applicants want to be thinking about. That is,

the first stage will encompass putting into

place all of the initiatives you've heard about

today except for the revisions to the count

system. Those revisions take some extensive

reprogramming of PALM which John Owens might speak

to in a minute and those need to be completed

before we can transition to the new count system.

We have a goal in place with a target of the

beginning of the second quarter to do that and

that would be December 20.

One important thing I think everybody

needs to hear both on the PPAC and in the

stakeholder community is this last issue. We

recognize that this is an incredible complex

number of changes to a system that was already

complex to begin with and both sides are concerned

about where this could go. We have provisions in
place in the agreements to monitor the program regularly. We're going to be looking at it quarterly and then getting together toward the end of FY 2010 and looking at do we want to continue. We have a lot of data we're going to be collecting and the data is going to be available to both management and POPA. We're going to be looking at it as a task force and deciding if we need any changes, if so, what do we need and how do we do it, et cetera, and continue to be looking at this. As we said at the beginning, it's an iterative process. We think it's a good first step but we recognize that there is work to do. Neither side in this adventure got everything they wanted and we'll still be back at the table talking with each other.

One thing I think that's very important and I commend Director Kappos for is the last bullet here. You'll see that no matter what happens, if we have to make changes, even if we have to completely terminate these changes at the end of FY 2010 and go back to our current system,
that he has committed that examiners will still
get the benefit of the at least 1 hour of
additional time per case and we appreciate his
consideration there and his commitment to the
examiners to get more time in for examining. The
POPA will be going on, it will be concluding
tomorrow and we'll let everyone know one way or
another what the outcome is. Thanks for your
time.

MR. MATTEO: Thank you very much. I
feel the irresistible need to lead with laudable
efforts here, pushing back on 33 years of inertia
in 6 weeks and coming up with something that both
management and POPA, at least POPA management can
agree on, understanding that the vote has not yet
been taken. I have to compliment you on the
culture shift and the dedicated collaborative
effort that went into that.

Having said that, however, one of the
things that I would be interested to hear and I
expect it's implicit but for me it would make me
more comfortable if it were explicit is we're
talking as if there are two parties involved here,
but the other implicit party at issue here is the
public and patent applicants themselves. In terms
of extolling the iterative nature of this and the
fact that you want to revisit it periodically, are
there built into this system ways to reach out to
the IP community and the inventor community to
filter their feedback into this view as well?

MS. FOCARINO: That's a great question.

I had a meeting yesterday with Jennifer
Rankin-Byrne and others to start discussing a
framework for being able to solicit input from the
public and when the appropriate time would be,
when can we expect the public to start seeing some
meaningful results from the package and
incorporating their input into any changes that we
make. The intent is to get input internally from
the people who are actually doing the work and
then externally from our stakeholders.

MR. MATTEO: Did anyone else have any
questions or comments? For those of you like
myself who went blurry- eyed watching the dizzying
speed for the slideshow, I want to mention that
these presentation materials along with all other
presentation materials from this morning and
afternoon will be available on the PTO website. I
suspect they're all in disparate locations, but
maybe we can figure out a way to at least
consolidate pointers to those locations on the
PPAC website for a one-stop-shop kind of a
situation. We'll explore. There are no
commitments, but that's something we can look
into. But again, all of these materials will be
on the PTO website for future reference. I
believe, Marc, you had a comment or question.

MR. ADLER:  This is a great start.

Hopefully we get the vote and we can move ahead.

I have a couple of questions.

Previously we were talking about that we had
defined complex applications. All applications
here are equal so we still haven't gotten to the
question of what happens when you end up with an
enormous case and the time required to deal with
those. There are probably other opportunities for
further improvements to this as we go forward, so let's park that thought somewhere.

The other one is if we could reduce the need for the filing of RCEs by a significant amount even though the data has been showing the opposite, if we could turn that trend downward we could change this so that examiners could have even more time on the first office action. In other words, you could trade off some of those RCE numbers for more time up front, again, to pendency, they're all connected. In other words, if we can reduce pendency, we could also get more time for examiners up front.

The only one that I think you might get some feedback on which is probably good but just to think about is you're changing the docketing thing. When you go to this amended docket, to the special docket, because you won't be getting that first rejection on the RCE in 2 months, there will be fewer second RCEs probably filed in the same period of time so that there will be some numbers there that we'll have to see as a result of the
change. Right?

MR. BUDENS: Yes.

MR. ADLER: Just to throw out some things for you to think about.

MR. MATTEO: Thank you very much everybody. What I'd like to do, it's 10 of 10:00 right now and we have a break built into the schedule. Why don't we take a brief break and reconvene at 10:00 a.m.?

(Recess)

MR. MATTEO: Welcome back, everybody.

It is now my great pleasure to introduce to you the new Under Secretary and the Director of the Patent Office, David J. Kappos, who will be sharing with us some of his initial impressions and thoughts. Dave, if you would, please.

MR. KAPPOS: Thanks very much, Damon, and sorry for the delay in getting here. We've already had a busy morning and we're closing in on 10:30. I want to share a few comments and then leave a little bit of time for questions or any discussion that we need to have with the team.
First of all, thanks to the PPAC for your service to our U.S. Patent and Trademark Office and to our country. I appreciate your willingness to take the time and put your energies into helping us to improve this Agency. Second, thanks to my USPTO colleagues. I see Robert, Peggy and Drew sitting here at the head table in addition to Commissioner Stoll and others in the background. Thanks for the energy that you've put in to helping the PPAC to do its job, and I know the considerable amount of time that it takes to be responsive and helpful.

On that I want to say that we're having discussions and trying to, if you will, reinvent a lot of things at the USPTO right now and that includes our relationship with our two public advisory committees, the TPAC and the PPAC. I'd commented previously to the TPAC and I'll repeat the comments here that I view that we have an enormous opportunity to work together to do substantive things to take action for the U.S. innovation community and to do what we need to
have a partnership between the PPAC and the USPTO management and employees that's probably a little bit different from the way it's been in past years. I'm very encouraged by the PPAC here and by Damon's leadership and I think we've got an opportunity to do things that are going to be positive that really are going to take action and that are going to leverage the unique skills and capabilities, and the statutory advisory nature of the PPAC that gives is an engine for assistance, for comment, for input, for change that we really, really need right now at the USPTO. As probably apparent to you but has become very apparent to me, it can be somewhat isolating to be in an Agency when your ability to interact with the public is somewhat constrained. Having an engine like the PPAC provides us with a very important bridge and a very important way to stay connected with our community and with our constituency and that's the way I want to build up the relationship.

As I mentioned at the TPAC meeting and
I'll also repeat here, I'm big on joining in public meetings and big on transparency so that I'll try and come and spend time at these public meetings. I probably won't join in any of the closed-door sessions although I realize that if they're kept brief there are reasons for having them and we need to respect that.

A couple of substantive comments that I wanted to make. Workload. You might have seen these stats already, but I'll just repeat them so everyone has them on the table if you haven't heard them recently. The latest up-to-date numbers that I've got are the backlog of unexamined cases, 735,961. If you're counting all the way out to the decimal point, that is an astounding number, it's an unacceptable backlog and that is a top priority for us to work on here at the USPTO. Total inventory of applications in the pipeline, that's everything that's in process in addition to the unexamined backlog, 1.280 million patent applications. That is in my view about lifetime dancing lessons already for us here
at the USPTO, and of course I expect innovation to continue and accelerate over time so I think all of those flow rates are inevitably going to increase, and that's a good thing because that means our economy is generating innovation and people are getting more products and services that they need, access to health-restoring medicines that they need and all the other things that the innovation community facilitates so that it's perfectly okay. It's our job to figure out how to deal with those backlogs much more quickly.

Average first action on the merits pendency, 25.8 months, an average overall pendency of 34.6 months measured by I believe by what we're now referring to as the old metrics, and in keeping with transparency we're going to be putting out new metrics which are going to try to fully report pendency from every conceivable viewpoint including total pendency from original filing of a priority case whether that original filing is in the U.S. or overseas, all the way through to final disposal of the case whether it
be complete and total abandonment, in other words,
no continuation, no CIP, no divisional, no other
case filed, or whether it be issuance of a patent.
So we'll start trying to track and transparently
report what many in the applicant community think
of and refer to as the total application pendency
and we're working on getting the machinery in
place to do that.

I wanted to mention the count reform
project and thank you to Robert and Peggy for
demonstrating the kind of labor and management
leadership that it takes to address as really
hard, complicated problem in a constructive and
businesslike way. We respect that the union is
still voting and in fact I think Robert and Peggy
might still be doing the last of the education to
union members, so I'm not going to get into the
details there. We want to respect the union
process and let it complete. But in any event,
I'm extremely proud and please of the working
relationship that Robert and Peggy have
established and leveraged to make some real
progress.

I need to mention the Tafas case briefly. There is not a lot to say there. It was pretty clear that we needed to rescind the claims and continuation rules. We did it as quickly as possible. We're trying to put that behind us. In my view, Tafas was an example of a net negative result. In other words, it matched a modest, very small, incremental gain in productivity for the office against a very large detriment or cost in the applicant community and it was for that fundamental reason why I viewed the Tafas rules as being something that didn't make sense from the beginning. We'll now be looking for rules and outreach with the applicant community that produces net positive gains. That's not to say that we won't ask the applicant community to do things that involve change from time to time, and of course we'll be changing lots of things in the office, but we'll be looking for a complete equation that produces a significant net positive and my judgment was that the Tafas rules did not
fit into that category. We're pleased to move
away from those and get on with rule making and
collaboration with the applicant community and
with the PPAC as a vehicle to keep us oriented, to
keep pointing out true north to us as we craft new
provisions and new rules, et cetera, and that's
what we'll be depending on the PPAC for.

Patent reform. I need to mention that
for just a minute. This is a process everyone in
this room knows has been in the works some would
say for a long time, a number of sessions of
Congress. The Administration now has a views
letter out, so for the first time the
Administration has a point of view. This is a
high priority for Secretary Locke. It's my very
highest priority to get patent reform done and
passed and legislation in place. We're very
supportive of the work that's being done in both
Houses of Congress and we're available here at the
USPTO to assist in our role as a technical expert
Agency. We've been working hard already at the
request and direction of Members to do just that
and we'll keep doing it and do everything we possibly can to get patent reform through.

The legislation can be very beneficial for the Agency first and most importantly for the innovation community for our country. It will help with litigation reform, it will help with providing viable postgrant processes to enable the prompt challenge, prompt conclusion of those challenges of issued patents. From the viewpoint of the Agency it will put fee-setting tools in our hands which are very, very important to being able to get the USPTO on a sustainable funding model. So there is a lot of good in patent reform legislation. And while not everybody gets everything they want, in fact I think it's accurate to say nobody gets everything they want, I think that patent reform legislation, the legislation that we've got pending in Congress, is a big net positive and so I'm putting a lot of energy into trying to help get it through Congress right now.

Those are the main topics that I wanted
to address, the main things that are on my plate right now, patent reform, a lot of time reengineering process here at the office like the count system is extremely important. Looking at ways to engage the applicant community is very important and echoes to Tafas and looking beyond Tafas. I'll stop there, but I'll just by way of stopping say that relative to fee collections, you probably already know that we're starting off FY 2010 at about $200 million short of what was originally projected in the budget that was originally set out for the Agency this year and that has put us in a position where we can't hire to even backfill for attrition so that the size of the Agency is shrinking. We're not able to undertake the information technology improvements that we badly need to undertake. We're not able to fund PCT handling to anywhere near the level we'd like to be funding it. We're not able to authorize as much overtime on the part of the examining corps as we'd like to be able to permit. So unfortunately what we're looking at is in my
view what the threshold of some might say another,
but anyway, at least a lost opportunity and I
really don't want to see us lose this opportunity.
If we have the funding we need, we can get started
immediately on the things we need to do to
dramatically improve the functioning of the
Agency, and we know what we need to do. There are
no inventions needed, no big mystery. We can do
these things with adequate financial resources and
that's where the $200 million comes into play. Of
course it's within Congress' province to work out
funding of the USPTO. It's our job to make the
public and Congress aware of funding problems and
that's what we've done and that's what we're going
to continue to do, and of course we'll help any
way we can in terms of bridging the gap.
Meanwhile though we're certainly not standing
still even in the delicate funding environment
we've got. There's lots we can do and we're off
doing those things many of which I've already
mentioned.

Let me stop there. Damon, thank you
again for having me in and let's have a discussion
if people want to raise discussion points of
questions.

MR. MATTEO: It's very much appreciated,

Dave. It's like to turn it over to the floor for
questions or comments for Dave. Looks like we're
all sold.

MR. KAPPOS: Somebody's got to have an
issue or question.

MR. PINKOS: Thanks so much for joining
us today. We really appreciate your time. I
guess on the funding issue, has the Administration
settled on a request of Congress, a specific
solution going forward I guess one for this year
whether such a large anticipated shortfall and
then of course for the long-term as well?

MR. KAPPOS: Thanks for that question,

Steve. The Administration views letter which does
represent our position on this is that we need
director fee-setting authority which enables us to
solve the funding problem in the long-term. For
those who don't know, as I've learned in the
2-plus months that I've been here, it turns out
that getting fee-setting authority isn't the end
of solving the problem. You then have to get
through the notice and comment rulemaking process
which I've gone through the timeline in detail
with the team here at the USPTO and it's at least
12 months and probably more like 18 months from
when you get fee-setting authority to when you
actually get the fees reset so that there is a
long gap in there and, Steve, that's where the
$200 million comes into play. So our view in the
Administration is that it's really for Congress to
work out vehicles and it's our job to make
Congress aware of the funding gap, and so that's
where the matter stands.

MR. ADLER: I'm very happy to hear the
comments you made with regard to the redefinition
of pendency to be transparent because applicants
do view the overall pendencies to the absolute
final disposition of the case as what it's really
about. Certainly that will add more time to the
data that you already have, so it makes the
initial numbers look even longer than they are, but that just makes it more incumbent upon us to figure out how we reduce pendency and deal with the backlog through process changes both that we can do as well as those things that applicants can do and hopefully the PPAC can help the office in that regard to explain to the public what we all can do to improve the way in which patent applications are written, processed and examined to that we can get a handle on the backlog and drive the pendency first office action to 10 months and hopefully complete to the grail of 18 months which would also help us figure out how to sink our cases that are first filed here with the patent prosecution highway better so that that all starts to make more sense. Yes, I'm thrilled that you're at least getting more transparency here and we some opportunities to make some changes in spite of the budget and the financial situation. And the count system will also help a long way to push more to the front end which is the right direction. So everything is good and if we can
get patent reform passed, where I'm personally on
that, I'll be thrilled if that was one or had been
done already, but hopefully we can get it done in
the next couple of months.

MR. KAPPOS: Thanks for those comments, Marc. A couple of things. We are going to put
all of the pendency data, and again some of it
will be better than others. It's okay. It's
facts and we all need to have the facts.

Relative to getting the word out about
what applicants can do, this is a place where we
really can use PPAC help and also some PPAC input
because it's the job of many of us as PTO leaders
around this table, Drew, Bob, Peggy, Robert,
Howard, myself, to get data out and information
out that helps the applicant community understand
what they can do to facilitate the process.

I'll give you a couple of examples and I
included this in a speech that I gave earlier this
morning. The first action interview pilot has
been extraordinarily successful. It statistically
increases an applicant's chance of getting a first
action allowance very, very substantially. It's a no-brainer that applicants should be using it. So I'm making it a point to lay this out very explicitly in every speech I give. I'll do it again tomorrow, I'm speaking to another association, to ask them very explicitly to help them and us. This is a net positive gain on both sides of the equation. But this is something that the PPAC can do also, is to champion these very straightforward actions that the applicant community can take. So first action interviews is one. Another one now that's quite clear is participation in the patent prosecution highway which we now know statistically doubles your chances of getting a first action allowance and doubles your chances of getting a final disposition that's a patentability disposition to over 90 percent. Furthermore, if I'm remembering the statistics right, the pendency in the PPH program once the petition for acceptance is accepted is between 2 and 3 months, so it's off the charts in terms of how fast the PTO is
processing applications once they're in that PPH system, and we ought to get that word out. I'm doing my best. If you guys know more statistics or more information I can use, I will do it, but it's also a place where the PPAC can play a role as advocates to get word out on very specific things that applicants can do to help themselves and help us do a better job.

MR. BUDENS: A question for David. Going back to something you had said earlier concerning the fee-setting authority, one of the things I've been doing is when we've been up on the Hill has been saying that we may need to think about more of an expedited rulemaking procedure for the Agency maybe specific for us if we get fee-setting authority so that it enables us to respond more quickly to economic downturns like we've seen recently. That language is not in the patent reform bill. It's not anywhere I've seen other than occasion suggestions I've made when I've been up on the Hill. Has the Agency proposed any language up on the Hill that might provide for
any kind of a change to the normal administrative procedures rulemaking process that would allow us to expedite the changes if we need to increase fees or make changes to deal with economic downturns?

MR. KAPPOS: Thanks, Robert. That's a really interesting idea. The first I've heard of it. It sounds very constructive to me. It's not something that's in our views letter and not something I've heard about being proposed up until now. Of course it's within the province of Congress to decide what kind of rule making it wants the PTO to go through, but we certainly would be very interested in working with Congress along the lines that you're suggesting if Congress wanted to go that way.

In terms of the substance of the rulemaking process, it really does take a fair amount of time. For everyone, I think what Robert is referring to and what I'm certainly getting from the comment is that we have what I would call an impedance mismatch, a mismatch between a
necessary cycle time in the office to keep up with
a changing environment which is a cycle time that
operates in months or maybe on the order of a year
versus a cycle time of the regulatory process in
Congress which is much, much longer than that. So
until and unless we can find a way to match those
two cycles times up against one another, we're
going to be in a situation were we simply can't
keep up in terms of our rule making here with the
needs of the applicant community so that anything
that enables us to get a closer match is going to
be possible.

MR. ADLER: One other thing. Earlier
today Robert was talking about a new collaborative
environment dynamic. I wanted to know whether you
could say a few words around trying to provide
incentives, instead of moving away from
regulations to incentivize the behaviors that we
want to see for applicants and the public whether
it's to improve the quality of what goes in or to
expedite prosecution or other things. So it's an
open question to you to say more on what Robert
was saying this morning around incentivizing behaviors instead of imposing requirements.

MR. KAPPOS: Thanks, Marc. I come at problems like this from a management kind of a private-sector background and the way that I've always looked at management challenges is that you've got some that are in the category of very heavy lifts and here it's like when you need to change the laws because we all know that takes a lot of time and a lot of effort. Then there are other challenges that are in the category of sort of medium lifts that require the regulatory process and it's good that it takes time because we're in a democratic country and want the public to have input and that's all good. Then there are a set of things that we can do much more quickly, many of which we can do very, very quickly, where our constraints are that we want to adequate input and that's where the PPAC comes in and that's where the applicant community comes in, and so we're trying to load up a pipeline. This is like running a PNL in a business. So we're loading up
a pipeline with heavy-lift changes, medium-lift changes and light-lift changes and we're loading as many things in that pipeline now that it will take different times to move through it. So we have focused on all three categories including that third category, Marc, that you're mentioning which are things that we can do that are just pure give-to-get kinds of incentives that will help applicants to help the office do things more quickly, do things more accurately, and usually don't involve changing fees because fees are in the medium-lift category and they require taking some time, not that we won't change fees on the ones that we can change that are regulatory rather than statutory fees, but they usually will involve changes to the kind of documents that applicants need to file or the things that applicants need to say in those documents. So examples about predisclosing anything, we're working in a number of ways in that regard to improve let's say as an example the accelerated examination process and that's something that we can do ourselves and so
we're doing it ourselves and moving that process away from exacting potentially damaging documents from applicants as a price to enter which hasn't proven to be very successful overall and moving more in a direction toward not forcing applicants to submit a lot of information but giving them some benefits if they're willing to submit some helpful information, that's what Bob was referring to, and there are a number of other places. Again, we're working on this stuff internally making sure we're getting all the right internal government legal advice and we'll be coming out with them seeking input from the PPAC and others here as soon as we can. But we're completely in line with you, Marc, on seeking more incentive-based, nonconfrontational ways, where if applicants will provide us with a little bit of help we can do a lot better, a net positive gain again.

MR. FOREMAN: Dave, I think I speak on behalf of everyone on PPAC that first off we're all excited to be working with you to help usher
in some of the changes that you want to see in
this organization. Not only are these goals
ambitious, but they're commendable because we've
got a great patent system but we can always make
that system better.

We all have unique skills and we all
have the pulse of the innovator community out
there, so what I would ask at this point is what
is the overarching goal? What message would you
like the innovation community to know with the new
Administration? What do you want to achieve?

MR. KAPPOS: It's interesting that you
asked that question. We were having a discussion
about this just as recently as last night and I
would put it, and I'm just doing this
extemporaneously now, but I would put the mission
in one sentence, and the way I think about it is
that the PTO, the United States Patent and
Trademark Office that we want to create is going
to be the world's premiere Agency at championing
innovation by granting timely, quality patent and
trademark protection by in a timely and
high-quality way reviewing decisions that we've made as requested by the applicant community and the public and by leading the world in strong, balanced intellectual property policy development, and nothing short of leadership across the board.

That's the PTO that we're going to create here.

MR. FOREMAN: Thank you. I think we all look forward with you to achieve that.

MR. MATTEO: Absolutely. Dave, you weren't here, but at the risk of repeating myself, transitions are a time of change and opportunity and of promise and all of us here embrace that goal fully. We're happy to engage the PTO in any positive and constructive fashion that we can. In fact, you weren't here for the comments either, but in the series of presentations that have been done thus far, we've seen a definite change in the interaction internally at the PTO and interaction with PPAC, and just as you were encouraged, so too are we. So it feels like that's going to be, to put it in the technical vernacular, where I think we both come from, a positive feedback loop.
We're going to build on your strength and enthusiasm, hopefully you can build on our passion and contributions and just keep working that back and forth until we are the preeminent intellectual property protection Agency.

MR. KAPPOS: That is just fantastic, and with that I'll let you carry on with the meeting. Thank you.

MR. MATTEO: Thank you very much, Dave. Thank you very much, everybody. I appreciate your patience.

In our continuing juggle with the agenda, I believe next up is the quality discussions, and we have two back to back, one of the definition and the underlying foundation of quality, and then one building upon that on the quality program, the actual process and updates on programs. We'll start off with the definition of quality. Marc and Andrew, if you'd be so kind as to walk us through the process. This is an ongoing project, and Marc and Andrew are going to give us an update in terms of where they are with...
this. Thank you very much.

MR. HIRSHFELD: I'll start, and Marc, anytime you want to jump in, feel free.

For those of you at the last PPAC, obviously all of us and a bunch of others in the room, we had discussed identifying key quality metrics. Since that time of the past PPAC meeting a lot has happened. For starters, when Dave Kappos came on board he had called me into his office and said he really wants to supercharge this project and that this goes hand in hand with his idea and goal to have an open and collaborative process. He would like to expand this project much beyond identifying key quality indicators. He wants to take a complete fresh look at quality, at all aspects of quality, with an eye toward potentially revamping the way we measure quality, the way we evaluate in all parts of examination and prosecution, even looking to actions of those practitioners outside of government. That being said, this project in his exact words has been supercharged. That's where
Marc and I come in. He has asked that the two of us co-chair this project, so today I'd like to discuss what we've done so far and where we are.

We have started with trying to define a quality patent which I think, as most people know, you can probably spend months and months on the definition of what a quality patent is, but we tried to put something down as a starting point.

We have a quality patent is a patent for which the record is clear, that the application has received a complete and through examination. I won't go through the whole definition, that's up there, but a key point is that we're looking at the validity of a patent. We're looking at that the patent has a proper scope and that the public is on clear notice of what is being covered by that patent. What you'll see is what's not in that definition is the economic value.

MR. ALDER: You could think of this as quality is equal to validity divided by pendency.

In other words, we want to make sure that timely, effective patents are granted. We're not looking
at the economic implications of that patent in the
marketplace. By eliminating that we can focus on
the process by which the patent is granted as well
as the resulting metrics about whether that patent
hold up as a valid patent in subsequent contests.

MR. KIEFF: I totally applaud everything
that you are saying and I only just wanted to drop
a footnote for everybody including those who might
look back later and to better understand decisions
that have been made. A patent that issues from
the office to later find its way into dispute that
either makes its way to court or not could be
viewed by those in the dispute or those looking at
the dispute later as one that we got wrong, but
only I think would it be fair for them to do that
if it was one we got wrong based on a fact that
was plain in the record before the office
initially or some very clear undisputable kind of
policy or legal argument that was plain. So that
we also in addition taking care to disclaim that
we are not in our internal quality metrics
considering economic value, nor are we in our
internal quality metrics considering the vast wealth of information that the world probably has about every one of the patent applications that's in this office that nobody in the world would want this office to take the trouble to have before making its initial quality determination because that would then be an infinite investment of effort for what we know to be an 18- to 20- hour decision.

MR. ADLER: Yes, to answer your question. We're not looking for perfection. We're looking for improvements in quality, and we know that we're not going to find things potentially that might exist in somebody's repository somewhere that we didn't find. But we can do better, we could always do better, and our goal is to try to continually improve overall likelihood and certainty of a patent. If it's clear that there was prior art that was missed that was available to the office that may be of record, those are the things we're talking about.

MR. KIEFF: This is to make sure that we
continue to remind the readers out there that we were not trying to do more than what we're trying to do.

MR. HIRSHFELD: I agree wholeheartedly, and this certainly is an iterative process and Dave has made that very clear. What he would like us to start with is engaging the community. So what Marc and I and others, Steve and Scott also, have been working on is a notice that will be published hopefully in the near future that's being finalized now where we are going to look for public comments on all aspects of quality and engage the public to hear what the public believes we should be measuring, are we measuring the right indicators of quality, should there be different measures of quality, just take an entirely fresh look at the entire quality system, so that that will be coming in the near future.

MR. ADLER: That notice will focus on three aspects. It will focus on the search, on examination and on the application itself. We're not excluding other suggestions, but those are the
three parts that we're going to ask the public for comments.

MR. HIRSHFELD: While the notice is out, the team from PPAC and the team also within the PTO will be gathering past studies. There has been a great deal of work, internal studies and external studies, and so we're in the process of trying to gather all of that information more as a starting point for future discussions, not to duplicate any work that's been done or not to reinvent the wheel, but as a good starting point of jumping off point for the project.

MR. ADLER: There are internal metrics that the office uses to evaluate the performance of examiners or the quality of their actions. That's important. In addition to that, we also want to get external feedback about external metrics and other quality items so that there's a blend. If you recall our previous discussions around this, it was very internally focused and now we're trying to get it more externally focused and balance both the metrics that the office is
1 using to measure performance as well as the other
2 things that applicants are seeing in terms of
3 quality.
4
5 MR. HIRSHFELD: That's essentially all I
6 had with one small addition, that we are looking
7 at having down the road a roundtable. Once all of
8 the comments are received, we will attempt to put
9 those together and have a meaningful roundtable,
10 at least one roundtable, potentially more, where
11 we can further engage the public and try to refine
12 the way that we look at and analyze quality.
13
14 MR. ADLER: I believe that without
15 prejudging this that if we actually do this in the
16 right way we can look at different metrics that we
17 could use to select and track over time to see
18 whether we're doing well. The allowance rate is
19 one of the historical ones, but there are probably
20 other ones I hope that we can use to measure
21 whether as to claims if the scope was proper, if
22 the application meets 121, there is internal
23 consistency between the specification and the
24 claims, and there are a lot of other things that
we could use to then feed back that information
back to applicants so that they will be able to
write better patent applications in the future.
This is iterative. What did you call it?

MR. MATTEO: A positive feedback loop.
MR. ADLER: A positive feedback loop.

This is a feedback loop of both positives and
negatives so that people can improve what they're
doing. I think there's a lack of understanding
about what folks could do in the applicant
community to improve the quality. You're not
going to get a quality patent if you have a very
poor quality application, garbage in, garbage out,
so that we need to improve the quality of what
goes in if we're going to be able to get quality
coming out the other end. That's part of my job,
our job, and part of everybody's job because we're
all in this in the same way.

I want to thank the office, Drew and
Diane Campbell and a number of other folks. The
collaboration that we've gotten and the
hope it will continue. It's great. I'm very, very happy both on this quality part of the initiative as well as the pendency, the other part of it as well. You'll be hearing more about this soon.

MR. MATTEO: Just a quick question and maybe a sidebar commentary. It's got negative and positive, I think that makes it a real-world feedback loop which is where we all live.

MR. ADLER: Yes.

MR. MATTEO: Just a quick question. I'm a huge believer in iterative processes to constantly feed back and improve. I think I have a question in terms of this single roundtable. Is that a vehicle where you're going to roll out your findings fait accompli or is this going to be iterative multiple roundtables where you can help define the measures and metrics?

MR. ADLER: Here's the deal. I don't think it will be a single roundtable.

MR. MATTEO: Then I misheard.

MR. ADLER: We really haven't defined
that yet. We're thinking about it this way. There will probably be a first one, whether we need to also have other ones as well, and what it would be will be to say here's the information that we received from the requests for public comment, here are some thoughts that we have and hopefully we'll invite people who have also been studying this issue whether they're academics or patent attorneys or individual inventors, the usual collection of folks, and say here is some of the data that we've found, here are some of the thoughts that we have, what do you think? Then we'll use that and then maybe go to the next forum with that. This may take a while. This is not a one meeting conclusion.

MR. HIRSHFIELD: I certainly did not mean to apply that it would be a roundtable. I think what will happen is that I envision at least one roundtable, but probably multiple roundtables. I also believe that what we get back from the public during the comment period will also help us decide and see what the right next steps are. One of the
difficulties in this project is that it’s so huge and so open-ended that we need to take things one at a time and I think the next step is getting the comments and deciding what is the best way to have these roundtables based on the input and feedback that we’ve received.

MR. MATTEO: Marvelous. I apologize if I misheard, but to the extent that you said how you were going to be inclusive of the broader IP community and the various different flavors of constituencies, it's always better to hear that.

MR. ADLER: Thanks for the clarification.

MR. MATTEO: I think we have now Peggy Focarino up who is going to talk to us about the status of the current quality efforts. If you would, Peggy.

MS. FOCARINO: Just to take a look at where we ended up in 2009 if we can see the next slide. Here are the historical measures that you get an update on every time we meet. We historically for many years have had an end check
of our work and our allowance error rate. That's the very top row. Then in 2004 we began using an in-process review metric and you can see from 2004 through the end of this fiscal year that when you look at our historical measures we've had improvement every year. I know there's a lot of debate about these measures, there's a lot of misunderstanding about these measures, and I think Drew and Marc will be working to remedy that and introduce additional measures. I think what this clearly shows you is that there has been quite a bit of discipline instilled in the process here and a focus on quality and I think certainly the foundation is there to begin looking at different metrics. I think that's really good news. You may debate what we're measuring and how, but I think the discipline is certainly there and that's a great thing.

MR. MATTEO: Peggy, before we get off of that slide so we can frame how to interpret that, is there is a baseline against which these progressive years are measured? The 3.1 percent
for 2009, the same measures and metrics were
applied from 2004 all the way through?

MS. FOCARINO: Yes.

MR. MATTEO: So there is a baseline?

MS. FOCARINO: That's comparing apples
to apples. That 3.1 measure has been measured for
probably 35 years. The in-process metric, we
began measuring that in 2004. The baseline was
the 82 compliance rate when we did that baseline
measurement the year before in tracking
improvement compared to that baseline year.

MR. MATTEO: Another one of my pet
things that I really like is efficiencies from
process understanding and process improvement. Is
there build into this a vehicle for learning and
processing understanding and circling that back?
Is that the genesis perhaps of some of those
improvements?

MS. FOCARINO: Yes. In Drew's oversight
of the Office of Patent Quality Assurance, they
have a pretty good feedback loop where each area
can go in and get extensive data on the types of
reviews that were done and develop training to
address the types of areas that we see need
improvement. So there is quite a bit of feedback.

MR. MATTEO: Excellent. Thank you.

MS. FOCARINO: Some of the initiatives
that are ongoing and what we've been focusing on
is trying to recapture some of the resources that
we've been expending on doing that in-process and
end check review and focusing more on training
initiatives in the tech centers and supporting
other initiatives in the tech centers to improve
quality. We've also gotten some resources from
our Training Academy as we have scaled back our
hiring efforts and refocused them in the tech
centers also to help with training initiatives and
focus more on up-front quality improvement rather
than checking the quality at the end of the
process.

Marc mentioned this, looking at other
data points, and we do have several data points
that we've been looking at. This is called our
QIR data or quality index data, that looks at
things like actions for disposal, allowance rate, second, third, fourth nonfinal actions and those types of actions. For particular technology, we can see where people fall at different ends of the spectrum and perhaps focus more in on those areas and focus our training efforts on areas that definitely are outlined in terms of what we see in the different technologies.

We're looking at the classification process and particularly the transfer process also. We have a very difficult time when applications need to be transferred within the tech centers and particularly when they need to be transferred outside of the Technology Center, so we're focused on improving that process as well.

I think Drew will talk a little bit about the 101 training effort that we're undertaking right now and this is a tremendous effort and it took a lot of work on the part of Drew and his staff and the tech center directors also in developing specific examples for examiners. It's overdue to say the least, but it's certainly a really good training
package and I think you'll see some real
improvement internally in how we're addressing our
101 issues.

Then we've focused also on skill
training for managers, how do they review
performance appraisal plans, the guidelines for
tech centers to ensure more consistency, how our
supervisors provide constructive feedback to
examiners when they're giving feedback on their
office, employee relations issues, all kinds of
things, and providing them automated tools to
track particularly our probationary examiners and
providing them with regular feedback on their
progress so that they know who they're doing in
those critical first 2 years.

We are also providing training on
searching, a lot of training on tech searching and
classified searching. We are looking at our
search strategy and we have what we're calling
peer-to-peer experts, identified examiners in
particular areas that considered to be outstanding
searchers and having them work with their
colleagues to help them develop the same skill set. We have information exchanges for searching also that have to do with looking at errors and having the reviewers meet with the examiners in going through how they might have avoided those particular mistakes in those applications. It's also good to have that because that develops a better relationship with our review group and also with our managers and the examiners so that it's not so much of an adversarial process. Then continuing to survey our SPEs so that we know what the current training needs are in their particular areas and being responsive to that.

Then just to show you our allowance error rate, this is the historical rate that we've measured literally for decades so that you can see the outcome from 1975 on. We're pretty low right now, but again the way we measure will be looked at and I think you'll be probably seeing some changes in running this metric in parallel with whatever we decide will be a more appropriate metric. Are there any questions on quality before
I get into the more operational?

MR. ADLER: I had one question on the
search training. Is that something that could be
publicly available to prospective applicants to
participate in?

MS. FOCARINO: It certainly can. I
think you heard Dave Kappos mention transparency.
Every training package that we've done so far, and
I'll have to double-check on the search training
package, but we've posted it on the intranet for
public consumption, our compact prosecution
training, our interview training, and certainly we
can look to see if there is developed search
training that we can post also.

MR. MATTEO: Just to build on that which
is an excellent suggestion, is there a way to
either engage or more fully engage the IP
community in terms of developing the best practice
in that you share with them what you're doing and
they can do vice versa and hopefully the union of
those two things or the intersection of those two
things is a best practice that we can integrate?
MS. FOCARINO: I think this would be another roundtable topic where we would want to get feedback from our stakeholders on what they feel is an excellent search and what kind of skill set we would need to develop that we may not have.

MR. MATTEO: That's great. That's another pet thing that I was interested in. I've already got a few people teed up and I'd be happy to feed them into the process.

MR. KIEFF: Just to follow-up on that. The community to which the outreach is being made in this particular context may not be necessarily those who are drafting the applications in the first instance, but those whose so-called practice or business is doing quick analyses of validity. So I'm thinking of, for example, the lawyers out there who practice in the opinion and counseling practice so that that would be one group. The other group includes the people who refer to themselves as the public-interest types. I don't want to label them, but I think for example there is David Ravisher, Dan Ravisher, I'm embarrassed...
to say that I can't remember his first name, but he runs an organization, Greg Aharonian I think calls himself patent bounty hunter or something. There are people out there who for a range of reasons are happy to try to better assess validity in their view so those might be other constituents.

MS. FOCARINO: Let's take a look at some of the other outcomes from fiscal year 2009. If you look at the next slide, we had a strange year when you look back on the review and the filings. We had an opportunity to start chewing into the backlog of applications. In the red line at the top you can see that we in fact were able to cut into the backlog so that we finished the year with about 20,000 fewer applications in the backlog. Filings tapered off a bit, and I'll get into the exact percentage drop, and first actions increased. Unfortunately because of the economic situation we had to curtail our hiring efforts to that we ended up the year with just under 600 new examiners, but it would have been a really great
opportunity to hire more if we were able to because the filings were down obviously and the examining corps as a whole was more productive. The good news out of that is that the backlog went down slightly in 2009.

MR. ADLER: The average number of new cases filed for the year is about what?

MS. FOCARINO: The average number?

About 460,000 and something.

MR. ADLER: So we have a year-and-a-half of backlog?

MS. FOCARINO: Yes. With the next slide I think you heard Dave Kappos mention the volume of applications coming with last year at about 460,000 utility plant reissue applications, 24,000 plus design and almost a 2 percent drop in filing growth from 2008. Our attrition rate went down significantly from 9.5 percent in fiscal year 2008 down to below the 6 percent range and that includes people who transferred or retired also because what we look at in terms of attrition is the loss to the production line. We would like to
keep that rate down, but I think there are a lot
of factors that are going into that. One may be
the economy, but I think also our recruitment
bonus and improved hiring efforts and things like
that have helped in this area.

MR. MATTEO: Peggy, it's only at best
tangentially related, but with the effectively
negative 2 percent growth in filing over 2008, the
immediate follow-on question for me is what was
the attendant reduction in maintenance over that
period of time? Did you see a larger drop in
maintenance where the fees tend to be higher?

MS. FOCARINO: You're talking about
maintenance fees?

MR. MATTEO: Yes.

MS. FOCARINO: Yes, maintenance fees
went down. I don't know the exact percentage, but
obviously our allowance rate was lower in 2009
than it was in 2008 so that the maintenance fees
were dropping also, and also extensions of time.
We experienced a reduction in fees coming in from
extensions of time as in our applicant community
also was doing some belt-tightening.

MR. MATTEO: I was curious if it was 2 percent or percent, just the order of magnitude.

MS. FOCARINO: When Mark Olechowski comes in to talk about the budget, he probably would know. They track that on a daily basis.

MR. MATTEO: Thank you.

MR. PINKOS: Just a quick question as to whether you compared your attrition rate to private-sector attrition rates recently.

MS. FOCARINO: That would have been a good question. Steve Smith has now gone. His staff has tracked and benchmarked our attrition rate compared to the private sector and other government agencies where you have a highly technical workforce and the attrition rate here is pretty darn good. We ended up the year with almost 6,300 examiners and could have used a few more, actually.

If you look at the next slide, you can see we did hire across the board in every area and we had to curtail. We had to planned to hire
1,200 examiners and we ended up the year as I said at just under 600 examiners, and we have some areas that are getting fairly large, particularly the electrical areas.

The next slide concerns the count system discussion with a heavy focus on RCEs and the need to reduce the RCEs. I think you can see looking from this slide why. Almost 30 percent of our filings in 2009 were RCE filings.

MR. KIEFF: May I jump in and ask has there been thinking about the RCE problem which has arisen? Problem is too strong a word. The RCE factor which has arisen a few times and the focal point of conversation that's arisen a few times in this conversation today, has there been thinking about what is motivating the applicant community to be filing so many of these?

MS. FOCARINO: We've thought a lot about it.

MR. ADLER: I think there are two things going on. One is strategic filing, this idea of not wanting to specify what your real invention is
until you get more data so that there is this
intentional delay and certain segments will figure
that out over time. I don't know what percentage
of the cases are that. The other part of it is
the final rejection practice and the ability of
not really reaching closure at final, therefore
instead of filing an appeal, they file an RCE. I
don't know yet. We need to parse that apart and
figure out what we can do about the finals. There
was a previous slide about the QIRs and finals
that get pulled that aren't really final. There's
a whole issue about final rejections. Amendments
after final rejection used to be at least looked
at and that's not happened as much. There is some
percentage of cases that are filed because they
just don't know what to do so they refile it. I
think those are the two aspects of the RCE
practice and we need to figure out what is
business model related and what is prosecution
model related.

MR. KIEFF: To follow-up, I think I
share your intuitions on this and my only added
gloss to put on it would be that there might be
some in your second category who think of
themselves as being frustrated with the responses
they're getting from the office and think to
themselves that, A, legitimately an appropriate is
to file an RCE, and not a game response, that to
go to the board is to make a federal case out of
it, so to speak, but to just refile is a way to
congenially interact with the examiner in a way in
which she after all will be receiving more credit
so she may enjoy that interaction too without
having to learn a new record and that there is
this kind of dynamic that then goes on that could
be impacting some portion of that.

MS. FOCARINO: Good points. Taking a
look at pendency, again this is another area where
we're sliding, although first action pendency is
pretty close to what it was in 2008, but the total
pendency you've seen has gone up slightly. These
are our traditional metrics. You heard that we
are looking at new metrics so that we would be
showing you these metrics in parallel with
whatever way determine is appropriate and ask for
input on this also as to how should we be
measuring pendency.

MR. ALDER: This is the old way?

MS. FOCARINO: This is the historical
look where we're looking back from the time it's
disposed of or first action is back to the filing
date.

MR. ADLER: So that when we go to the
new pendency, we'll be having these plus the total
pendency?

MS. FOCARINO: That's the way I envision
happening, that there is some reporting criteria
that we have to follow, we can't just switch our
metrics. That's probably why you'll probably be
seeing both for a while so that we can ease out of
this way if it's determined that there are better
looks at pendency, and more transparent looks.

MR. MATTEO: Not only that, but seeing
them juxtaposed helps you calibrate between the
two to help the transition more effectively.

MS. FOCARINO: Right. Some of the
things that obviously impact pendency in a good
way, and you heard Dave mention some of these
include the first action interview program and
that's one that I'll talk a little bit more about,
and accelerated exam and you heard Dave say that
he wants to make changes to this, but it is
working very well for the people who choose to
jump through those sometimes onerous hoops of
getting their application in this particular
program. We've done extensive training on
interview practice for every examiner in the corps
that has gotten some really great reviews. This
is posted and available in the intranet. And
really giving examiners who don't have a comfort
level with doing an interview, giving them the
skill set to be able to have a productive and
effective interview.

Another bit of training that we've done
for every examiner in the corps also is training
on compact prosecution and some of the tips and
the skills necessary to be bringing a final
disposition to an application in less than five or
six or more office actions and just making
examiners aware of some of the best practices
here. Both of these training sessions have been
performed in more of a workshop setting so that we
have a lot of interaction with the examiners and
the trainers and the format has been pretty well
received. The examiners like this.

MR. ADLER: When I was talking to the
pendency team about compact prosecution, I
misheard them and I thought they were saying
combat prosecution awareness.

MS. FOCARINO: I'll have to check and
see if that's one of the best practices.

2009 as I said was a very interesting
year operationally with trying to work with less
revenue than we had anticipated. We had to
curtail or suspend a lot of the program that we
have so that we focused on how we could maximize
the resources that we have and to mitigate some of
the effects that we were going to see from reduced
hires and turning off overtime and those sorts of
things. PCT outsourcing was one that's allowed us
to outsource those Chapter 1 cases and have our
examiners then be able to pick up U.S.
applications in place of doing the PCTs, so that's
definitely contributed to a reduction in pendency
and also generates revenue from the fees that we
would subsequent collect from this U.S. filings.

    We've taken a look at our examination
resources and redirected a number of resources
that were in other areas and not focused on
examination whether they were detailed or in other
areas and redirected them back to the examination
pipeline. Also in our Office of Patent Quality
Assurance shop that's under Drew Hirshfeld, we had
a number of resources from there that were focused
on training examiners, search techniques, claim
interpretation, compact prosecution, everything
that would lead to earlier disposition of
applications. I talked earlier about our
attrition rate, so that was a help also. We
realized a lower attrition rate so therefore we
had more FTEs on board than expected and that also
helped us with the backlog.
Then the heavy focus on maximizing resources resulted in about a 10,000 PU gain than what we would have expected so that we finished the year I think in a better position through the efforts of the directors who came up with a lot of different ways to make sure that we were making the use of our examination resources in a year that was really tight in a lot of ways.

MR. PINKOS: Peggy, on that last point what were the top one or two redirections and maximizing resources that were so effective?

MS. FOCARINO: I think just taking a real close look at how we were spending our time that wasn't examination time by an examiner, what kinds of activities were being done, what's normal for the activity whether it's classification activity, that's one good example, and either trying to have that activity performed by a different type of resource or being more efficient in the performance of that activity, so taking a very close look at how we're spending our nonexamining time has been real effective.
MR. ADLER: It's like 35/65. Right?

MS. FOCARINO: The percent of examining time was about 73?

MR. WILEY: Seventy-three.

MS. FOCARINO: Seventy-three percent.

Seventy-three percent exam time, of course people are going to take leave, so that's historically pretty high for the corps.

MR. HIRSHFELD: So that's 25 percent.

MS. FOCARINO: Right. We normally model an 80-percent exam time for one full-time equivalent because we take into account leave, and if you have a more experienced workforce obviously they earn more leave and they're going to take it, and we've never been close to that because no examiner examines 100-percent of their time.

There are other activities. They're training and classifying cases.

MR. MATTEO: Peggy, with regard to the redirection maybe as a jumping-off point for the question, in revisiting all of this, have you stepped back and taken a fundamental look at how
to adjust these resources and what for example
would be the down side of redirecting detailees?
Was there that kind of exercise that was the
backdrop for having done this?

MS. FOCARINO: I think that's probably
one of the next steps for the directors to look at
so that when you stop detail activities, those
types of things generally should be an investment
because our examiners can acquire a bigger skill
set that should help them. So there are some
downsides there, but I think some of the benefits
probably have been more consistency in those
nonexamining activities and what would be normal
in terms of the amount of time that any examiner
should spend on a particular activity. I think
it's been very beneficial there, but it's an
ongoing thing so that we have to keep looking at
that.

MR. MATTEO: This is the kind of thing
that's best ongoing.

MS. FOCARINO: Yes. I mentioned before

in the count discussion the actions for disposal
and how that number had risen over the last several years. You can see back in the late-1990s we were a little bit over 2.3 actions for disposal, it steadily rose as we approached the last few years, and now we're seeing a decline, so I think that's a good indicator that some of the initiatives that we've been focused on are working. Of course, when you have a large percentage of new examiners, your actions for disposal are going to go up because these new examiners typically don't dispose of applications so the calculator for that, the numerator, gets higher because new examiners do new actions and they do very few disposals. So I don't want to mislead you. There are other things that you need to be aware of when you look at this number.

MR. MATTEO: That's what I was going to say that since your attrition rate was lower and the new hire rate was lower, is that an artifact that we're seeing here? And to what extent is that an artifact and how much of this is the real gain?
MS. FOCARINO: You would have to go back each year and compare the same thing, how many hires did you get in that year, what was the attrition rate and the age of the examining corps and the experience level.

MR. ADLER: How do the RCEs factor into that? They're included in that as well?

MS. FOCARINO: In the actions for disposal? No. That's another thing we may want to look at. I know what you're thinking.

The appeal conferences. We have pre-appeal conferences and we have appeal conferences, and then the application finally then goes to the Board of Appeals. Just taking a look at this one, the middle line there that's going down, examiners' answers, obviously the volume of examiners' is going down as a percentage of total applications. The purple line, reopenings, we had a period of time there in toward 2005 where we were increasing the number of reopenings. This was prior to when we had begun taking a look at applications before they get to the board so that
we have the pre-appeal conference that's now available to applicants and then every application that goes to appeal is conferenced in an appeal conference. The reopenings have gone down I think because of those conferences where we're taking another look, is the application ripe for appeal, are the issues ripe for appeal? The bottom line are the abandonments that have been going down, and then the top line there are the examiners' answers so that the answers have gone up by quite a bit actually. The volume of workload at the board has increased and I think you've heard that in other venues, but the number of abandonments have gone down.

MR. ADLER: Is that allowances?

MS. FOCARINO: It's allowances. Yes, it's allowances. I didn't make that slide, Dave Wiley did. So allowances have gone down which is good because if you're going to get to that point obviously you don't want the examiner then suddenly allowing the case on you. The volume of work that we're getting to the board is going up,
but the reopenings are going down, so just another
couple indicators I think that show at least we're
going in the right direction and sifting out the
cases before they get to the board that really
aren't ripe for appeal.

Then to take a look by tech center over
the last few years of what was the affirmance
rate, you can see if you look at the bottom have
steadily gone up. We've stayed around the same
for the last couple of years at 74 to 73 percent
affirmance rate, and the affirmance rate is
defined as the cases that are affirmed and
affirmed in part.

First action interview statistics. You
heard Dave Kappos mention that this is a program
that we would like to see more participation in.
We've had good participation to date. The key
with this is that we're allowing in proportion a
substantially larger number of applications
earlier in prosecution that participate in this
program. I've just worked with Robert and POPA to
expand this. I think the last time we met we were
trying to expand it. We would like to expand it
to every area in the corps, but working with the
union, they agreed to expand it to each tech
center, so we picked a work group in each tech
center and we picked a work group whose pendency
was the longest to try to get the biggest bang for
the buck so that those indicate the work group
numbers to show you where we will expand. The
program has some things that needed to be changed.

It was a very intensive process because we had to
do a lot of manual tracking so we wanted to do
some automation changes so that we were in the
process of doing those and also surveying
applicants to find out if they were in the
program, what their experience was like, ways we
can improve the program.

MR. ADLER: Has this expansion occurred
yet?

MS. FOCARINO: I don't see Wendy Garber
in here, she's been working with the union on it,
but I believe that it hasn't occurred yet. We've
just got agreement from the union and settled on
the work group and the process changes that were needed to allow the expansion so that we weren't losing track of these cases. I'm not sure if it's targeted for the beginning of the second quarter, but I'll find out for you.

The last thing, and you heard about this too earlier, and I think Mark Powell will be sharing a little more details when he talks about work sharing, but you can see that we have a number of pilots going on with different countries. The only program that's permanent is with the JPO, and Korea too, but not a high volume there. You can see 1,160 applications, but certainly you can double your chances of getting a first action allowance as you heard if you enter the program, so every little bit helps and these are the kinds of things that we need to continue to explore and move forward with so that we can be doing a menu of things that will help us reduce our pendency. I think that might be the last one.

MR. MATTEO: Thank you very much, Peggy.

Are there questions from the floor?
MS. FOCARINO: Don't ask me any
questions on the slide that I totally screwed up.

MR. MATTEO: Yet again to keep things
interesting, Drew Hirshfeld was called away, so
we'll either need to postpone the 101 until later
in the afternoon, or perhaps since it's just a
small self-contained piece of the agenda, we can
push it off to a separate call that we can have on
some other way. It's unclear whether he will be
able to return, but for the moment we'll have to
pass on that. I don't see Mark Powell in the
room. He's behind the other Mark. Would you mind
terribly moving up in the agenda? Thank you very
much. Thanks again everybody for your patience
and being flexible.

MR. POWELL: Thank you, Damon, and I'll
be somewhat brief since this is more of an update
than anything else.

I wanted to touch on work sharing in
general with the Patent Prosecution Highway focus
in particular, talk a little bit about what we're
doing in PCT, and bring you up to date on where we
are with the IP-5 foundation projects.

Here I've laid out the basic principle behind the PPH for refresher purposes. Claims are allowed in a first office and those corresponding claims are copied into the application in the second office and the case is taken out of turn in the second office.

This slide is a month newer than the one Peggy just had up so that we're up around 2,000 and we're getting requests at the rate of about 100 a month at the moment. There was a real spike in the summertime where my TC alone was getting 100 to 110 a month, and the television area was a very interesting phenomenon. That seems to have leveled off a little bit.

MR. KIEFF: Just a quick question. Where were those coming from?

MR. POWELL: They were coming from mostly Korea and Japan because in PPH we are the office of second filing and they were the television companies, LGE, Toshiba. You can go to Circuit City and pick out the name brands. There
was a lot of that, or Best Buy. It was interesting because in discussions with the PPH in other contexts, the Australian government suggested that perhaps because of the economic downturn certain sectors of manufacturers were trying to up their use of the PPH to get their IP rights quicker for whatever reason in the consumer electronics area.

In any case, the overall allowance rate of these cases is still approximately 95 percent which is about double our ordinary allowance rate. I think our allowance rate of nine PPH cases is probably a little bit higher than that, so pardon that inaccuracy. Actions for final disposal, I think Mark tangentially asked about this figure, by final disposal I mean after RCEs at the end. In PPH cases that's been running at about 1.7. When RCEs are added to the whole mix, the latest figure I saw was about 3.38 and I think Mr. Wiley will verify that for me.

MR. ADLER: So that that 1.7 compares to the numbers we just saw around 2.6 or whatever it
was?

MS. FOCARINO: 2.7.

MR. ADLER: 2.7?

MR. POWELL: 2.7. Right. That may be apples and oranges. I'll have to think about that for just a second. In any case, it's taking a significantly fewer number of office actions to get through these cases and that is a significant pendency improvement.

To what do we attribute this? You have a set of claims in the second office in our case, using being the second office, that have been through a rigorous examination and a major patent office or IP office and we believe that some of the patentability questions such as novelty, clarity, perhaps to some extent obviousness have been to some degree resolved in that first office. It is very difficult to measure that. In some of our pilot cases, we went through an analysis case by case of what rejections were made here and what were made in the first office. It seems to vary, but it seems like in particular novelty is taking
care of and again clarity.

MR. PINKOS: I'm sorry to interrupt, but before you move on to the next step, maybe the statistics just speak for themselves with the 1.7, the action for disposal, but have you received feedback from examiners? Clearly they can't give full faith and credit so to speak to the action of the JPO, but have you received the feedback of how useful it is? Again maybe the statistics speak for themselves.

MR. POWELL: It's been a while, but we had a couple of roundtable sessions with the examiners just to get some feedback on it and they really like them because they're getting a case with fewer claims in it and narrower claims, and plus they're getting from the first office a piece of the prosecution history, references and all that.

MR. PINKOS: So it's a much better roadmap and the applications are much better.

MR. POWELL: They are already part of the way along in the process to some degree.
MR. ADLER: If they're Japanese applications they tend to be shorter, there are fewer claims and they've already gone through examination and they've been allowed. Do you have data on the pendency of those cases in the first office?

MR. POWELL: On the pendencies for example in Japan?

MR. ADLER: Yes, because they have up to 3 years --

MR. POWELL: Defer. I can probably get them. No, I do not have them right off the top of my head.

MR. ADLER: I'm trying to figure out how it affects pendency really.

MR. POWELL: The pendency from the first filing?

MR. ADLER: The overall pendency.

MR. POWELL: From the priority. Japan's deferred examination system was 5 and is now 3. It's difficult to predict. Some 30 percent of their applicants request examination within 2
years, I believe, and I don't know what the mix is
as far as technology sectors.

MR. ADLER: When you're over there maybe
you can ask them.

MR. POWELL: I will certainly do that.

There is a work sharing benefit to these cases.
We've had 2,000 which for a relatively new
program, this has only been going on and this
started as a pilot only about 2-1/2 years ago as
permanent in Korea and Japan. As Peggy has
mentioned, we have now pilots or agreements with
nine other countries who have smaller offices, but
it's picking up. Among the next steps that we
have going here, there are eleven and there may be
a twelfth country in the whole mix of bilateral
agreements between all these different countries.
We have 11 bilateral agreements, Japan has 11 or
12.

MR. ADLER: China?

MR. POWELL: China has not participated
to date. So we have a form now, what we call the
Plurilateral Forum on PPH. I had to check with
some of my friends at the State Department as to
was it plurilateral or multilateral, and
plurilateral is what you use when there's a bunch
of bilaterals you're trying to pull together.
There is that context and in that context we're
trying to work to harmonize requirements among the
various offices so that it will be easier for
users not to have to continually go through
different sets of requirements for different
entries in different countries. We're also
working to reduce burdens on applicants where we
can in terms of translation requirements
particularly for our Asian customers because the
bulk of our work is from Japan and Korea. We've
worked to reduce things that we absolutely have to
have translations for down to the minimum, for
example, to check for claim correspondence because
that's an important part of it, and then indeed to
adverse the program to try to get the usage up. I
think it's coming up again for a new program, but
given the benefit of this that we can see from the
numbers, it will be a good thing if we can get
this rather greatly expanded.

I want to talk just a little bit about the PCT. One of Mr. Kappos's major concerns is PCT process and the stature of PCT, not just here at USPTO but worldwide. The system of having an international application and an international search is the original work sharing proviso and I think that no office has taken full advantage of that, and we certainly intend to try. Over the past couple of years mainly through the use of the PCT contract we've been able to get much more timely than we were a few years ago and our quality is also very solid. But the good thing coming up in the very near future is we're agreed with the European and Japanese offices to pilot the use of international search results in a PPH framework to see how that works and that will include of course reuse of work of our own contractors in cases where we are the ISA and there's a national phase filing. The planning for that is to have a formal agreement reached at the November trilateral in Japan and for this to begin
in January. Are there any questions? If not, I'll go on to the next slide.

Also in parallel to this again back to what we call the IP-5 context which began in 2007 with the idea of adding to the traditional trilateral, the Chinese and Korean offices, the next two largest offices, is to a discussion of how we could cooperate with them in this larger vehicle and further increase efficiencies around the world. When the IP-5 offices first met of course work sharing was one of the things that was discussed and the way things have actually gone is that instead of trying to start another round of pilot programs and work sharing between all of these five offices, that those offices would focus on things that facilitated work sharing as opposed to work sharing per se. So over the course of the last year and a half and really a small number of meetings, three heads of office meetings or deputy heads of office meetings, they resolved to work on some of these systems types of projects.

What you have here is a list of what
they call the foundation projects and they include
for example search strategy, machine translation,
search and examination, things that if all the
major offices shared it would facilitate work
sharing by providing ways for examiners to
understand what the other corresponding examiners
are doing and why.

MR. MATTEO: Excuse me, Mark. In terms
of allocating, which is probably the wrong word,
but choosing which patent office did which
project, did you endeavor to identify who was
particularly advantaged in search for example and
that became the PTO we're going to lead by best
practices and we'll do this?

MR. POWELL: I actually wasn't at that
particular meeting, but to my understanding it was
on a voluntary basis. I think the EPO volunteered
first to take the documentation part which really
makes sense because they spend the highest
percentage of resources on documentation than
anybody. We took the first search strategy and
the examinations rules, and I think Japan and
Korea picked up on two. There were eight originally, and China in the end wanted to start a project on statistical reporting, comments -- offices which really ties into our pendency modeling efforts and that sort of thing and is important, as well as common training or rather common approaches to commonizing to the extent we can procedural things and quality measurement systems. I think it was more a quick we'll do this and we'll take that and I think that's more or less how that panned out.

However, going to the next slide, since then what they've done is because there is so much overlap of the topics that you saw on the previous slide, the group has broken this down into three basic working groups. One of them has a single project and that is the common hybrid classification system. Just to give you an update on that, the thought there is that each of the offices or many of the offices and offices outside of this forum have focused resources on classification in certain areas and frankly have a
better classification system than other offices in certain areas. Certainly by example, the USPTO in our medical devices and other areas, we have the most granular system, the most easy to search and the most logical. Other offices, Japan for example, has an excellent breakdown of a lot of the automotive-related technologies and that sort of thing. The idea behind this whole system is to try to combine the best parts of the offices into one system which is using the IPC as the backbone, not the IPC itself, but as a format, and then eventually over a period of time have one classification system in which all examiners are searching so that when an examiner in Korea is searching a subclass, the examiner in the United States knows that he's searched that subclass using these key words with the idea that if examiners can share what they've done and convey what they've done, the examiner in another office won't have to repeat it to save efficiency.

MR. MATTEO: Mark, if I may, the intent of this is to supplant and each individual
national classification exists in parallel?

MR. POWELL: In the ideal it would supplant it in the end.

MR. MATTEO: Clearly there needs to be some juxtaposition for at least a while.

MR. POWELL: Of course, as with everything we do in the IPE community, there is never a 100-percent solution because we have technology that other offices don't examine, for example, business methods and that sort of thing so that there are always exceptions.

MR. MATTEO: Fair enough. I'm just trying to get a sense of the trajectory and the objectives.

MR. POWELL: Again this is a tremendous undertaking and coming up with a common classification schedule is probably relatively easy. The difficult part is getting all the documents reclassified into that over some period of time and that's very costly obviously. There are tools that can help do that that could be phased in to areas that are hot currently. This
of all of them is probably one of the longest-term
of the 10 projects.

What they've done of late is identify
some potential pilots to start essentially
discussing areas where one office is better than
the other and to try to work them into some very
basic straw man beginning for the process.
There's a meeting next week in Japan on that, and
then we have another one in March.

The second working group very, very IT
oriented. Again as I said, a lot of these
projects are very interdigital. I think the first
item you see there, the one portal dossier.
That's probably one of the foundation projects
that we would like to see come to fruition the
quickest. Without going into a lot of technical
detail, this is the one I think of, to click here
for all search and examination results, and there
it is all around the world. Then we have the
common documentation database. They're still
discussing the concepts. We would all like to be
looking at the same group of references in line
with the PCP minimum documentation ideal. Is that one data base? Is it a distributed database? The office have agreed to the concept of these and all the things you see here and they're currently looking at different technical solutions which are feasible.

MR. MATTEO: A federated search of sorts?

MR. POWELL: Frankly, I'm not an IT guy, but they're looking at, yes, I think a federated search.

MR. MATTEO: The broad direction if not exactly the incarnation.

MR. POWELL: Yes.

MR. MATTEO: Thank you.

MR. POWELL: Exactly. That's what this working group has focused on.

There's a third working group which is more examination-related practices if we can go to the next slide. That again is the statistical parameters, the training, how can we cooperate on harmonization of rules and procedures, more
long-term things. At the bottom of the slide you
see outside of the first work group the next steps
for the others.

I believe I brought this to the last
PPAC a few months ago. During this fiscal year
absent any particular work sharing program or IP-5
project, we try to be a little more proactive
inside the USPTO and put together a guide for
examiners which we called the Prosecution Passport
and it looks like a passport. It's an IT guide
where if an examiner has an application with EPO,
Korean or a Japanese priority, they can go to this
guide and it shows how in our systems they can get
directly to the file wrappers of those offices and
extract the work. Unfortunately right now you see
that it's limited to three offices, but those
frankly right now are the only three offices that
have work available online through our dossier
access system. We'd like to have the German work
available because they're our third-largest
cross-filer believe it or not. When I visited
them last year I noted that they were about where
we were about 7 years ago. They were just about
to go into an electronic file wrapper system. So
hopefully very soon we will be able to have access
as well. That's your update. Are there any
questions?

MR. MATTEO: No. Thank you very much.

In particular, I appreciate your pinch-hitting.
Thanks for stepping up. We've had some changes to
the agenda. It's just about 10 after 12:00. Why
don't we take a 30-minute lunch break and
reconvene about 12:40 and hopefully by then Drew
will be back and we can kick off the 101. If not,
we'll pick up the agenda from there.

(Recess)

MR. MATTEO: Why don't we reconvene and
we'll get started? We'll return to one of the
very beginning items, PT 101. Drew Hirshfeld, if
you would, please.

MR. HIRSFELD: Thank you very much. I
apologize for having to leave suddenly. What I'd
like to talk about are the interim instructions
for evaluating subject matter eligibility.
Interim instructions were given by me to the examining corps on August 24, 2009, and all of these instructions are posted on the USPTO's website. In combination with the instructions is about an eight-page document. There is also training material that goes with the instructions. As with the theme that we've talked about throughout today with a collaborative effort on all of our activities at the PTO, we do have a public comment period which was first set out for 30 days and then it was extended so that that comment period is now open to November 9, 2009. Comments that we've received to date are posted, or at least comments that we received by September 29 are currently posted on the website, and additional comments will be posted on the USPTO's website as well. It certainly should go without saying but I'd like to reiterate that these comments are very important to me and the PTO as a whole to hear what people think of the instructions, what changes should be made, and of course where appropriate we will certainly make
changes to the instructions. This goes with an earlier theme also of have an iterative process. I think that these instructions are certainly no different from anything else, that this a step in the right direction hopefully and changes will be made. We all know that there's the big Bilski case coming right around the corner, and of course changes will also be made relative to the decision in the Bilski case.

Also it should go without saying that the purpose of issuing the instructions was simply to provide guidance. I don't think there's any secret that there's been feedback to the PTO and through internal reviews at the PTO that there was not as much consistency as we would like, so certainly the goal of these instructions was to promote consistency throughout the corps which of courser is better for examiners and practitioners and puts everybody on the same front and on the same page as a good starting point.

It was an attempt of mine in coming up with these instructions not to add significant
restrictions on eligibility. As a matter of fact, I would say it was the opposite, that it was the rein in to make sure that people weren't going too far in what they were making in 101 rejections. Certainly we're in a state of flux. We understand that the Supreme Court case is pending, so these were as an interim basis to try to promote consistency, try to bridge the gap to the Supreme Court case and of course revise as necessary. Also there has been a lot of discussion about how various case law has affected certain technology, software, business methods, et cetera, and there was an attempt to try to treat all claims similarly regardless of where they are and to minimize impact on certain technologies.

Today I only have a small amount of time so I can't take you through the whole instruction, but as a very high-level summary, changes were made and the instructions addressed not only process claims but also product claims as well, and of course that was to promote consistency where I was getting feedback that there were
inconsistent practices, and it was also to provide
examiners with important guidance that's
necessarily since because the Bilski decision put
questions as to the continued validity of the
useful, concrete, and tangible test.

For method claims, all method claims are
analyzed under the machine or transformation test,
and again that's all method claims. There have
been a lot of question as to do you treat business
methods differently than anything else or computer
method claims, and the answer would be, no, all
methods are going through the machine or
transformation test. For products, all claims are
analyzed to see if there is a judicially accepted
subject matter first, and if there is, the inquiry
doesn't end there. In other words, the claim
would not automatically be ineligible, we would
look toward the preemption test and there would be
a preemption to see if there's a particular
practical application of that judicial exception.

Another area that the instructions
address, and this in at least my opinion is it is
a significant change and probably again in my opinion, others may feel differently, but I think this is the largest change to the instructions, the difference between the handling of functional descriptive material and nonfunctional descriptive material. Previously these were issues under 101 subject matter eligibility. In other words, an examiner would look first to see do you have for example nonfunctional descriptive material and look at that material by itself and see if that's eligible or not and then make the determination of the claim based on a specific limitation. In trying to teach examiners that we want to look at claims as a whole, that analysis really makes more sense in a patentability type of analysis under 102 and 103 and not under a 101 analysis so that the instructions do tell the examiners to now look and do a functional/nonfunctional descriptive material analysis under art and look at the art and not as a 101.

That was a very quick high-level summary. As for the training, in September
approximately 5,000 examiners were trained on
these instructions. Again they are on the USPTO
website. Each of the technology centers are
working on more specific training geared to their
particular examples that they see in their
technology centers. Certainly what we had rolled
out with the 5,000 examiners was 1 hour of
training, there was an overview as a first step,
and the next step would be the TC-specific
eamples and those are currently being worked on
by each TC and also with my office and they're at
varying stages, but in the works of rolling out
that training to examiners which will be the next
step.

The people who are working on these
training have been instrumental, and in my group
I've had a 101 group that's been formed from
representatives from all of the technology centers
so that the people who are working on this
training in combination with some of my direct
staff have all been working together for months on
the training materials.
Finally, as with most of the training materials or all of the training materials, we're making an effort again to make sure that we're working with the public and receiving public comments and all of the training materials that are rolled out will be posted on the USPTO's website and available for public comment. That's the quick overview of 101.

MR. MATTEO: Thank you, Drew. Just for my purposes of clarity, you had mentioned something at the beginning of your conversation. It sounded as though this was an attempt at expanding the criteria. Was it your sense that you were getting false negatives before this in terms of 101 determinations?

MR. HIRSHFELD: I think that the main problem was a lack of consistency. There were many false negatives or many rejections that were being made that I did not feel were appropriate 101 rejections. Overall I feel that the instructions have done a good job in making people more consistent, but I think any time you have
inconsistency you're going to have errors on both
sides that you need to rein in and bring together.

MR. MATTEO: I appreciate that. Thank
you. Are there any other questions from the
floor? Why don't we move to finance? I'll ask
Mark to pick up. And apologies in that we're
changing the schedule again yet to availability.
I think from now on we'll just skip the agenda.
We're doing fine, do don't worry. If you would,
please.

MR. OLECHOWSKI: I appreciate you
webcasting as well. I was able to sit up there
and listen in and write down all the questions
people were asking Dave and Peggy and make sure I
say the same thing.

MR. MATTEO: As long as you come down
with the answers, that's what we're looking for.

MR. OLECHOWSKI: Thanks. I'm Mark
Olechowski. I'm the Deputy CFO here at the Patent
and Trademark Office. The first slide is a slide
of our average workday patent fee collections. We
have the ability to, and we do, we count money

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every day and so this is the average number of patent dollars from all patent fees that we received on a daily basis for the entire fiscal year. You can see that in the beginning of the year, the first quarter, I would say that’s pretty nominal first-quarter activity. If you remember last year, we implemented a 5-percent CPI and what typically happens when we institute a consumer price index adjustment to our fees, we get a lot of money in September. People are paying their maintenance fees ahead of time to save the 5 percent. It might not affect the individual applicant, but certainly companies that have a large portfolio will pay us in advanced and then we see a decrease in the amount of fees we receive in the first quarter because people have paid ahead. The CPI while it increases our fees, actually the money we get in September is less than we would have gotten if they had paid their maintenance fees on time, even though it's certainly within their window.

We started to notice, it was around
January, in fact it wasn't the January decrease in fees that alerted us to a problem, it was a decrease in the number of applications. We saw a significant decrease in the number of applications filed in January relative to what we've seen in previous years and so we started asking ourselves questions, we're asking Patents questions, we're looking at our fee collections and everything else, and I remember the management council meeting where we said that we were concerned that we needed to know if it was an anomaly or a trend. As you can see from the remainder of the year, it certainly was the start of a trend. In February, then Acting Director John Doll instituted some immediate cost-saving measures as we revised our projections from our initial president's budget level down significant and went through a series of cost-saving measures which I know both the PPAC and the public are aware of. We made some significant decisions through the year in order to make sure we ended the year with a positive balance and from a CFO perspective certainly keeps
us from going to jail. There were some
significant decisions made by the Patent Office.
Probably most significant was patent hiring. We
were on a trajectory to hire 1,200 patent
examiners a year significantly affecting backlog
and pendency in 2010, 2011 and 2012, and that was
probably the most significant cut we made, but it
got to the point where we had to continue to make
cuts across all of the business units. As you
know, we finally secured patent examiner overtime,
we've cut travel and training and supplies. We're
not hiring anybody right now, not even if somebody
in your office leaves with very, very minor
critical exceptions and that's the way we've ended
the year. I will note that if you see a large
increase in September which somewhat surprised us,
I would say in the last 5 days of September we
collected $20 million more than we thought we
would, and when we looked it they were all from
our bulk maintenance fee payers, so it's money I
think we would have gotten in 2010. I don't thin
it's the start of a trend, although it would be
nice if it was the start of a trend, and I think through the first few days, half the month of October, we're seeing something in between the depths of where we were in July and August and where we ended up in the month of September, hovering between $6 and $7 million a day. But it got to the point last year where everybody wanted to know what we were collecting every day and so we've stopped issuing daily fee reports because we don't want to trend on daily fee projections, but I think the shape of this curve tells you that it was a difficult year for us last year and Dave, Peggy, Robert and the people who have talked today have talked about the impact not only on the office but to the community at large.

MR. MATTEO: Mark, if I may, just a quick question on that previous slide. To put that in perspective, do you have year-over-year trending analyses to give us a sense of how to interpret this?

MR. OLECHOWSKI: We do. I can provide you something, Damon. In fact I can tell you the
exact numbers if I can read my own chart, in 2008
we collected just in patent fees $1.643 billion,
and this past year we collected $1.656 billion, so
just from 2008 to 2009, I only collected $20
million more than I did in 2008. But when we were
hiring 1,200 patent examiners a year, the cost of
1,200 patent examiners in the first year is only
about $30 million, and now when they all stay on
board and I have to pay them their entire salary
for an entire year, it's about $100 million, so
the fact that I collected what I did in 2008
certainly was not going to cover the cost of our
operations in the next year which was the reason
we had to start scaling back. If you want to talk
about attrition, this is purely a financial
statement, attrition is a two-edged sword. While
we like to see our people stay, we project that so
many people will leave so that when they don't
leave it costs us more money which is a good thing
that they're staying and examining patents, but
they cost us more money. That's purely financial,
Robert. As I said, it's a good thing and even
that has made our lives a little bit difficult
because we've had a normal attrition rate over the
years that everybody has been fighting, we have
recruitment bonuses and we think we have our arms
around that, so now we're seeing what's the effect
of the economy on all that with people staying
around, like I said which I think is a good thing,
that's just one aspect of the projections we have
to do that makes it a little more difficult in
this day and age. I think somebody asked Peggy
about maintenance fees. We collected maybe $20
million less in maintenance fees last year than we
did the year before, but the rate of payment
changed. The first stage went from 89 to 83,
second stage went from 79 to 69, this stage from
49 to 43, so even though there was a bigger pool
of patents out there that people could pay their
maintenance fees on, companies were choosing to
pay a lesser amount of them, and we got that
information as we talked to some of our
stakeholders, the AIPLAs and the IPOs and some of
our interest groups and I think companies were
taking a hard look at their portfolios, where in years past they have decided I'm going to keep that patent in force, they were taking a hard look at the patents they were paying their maintenance fees on. So those were probably the two biggest drops from our fee collections, maintenance fees and application fees. We received more money than we thought we would in issue fees because people are here, they're staying here, they're working and they're pumping out the patents so we received more money in maintenance fees. We were about even on things like extensions of time. From a CFO perspective we were concerned about extensions of time. We thought that with the economy and everything else we'd see a significant drop in that fee category and it was about consistent with what it had been in years past. You guys are running businesses and I don't know what the future holds, but those are the kinds of things that I think have made it difficult in 2009, 2010 and 2011 to really project what we think is going to happen. I think we've been fairly
conservative, and I'll get into that in a minute, on what we think is going to happen in 2010. I know Dave and Peggy have big plans that we'd like to get done, but until we see a significant increase in the revenue stream, it's going to be a challenge to get a lot of those things done which I think is what Dave was talking about with an interim fee adjustment that would certainly help things here at the Patent Office as we watch for fee-setting authority and some of the longer-term fixes that we think we need.

MR. MATTEO: Thank you very much.

MR. OLECHOWSKI: This slide is not actual fee collections. These are what our projections were at that particular time. You can see in the beginning of the year that we were projecting that we thought we'd collect what we had put into the president's budget, a little more than $1.8 billion, and then as we got into January we revised our fee-collection estimates and at the same time we revised our fee-collection estimates, we had to start cutting our spending. So you can
see that in the February timeframe the spending projections started to fall below collections which keeps us out of jail. You can see at the end of the year in the September timeframe we started to collect a little more fees than we had thought we would and the bump-up in spending is not because we started to see fees come in and so we started to spend more money, just before the end of the fiscal year we forward-funded a couple of contracts that started on October 1, paid a month of rent ahead of time to get us started on the fiscal year on a little bit better footing, reduce our carryover somewhat, but we tried to keep the spread between projected income and projected spending about consistent with what it had been all year.

MR. MATTEO: Mark, these numbers are listed as projected.

MR. OLECHOWSKI: Of course, they're exactly what they are on September 30, so we ended up collecting in patent fees last year around 1656 -- because we have other sources of income, we had
the carryover we had the year before, we made a significant effort with all of our business units in the Office of the CFO to go back and look at old contracts. We closed out a whole bunch of old contracts. We normally recoup somewhere between maybe $8 and $10 million from old contracts. We recouped probably upwards of $25 million last year so that that comes back. Since our fees and the money we collect are available until expended, that money comes back to us and we're able to use it so that added to our carryover this year which will certainly help us get through 2010. But overall, we collected around 1656 in patent fees last year.

MR. MATTEO: 1656, and an operating expense of?

MR. OLECHOWSKI: It's somewhat less, but it depends on when the actual cost is incurred. So while I might sign a contract, I don't have to necessarily pay the entire cost of that contract so that when we do our books it's the number that's actually expended. We carried over I
believe $56 million in patents, so what's the
difference there? We probably had expended in
patents around 1.6. I think the last time we had
talked to you some of the difficulties we had last
year in making our cuts is that in recent years,
maybe 5 or 6 years ago, the slice of the pie in
the Patent and Trademark Office that was
compensation was about 50 or 55 percent. Today
it's almost 70 percent because we've grown so
much. We've been hiring people for the past 3-1/2
years, so it makes it difficult to do cost-saving
measures when 70 percent of your spending is in
people. We're not going to get rid of our people.
So then when you talk about I have to pay my rent,
I have to pay my utilities, the amount of the pie
that's available for cost savings really starts to
shrink. We talk about our IT contracts, I'm sure
John is going to chat about where he is.

MR. MATTEO: Fair enough. I understand
how that works and how accruals work. My question
maybe wasn't clear. What I was trying to get at
is you have projected here, I was trying to get a
sense of how closely the actuals map to the
projected so we can get a sense of confidence
about our forecasting ability. Is it getting
better? Are there things that we as PPAC or our
connections can do to help refine the forecasting?
The better visibility, clarity and certainty you
have in forecasting, the better able you are to
manage strategically. So if there's a way for us
to help, that's where I was going with that.

MR. OLECHOWSKI: We would certainly
enjoy any help we can get. I think it's certainly
challenging in this environment to do forecasting.

MR. MATTEO: You're not the only one
trying to forecast in a challenging environment.

MR. OLECHOWSKI: In February when we
were trying to get our arms around this, we had
projected that we would end the year around 1850
and I think that's where we ultimately ended up,
around 1856, so I think once we got our arms
around what was going on out there, we were able
to like I said get our arms around it. I think
we've been conservative with our estimates in 2010
for good reason. I think we're all hopeful that
tings are going to start to look up. Dave asks
me daily when can he start getting things done.
He talked this morning about some of the things he
wants to get done. While we're hopeful, we really
do need to monitor fees and we're 14 days into the
fiscal year and so I encourage your family and
friends to apply for patents pay their maintenance
fees. If you want some briefings on how we do
forecasting, we'd be glad to provide that to you.

MR. MATTEO: I would certainly be
interested, there are people with finance or
economic backgrounds as well, because we're all
struggling with this from different perspectives.
Maybe there is some learning that we can share.

MR. OLECHOWSKI: Absolutely. And a lot
of it is what is the applicant community going to
do?

MR. MATTEO: Not only that, we represent
a broad base of constituencies. One of the things
for example that I do in my organization is to the
extent we rely heavily on a particular industry or
a particular customer, we create an X-Y-Z watch so
we map what their fortunes are because we know
ours are probably going to follow theirs so that
there may be different ways that we can engage and
help you in this process. I'll offer that up.

MR. OLECHOWSKI: That's great. This is
another pictorial representation of where we were
in 2006. You can see that we were on a trajectory
once again to continue to grow. We knew that the
patent community lags the economy. The Trademarks
organization is much more responsive. It's almost
a leading indicator of the economy. They're much
more affected by the economy sooner than the
patents community is. Usually it's a year or two
after the economy goes up or down that the patent
community feels the impact so that we knew that we
would feel some impact to the patent community,
but we didn't actually think it would happen until
later in 2010 or 2011. So we were continuing to
hire our patent examiners, work on our IT systems,
so when our fees really started to decrease in
2010, you can see that we've leveled off from
where we thought we'd be somewhere up in the $2 billion range to where we ended up in 2009 which is just about 1.8, and I'm talking total PTO now. So in 2010 we're estimating that collectively both patents and trademarks will collect around 1886. In patents dollars it's only $10 or $20 million more than we collected in 2009, which leads me to the next slide which I think Dave certainly alluded to and Peggy talked about some. These are the things that are currently not funded in our 2010 operating plans that our business units have.

MR. KIEFF: May I quickly ask a quick question? Am I right then that in noticing that the overall expenses for the office are almost totally from the patent side and not the trademark side?

MR. OLECHOWSKI: The patents/trademarks revenue split varies over time, but it's anywhere from 8812 to 9010. It's about 9 to 1 patents to trademarks in terms of revenue that the office generates.

Like I said, I think some of the people
who have talked before me have talked to you about
where we are in 2010. We're not hiring anybody
which I think is a big impact to the Agency
whether that be a patent examiner who leaves or an
accountant from the CFO's office or an attorney
from Drew's group, that's a big difference in the
way we do business. Overtime has been curtailed
for patent examiners and all across the Agency.
The PCT which we had a little discussion on before
is funded at the contractual minimum. We're not
funding some of John's most critical projects.
We're asking him to keep the systems up and
running to the best of his ability. The same cuts
that we executed in 2009 to the travel, the
training and the supplies rolled forward into
2010. So I think it's going to be a very
challenging year to keep operations at the level
they've been through 2010. Dave talked about a
$200 million shortfall and that's certainly as
number that we've talked about to our
stakeholders, to Congress, to Commerce, and it's a
shortfall as in I don't have the money to do that,
it's things that we'd really like to get done,

hiring people, turning back on overtime, all these
other things that we've currently cut out of the
budget to get the PTO to what we call a sustaining
level of operations.

I think Dave talked about a missed
opportunity. I think we have missed an
opportunity in 2009 with filings dropping. It was
a great opportunity to really dig into the backlog
and get pendency down, and we're projecting that
filings through 2010 will remain flat, I think
maybe at a number this morning or this afternoon
where Peggy said around 460,000. So it's another
opportunity with the people who we're keeping on
board to really dig into the backlog and get it
down to a more manageable level, but I don't know
if we're going to have that opportunity with the
current level of revenue we're expecting.

MR. PINKOS: A quick question? Or maybe
not so quick. With the cutting that's had to
occur, and Peggy might want to comment too, and
even related to the ceasing of all hiring, we as
PPAC are probably most concerned obviously that
the hiring of examiners has been cut back, the
overtime, the pendency reduction measures that are
in place and the concern that the progress that
was being made will regress, so that's obviously a
difficult issue to handle and deal with. Are
there some positives that are coming out of the
belt-tightening in the really deep scrub you've
had to do in finding areas that maybe the spending
wasn't so important? In fact, on the hiring
outside of patent examiners, do you find that when
you're forced to do more with less that you can do
more with less? Many times it's difficult to pare
back the number of government employees in a
particular area once you reach a level, but now
that you have some attrition, have you find that
maybe some of the positions don't need to be
filled?

MR. OLECHOWSKI: I can start that.
You're right, that wasn't quick, Steve.

MR. KIEFF: I also realize I can rarely
be quick. I don't know why I prefaced that.
MR. OLECHOWSKI: I'll try to answer a couple of the questions that were in there.

Certainly there was some housekeeping done. I think we had gotten to the point where we were funding things because they were for lots of good reasons the thing to do, so then as the economy turned, priorities have to set, so that certainly there was a degree of housekeeping that had to happen. I would think that business units, whether it be Patents or the CFO or External Affairs were doing more with less, but I think it's a matter of endurance. How long can you ask your people to continue to do more with less? I think every day people come to work and they want to get the same things done. They want to try to get everything done that they got done in the past. I think a good example, I'll just use art, I have a procurement shop that has normally I think has 34 billets and we're down to 24 people and we have 1,700 contacting actions that we did this year and the same amount we last year. That's a significant strain on people and I think
that while we certainly talk about efficiencies gained, I think it takes its toll on people especially in the acquisition community where the 1100 and the 1102s really can jump around. There are so few of them in the federal government that they can really move around and I think we've seen the effect of that in our contracting shop just because there is a lot of movement within that community to begin with so that people are jumping up but they're not allowed to jump in. Maybe Peggy or Robert can talk about the examining corps. I think we've certainly seen a fewer amount of attritions that we've seen before and it's hard to put your arms around what the exact reason is. We've certainly done better in our recruiting to get the type of people we want in here. We have a recruitment bonus that is attracting our very best. And I'm sure that the economy has something to do it. People just aren't leaving in the numbers they have before, but it may be because we're getting the right people in here. So I think all of that said is
certainly there are good things about it, I think
there are bad things about it as well, Steve, that
we've learned.

MR. MATTEO: Scott, did you have

something?

MR. KIEFF: Is there a rough guess, and
if not, what would it take to make an informed
guess, about the tradeoff in a coming year like
this between impact to your budget and every X
percent of the backlog being decreased so that an
informed choice could be made about whether it's
actually prudent to spend the money to chew up the
backlog? It may be because everybody likes to get
rid of a backlog, but it may be that the cost of
chewing up the backlog is your $200 million
shortfall in which case ride the backlog for
another year and there's your $200 million.

MR. MATTEO: Is it a stasis question?

MR. KIEFF: I don't know.

MR. MATTEO: Or is it an
eat-away-the-backlog question?

MR. KIEFF: It's both.
MR. MATTEO: I think this is part of a sustainable enterprise question. I'm answering your question for you.

MR. KIEFF: I'm really asking the very, very narrow, the specific do you know has anyone done a rough costing of what it costs to chew up backlog?

MR. SALMON: I don't know if we've done a specific cost analysis on what it would take to get to, I don't know what the optimal number is, Peggy.

MS. FOCARINO: Ten months.

MR. MATTEO: Let's ask the question a little differently in terms of how much are you spending to eat up the backlog every year, if you can put your finger on that?

MR. KIEFF: Yes, that's all.

MR. MATTEO: So whatever that number is, maybe we dial it back, maybe we dial it up in trying to get a sense of what is the sensitivity analysis regarding that? Is that a better way to phrase it?
MR. OLECHOWSKI: Peggy, how much of the
backlog did we eat up last year?

MS. FOCARINO: 20,000 cases.

MR. OLECHOWSKI: I would say that's
pretty expensive. That's why I said it's an
opportunity missed because I think if we had been
able to continue on a trajectory where we were
including some of the things we're trying to do
now with process improvements, the new count
system, possibly a new fee structure, I think that
that trajectory could certainly take off in a
different direction than just 20,000 cases a year.

MR. KIEFF: I hear that, but I guess all
I'm saying is an opportunity was taken. The
decision was made either actively or possibly,
consciously or unconsciously, to over the last
year take advantage of the fact that filings were
down to pay attention to backlog, and maybe what
we could have done is taken advantage of the fact
that filings are down and paid attention to
something other than backlog.

MR. MATTEO: Independent of whether
filings are up or down, if you're teetering on the brink of being a sustainable enterprise or not, IT systems crumbling around us or not, that's the kind of decision that needs to at least be considered.

MR. OLECHOWSKI: Maybe I can answer without really answering and say that I think 2009, and it's in some of the documents that we've put out, exposed some vulnerabilities in the way we're funded. So what I think Dave and ourselves and Commerce and the Administration are working on for a long-term solution is giving the PTO tools, that if we're going to operate truly as a fee-funded Agency as a business then we probably need tools to do that. So in a normal business if revenues are down, what are the options? You probably can either borrow money, you can dip into a reserve, you could get some other investors. We don't have those kinds of tools.

MR. MATTEO: This is a different question that we're asking. I think we all to a person enthusiastically support increased
financial mechanisms, having reserve drawdown, all
of those things are for me at least independent of
this question, independent but I support them
fully. My question is, let me put it this way,
how much did those 20,000 dispositions cost the
PTO this year, or last year, sorry, in dollars?

MR. OLECHOWSKI: They cost us $1.7 billion. That's the cost of operating the PTO for
a year.

MR. MATTEO: You've chipped away at
20,000 of the backlog. Incrementally how much did
that cost just ballpark. I don't need it to 12
decimal points.

MR. OLECHOWSKI: I'm still not so sure I
understand the question.

MR. KIEFF: Let's imagine you were as
happy as possible with the books. I know you're
not and we want to help you get there. I know
that we should respect your heart-felt,
well-reasoned, intense preference that we focus on
that point, so we will focus on it. But the
question that Damon and I have been asking is a
different question. We apologize for distracting
the conversation, but want to distract it. We
want to take you off the track of trying to
convince us because we are convinced, that there
is a deep need to have overall more resources and
a deep need to have overall more financial
flexibility so that we're on our side. But
please, a totally different question. Last year,
this past year, the backlog changed. It changed
by 20,000. Is there a way to make an informed
guess about what that cost?

MR. OLECHOWSKI: While I hear and
understand the question, I'm not even so sure why
it's a pertinent question. It's not just that we
reduced the backlog by 20,000, we issued some
120,000 patents.

MR. KIEFF: The reason we're asking is
because on a going-forward basis, no one I think
has done -- in a perfect world you might want to
run an operation that has no backlog.

MR. MATTEO: A completely different
approach. Let me try it this way. Part of the
messaging could be, and let's make it messaging,
PTO has desperate needs for this versus pendency.
Which do you think we should be supporting with
our $1.8 billion of resources? Do you want us to
dedicate that on a going-forward basis to IT
infrastructure or whatever or is it more
important, public and Congress and whomever, to
eat away at the backlog?

MR. OLECHOWSKI: I'm certainly not the
person to answer that question about what the
priorities are.

MR. PINKOS: It doesn't really work that
way in the sense that it's not like the PTO is
ordering up 20,000 or more cases to be finished
and we're paying somebody on the outside to do it,
hiring these people, it's not just for 1 year, you
can't calculate -- and much of the 20,000
reduction was because applications were down.
You're hiring thousands of new people not for 1
year, not for 2 years, not just based on a
calculation of what you want to reduce that
particular year, but going forward for the
MR. MATTEO: That's the difference between a diachronic and synchronic view of this. I'm talking about this as a long-term strategy.

MR. PINKOS: I don't know what those two words mean.

MR. MATTEO: It's a snapshot which is very true now. People aren't fungible. You can't make examiners IT people, although I think sometimes we try.

MR. PINKOS: Some of them started that way.

MR. MATTEO: That's true too. I guess the question for me is long-term strategically, and I believe this is about fundamentally changing or at least revisiting the fundamental strategies of the PTO and the priorities of the PTO, maybe in a perfect world you had a choice between we had finite resources, let's channel them long-term where we do have the ability to change the nature of our investments to infrastructure or whatever, versus chipping away at the backlog.
MR. PINKOS: I think that's a good point about revisiting because that policy decision was made in participation with the public, with the Congress and everybody else over the last 5 years, that the resources will be dedicated to bringing in new examiners and to chip away not just at the backlog and new cases coming in. The revisiting I think is a strong point. That decision was made and they've been carrying it out and then the question is where are we now and how do you prioritize.

MR. MATTEO: Things have changed.

MR. KIEFF: Let me refocus the conversation today for a second. Is there an open question, Mark or Peggy or somebody, in the office about what Damon and I are asking? Do you understand what we're asking?

MS. FOCARINO: No, I'm not clear.

MR. KIEFF: Let me back up and let me tell you what I'm going to say.

MR. OLECHOWSKI: If you just want us to do the math and say what is the cost of reducing
the backlog by one patent, we can certainly do the
math. Then if you want to multiply that by the
750,000 cases we have and come up with some number
that says the PTO needs that amount of money to --

MR. KIEFF: Just one second. Just bear
with me for a minute. I would like to be able to
know whether you understand it. Then I'd like to
be able to know whether you think it's even a
prudent question for me to be asking. Then I'd
like to know whether you think that even if you
understand it and even if you think it's prudent
whether you could get an answer that would be
convenient and reasonably accurate so that then
Damon and I can get an understanding about what
the answer is and then we can make a
recommendation about whether we think it's
actually even worth revisiting this.

MR. MATTEO: This isn't about we need an
answer or anybody questioning what you did with
your money. This is about to the extent that you
have the opportunity to give you the opportunity
to revisit and if there is a change that you would
to make for us in toto as PPAC and to the extent we can reach out to people to help support the case that you would like to make going forward whether it is stay the course, reallocate resources on a going-forward basis, the backlog is important, but we need to get the infrastructure in place. If that's the kind of decision the PPAC wants to make, we want to get behind that and help you support that. That's the nature of the question. It's not about I don't believe that you're doing the right thing with the $200 million or whatever it is on a per-patent basis, it's about again offering up what is it we can do to support any message whether it's contrary to the decision that was made 5 years ago or not. Things have changed. I guess this is more of an offer of help than anything else. I want it to be hopefully heard in that perspective.

MR. OLECHOWSKI: I appreciate that and we can talk offline, Scott, about what the real question is, but I think you probably need to talk to the Director about help in terms of setting the
priorities for the PTO and where we spend our
money. I'll be certainly glad to share any
information I have on a financial basis with you.

MR. KIEFF: But the financial
information is important.

MR. MATTEO: It's a data point. We can
take this conversation offline.

MR. KIEFF: Subject to any other
question.

MR. MATTEO: Thank you very much. I
appreciate your patience as we were trying to work
our way through that. We'll think of a better way
to cast the question. Again take it in the spirit
in which it was intended. Off target, but the
intent perhaps was good.

I think what we'd like to do is move to
John Owens who will talk to us about
infrastructure. John is the OCIO of the PTO.

MR. OWENS: Good afternoon. My
apologies for the earlier disruption in the
schedule. I got called by a higher power, Mr.
Kappos. I'm going to give you a brief overview
and leave most of the time so I can answer
questions you folks may have.

First off, at the beginning of this year, the end of last year, almost about the same
time, I came to you, the current Acting CIO, with a document called The Roadmap, a roadmap to get
the organization’s IT systems healthy after they had been neglected for some 10 years. I could
tell you out of those initiatives that the bulk of them on track, six of them are on track. They
were process improvement, data center stabilization, AIS stabilization, that’s automated
information systems and those are the actual systems themselves, service desk where we call and
answer questions, network, telecom and enterprise architecture. Three of them are slightly behind.
Organizational strengthening, my human capital plan, was not finished on time and I'll go into a
little detail on that. As for disaster recovery, there is an offsite facility that I put a large
quantity of storage in, almost 2 petabytes of storage, and we started backing up our systems.
Unfortunately the connection between there and here is full. I cannot keep up. The bandwidth is not such that I can keep up with the number of changes here a day and store them offsite. We have ordered up more bandwidth. We are stuck at somewhere around 78 percent backed up of all the data here. It's not insurmountable, it's just slightly delayed. That bandwidth has been ordered. Unfortunately it's to a pretty remote location so it's going to take a little bit of time. As for desktop stabilization, when I inherited this organization we hadn't even pushed out completely Service Pack One for XP nor most of the security updates, so I'm happy to report this week that I am pushing out Service Pack Three for XP and the bulk of the security updates to protect the Agency and its data from hijacking or corruption. I would have liked to come to you and say nine out of nine full -- in the game. It was always a stretch goal to get there. We tried very, very hard. The organization has really pulled together to try to get there. We didn't
quite make it, but six homeruns and a couple of
base hits isn't so bad to be quite honest. So I'm
very proud of the organization and how we've done.

Let's talk a little bit about funding.

At the beginning of October when I presented you
the plan I had an idea of what I was going to be
able to spend. That is under the October 1
column. This doesn't take into account some of
the forward funding. This was a snapshot as of
just before the end of September 30 so there were
some forward-funding activities for my contracts
as well that were due on October 1 that's not
taking into account -- before that happened. The
compensation of course was reduced. Business
projects were drastically reduced, and I'll
explain the major impact that that will have for
you. The roadmap projects I tried to protect with
my life quite literally in some instances because
I still do believe that they are foundational for
the success of this organization, because at the
end of the day this is the system that the
processing of patents and trademarks happens on.
So if this system doesn't work, pendency does not go down, transparency through data dissemination does not happen, and we start issuing pencils which is not what you like. This is very important. The roadmap is important for those reasons and it's funny to say, but it's not an exaggeration. We have had system failures as Robert would be able to relate horror stories to you where I've had to call him and tell him I'm sorry, something is broken and we are fixing it as quickly as possible. That means downtime for an examiner which is a loss of revenue and that loss of revenue I'm just as concerned about as everyone else not just because it adds to the roadmap, but because that's future unrealized revenue and lost potential that I don't get a piece of to fix the systems, so there is that interconnection there that I am well aware of.

Then of course operations and maintenance which we've tried to prune down this year to focus on stabilizing the environment, spending less in this area and shifting some of
the money over time elsewhere. We did take an impact there, but this was of course to keep things operational. All in all, total reduction before those pay-aheads for this year of $60 million, the largest organization hit in the USPTO. I have to tell you that for historical purposes this has happened for many years. Over the past 10 years since the year 2000, we have had these types of hits to fund other things inside the Agency over time, mostly hiring, and that is what got us into this situation. We developed a roadmap which is a 5-year plan to correct the mistakes of the past, and unfortunately due to the economy kind of continued along those same trends. This does make me worried as the CIO because I don't believe truthfully that the infrastructure can take much more with the growth that we've had placed upon it, and we want the growth to happen because as I said, more examiners drives more patents being reviewed and processed, hopefully more being granted, and that drives revenue which can then be used to fix the systems. We have a
very symbiotic relationship with that and we want
to see those things resolve themselves so we can
continue on the path of improvement.

Hiring. This is also an incredibly
important thing for the CIO. As you heard Mark
say, next year we plan on zero hires. I inherited
the organization and I was down approximately 100
people. I have been able to sustain through my
limited hiring ability this year at 95 vacancies.
That means I lost as much as I gained pretty much,
plus or minus a couple. You might also think for
a moment 550 people, you have 450, 100 is not all
that bad. One-hundred of my people are in charge
of data dissemination. These are the folks that
provide copies of documents and patents and
trademarks and official copies and put out
publicly available data, but they are not the
technical folks who get the job done and
maintaining the systems. They're vitally
important for the success of the Agency in
fulfilling my role as the Chief Information
Officer in the dissemination of data to the
public. My number-two goal. My number-one goal
as the CIO is to keep the systems available for
examination, one that has been some trouble on and
off over the past year, so out of these 450
people, only about 300 of them are technicians
plus a slew of contractors which I would like to
reduce and hire some more federal employees to
keep the knowledge in house which I described to
you in previous sessions. But above and beyond
all else, take that into perspective. My data
center runs 24 by 7. I don't really have a day
off. There are 200 separate systems that operate
inside of here, and over 1,500 servers. That's
not a lot of people. So not being able to hire
this year is a serious problem. It is a serious
problem for me. I wouldn't make an argument
against hiring in one place over another. I know
that the CIO has shortfalls, the CFO has
shortfalls, Patents themselves to keep up that
future revenue that I count on to get the job done
needs to continue to hire. It is a major problem
however for my organization and I'll just put my
name on the list of people who really need the help. But it is a serious issue.

Let's talk about something else.

Details. I did get a little bit of help. SIRA and Patents provided me 29 folks to help keep the boat afloat, those 29 folks, and Trademarks provided me three, filled some part of that 95 positions to help me keep going. That was incredibly, incredibly appreciated. I thank them all from the bottom of my heart, I tell Peggy that all the time, because 95 people down and the stress that it puts on my people without the ability for overtime or anything else, I probably couldn't have been successful this year without these folks' help, and I am not kidding, each and every last one of them. They were all focused on development and customer support and we are working on the details of these folks to Q3 2010. Unfortunately that's about the maximum length of time I can detail someone a year, and then I'm going to have a real problem if somewhere in between I can't hire. You should all understand...
that the federal hiring practices are such that
for me to hire a large quantity of people, each
and every position takes somewhere between 3 to 6
months to fill. We can go into long details on
it, I can tell you about all the wonderful things
I've thought of from private industry which I just
came from like job fares that I'd like to do, but
federal regulation prohibits many of those types
of quick-hiring activities, so getting a decision
or the ability or the funding to hire early on in
the year is going to be more beneficial than at
the last minute. Otherwise I will have to look at
some other solutions that I haven't thought of
yet, so if you have any, let me know.

The roadmap in and of itself promised
that in the middle of FY 2010 we would start
concentrating on projects to further the systems
here beyond the state that they were not currently
in, not just stabilize them but move them ahead.
Mr. Kappos is very interested in doing that. In
fact, he's already encouraged me as some of you
may know from the last TPAC meeting to move
forward with Trademark money to advance them
beyond just infrastructure into building the next
generation. I can tell you that over the
discovery we've had over this year that some
systems that we have are so far outdated that
they're not worth saving while others are
patchable and workable. But we really have
stopped embracing new technology on or about the
late-1980s to early-1990s era of technologies. I
never would propose moving us to the very latest
cutting-edge, but something in the last 10 years
is certainly my goal. To embrace this we've
conducted work with all of the internal customers
here and certainly we are looking at ways of
reaching out into not only the examination corps,
but also the public in general to get their
feedback, and we're developing a more robust
strategic IT plan or what's known as an SITP.
This plan will be condensed and it will be how we
track ourselves. It will have at its foundation
the CIO's desires for the roadmap involving the
infrastructure while at the same time addressing
the needs of the examination corps and the future
endeavors there as well as the public and what
they would like to see. Chapter 6 is the patent
chapter. The document has 10 years of pent-up
frustration requests in it. It's over 1,000 pages
long. It is a fantastic collection of material
that now has to be reduced down into that secret
sauce that we need to actually do and the action
items and metrics for each quarter this coming
year and the next five. We are still in the
middle of writing this. Trademarks next
generation which I'll talk to you a little bit
about will also have a direct impact on patents
because the technologies that we explore here to
move them forward of course we can hopefully bring
in to help patents as well, and I'll give an
example of that.

Just to talk about the trademark system,
I know we're PPAC here, but this is as I said
important for those reasons, we are looking to
move the trademark system to a redundant scalable
virtually hosted environment. Again, not anything
that's cutting-edge. It's been around for well
over 10 years, but it is something that will move
us away from dedicated software written on
dedicated outdated hardware and outdated software
to a more robust platform. We will migrate from
the legacy technologies onto reasonably modern
ones. We will host on industry-standard-based
environments so that if we outgrow this facility
here or have to migrate somewhere at a later time
or even duplicate our environment across the
United States, we will be able to. Today that is
not possible. We will replace the heavy client
front ends that we have with Web 2.0 style
technologies that are much lighter, much more
transportable and much more adaptive to say a
nationwide workforce than having remote heavy
client deployments are. Of course, we've already
embraced not only what the recent release of our
website which was more important for me because of
the infrastructure and the first time we've had a
content management system here for our website at
USPTO, but because we embraced the open standards,
the things that are open source, Apache, Tomcat, Documentum, Web Publisher. We're looking at MySQL and continued use of Oracle where it makes sense; service-oriented architectures and buses and other catch words that you may or may not know like Ajax; but all of those things that would make a modern scalable system that's much more maintainable and measurable with built-in metrics would also be nice that we have not yet embraced here at the Agency. Some of you might be shocked that we haven't, but remember, we're dealing with technologies here that are late-1980s or early-1990s-based and we haven't really evolved past those. This project though it's related mostly to trademarks will establish the foundational infrastructure and the knowledge in my organization and the contractors we've hired of how to build and operate in this type of world which is the type of world that I came from before my tenure here at USPTO.

MR. MATTEO: John, if I may, it's not explicit up here, but I'm guessing that a move
away from custom software to COTs is part of this.

MR. OWENS: Yes.

MR. MATTEO: If this presages something you'll get into later, that's fine.

MR. OWENS: No.

MR. MATTEO: It seems like an important point in terms of contractor reliance and internal capabilities to highlight.

MR. OWENS: It's been quite an interesting series of conversations. A lot of folks here were under the impression that to get something useful they had to go with custom-written software, but there is a heavy burden or heavy up-front cost to writing custom software. It's like the Air Force building an airplane. The Air Force comes out with a new fighter jet and they say that that fighter jet just rolled off the line and it was the fourth one in line and it cost $3.8 billion. That airplane didn't cost $3.8 billion. That's the cost of the airplane plus all of the research, development and everything else that had been spent and the more
airplanes you build the less that cost is because you divide that initial introduction cost over a greater quantity of actual final product. The same thing with development. The cost of development, gathering requirements, writing them down, hiring contractors, fixing bugs, and deploying something for 10,000 examiners, once you look at the cost per person it's very small, whereas if I write custom software for our Office of General Counsel, 400 or 500 people for a reasonably complex system, it is going to cost much more per head and it makes it untenable. I try to use the 80/20 rule. If you can get 80 percent of what you need out of a noncustom COT solution, and many of the COTs products today can be configured to be very customized particularly with the advent of standardized interfaces, XML capability to exchange data, is more than adequate to meet our needs and we just have to look at it like that and I have been working with my peers and highly encouraging them to move to those COTs products. Unfortunately for me though there is
one open-source patent application system project
that doesn't seem like it's going anywhere, but I
did look at it just in the by and by. We don't
have a patents filing system readily available for
purchase. The last one we did inherit has its
issues and I think this does deserve quite a bit
of care attention, and the same thing with the
trademark system, by the way, whereas it probably
wouldn't be completely akin to a COTs product, but
as parts of it we can use COTs products. I think
the largest example of a success of that is the
financial systems here at the USPTO which are a
complete COTs product. We have a system called
RAM that interfaces with all of the legacy
systems, but the financial accounting system we
use here is COTs and it's been configured and it's
very easy to maintain and the CFO and the CIO work
cooperatively together to make sure that those
activities happen on time that handle the needs
and the growth of our environment. I'd like to
start seeing more of that. Turnaround time will
drop and costs will drop.
Where we need to focus is on the examination systems and our public interfaces. Getting the information from the public, getting the applications from the public, whether they be trademarks or patents, monitoring, measuring, knowing where your stuff is in the examination process, who to contact, what the disposition of it is, how to pay the bills that we need you to pay so that no one misses anything on time, everything is clear and concise, one set of credentials for the entire Agency, for the consumer and the internal employee examiner is in my mind critical for our future and success.

So if we flip the page real quick, let's talk about some of the new things that we're doing, I've added a couple here, and then I'll talk about some of the impacts that I wanted to highlight. We are moving very quickly on doing a couple of things. One is data dissemination. President Obama has a focus on making our government transparent to the public. We recently put out an RFI to the general public for a
zero-cost contract, something I had never heard of. Zero cost didn't exist in my vocabulary. I had to go look up the word free. It got me confused. But the fact of the matter is we are asking companies to step forward and for no cost to the federal government fund a project that separates the public system of dissemination of data, public pair, from the examination system. Today they are tied together, hard tied, whereas outside requests for information detriment to performance for the examiner. I need to duplicate the data. I need to separate those systems. I need to build a system that condenses and repackages the very bloated patent file wrappers we have today into something a little more transportable and concise while still providing the function and features that the public wants which is the data itself so that they can manipulate it to mine it for information. I need to do that in bulk. I can't just get on line and you can do five to 20 queries and then I give you another little capture window with a graphic
image. That is there to protect us because we were literally getting what we call BOTs or programmed robots that hits us with tens of thousands of transactions or more a second. We couldn't sustain that load. So this project, this zero- dollar contract, is literally to ask a company to step forward and say I give you this ability. I will give you the hardware, the software, the people to do it, we will build the correct system, we will repackage the data and we will give it away to the public for free.

This does have a small impact on some of our fee recoupment efforts. We do currently sell some of this data today as you may know. That will stop. There is a schedule to stop the selling of that data and give it away for free just as soon as I can cover the cost of hosting it. This will all be through data.gov as well as whatever RFI or RFP contact that is written by the awardee.

E-Learning. We highly believe that e-learning is the future for our organization not
only in looking at a nationwide workforce, but in educating the general public. I listened earlier to the thoughts of having a forum on how to do better searches or maybe a class on how to do better searches. Providing that information to the public to generate a stronger application is I believe critical to our future. So Mr. Kappos again asked me, Why don't we try this out? Go out and put an RFI for another zero-dollar contract and we provide the classes to a company that hosts e-learning. They will give us internal access for our employee for free and they can sell classes to whoever else wants them, so we did that. We put out another zero-dollar RFI for that. Again, I've got to be creative here. I don't have any fun, so bear with me here. That RFI completed actually and we are about to write an RFP hoping to get a good taker or two. This hasn't been unheard of by the way. I had a nice conversation with Mike down at the Government Printing Office who did a zero-dollar contract to take back volumes of congressional typeset records and get them scanned.
to put online and he wrote a zero-dollar contract
and we took a lot of their knowledge in
contracting experience to them extrapolate our
contract from that and has had quite a bit of
success at the Government Printing Office getting
for free a third party to take documents, scan
them in and turn them into in his case PDFs and
then signaturize them and put them online and
certainly we've both been talking and hope to
follow in his footsteps. So as crazy as it
sounds, there is precedence for it actually
working in the federal government and I'm highly
hopeful we'll be able to drive that to conclusion.

Improved online access to Web 2.0. We
just launched a new website. That website is far
above and beyond or at least infrastructure-wise
better. A lot of the content is the same. We're
going to have to work as an Agency on the content,
but I'll give you the highlights of the good news
story there. The hardware is scalable. It uses
Apache. It has a Tomcat back end which means that
it will allow us to do interactive products,
things like if you're familiar with Google, the
i-Google products where you can set up customized
pages and interfaces and look in fields to express
yourself and the desired information you want to
see to handle things like real simple syndication
or RSS. The technology base is completely redone.
It has a content management system. It's
completely been approved for federal government
use and is on the latest software to protect our
Agency from intrusion. That infrastructure, that
content management system, allows me to place in
the hands of each and every business unit here
including Patents the ability to add and modify
the data without my intervention like typing a
Word document, and whatever they put up there can
just be posted. I just have to create new styles
of content or interactive widgets -- the
development side, but each business unit now has
the capability to publish with their own chain of
approvals whatever they want. This alleviates
myself from a function and puts that function
directly into the hands who control and know
something about the content because trust me, you
don't want me giving an opinion about the patent
process. That wouldn't be good. And it lets me
concentrate on the technology. What I hope to do
sometime in the near future, and I know Damon and
I have spoken about this, is reach out to the
public to describe a My USPTO, or in particular in
this instance, a My Patent Experience. What do I
see when I get to the USPTO Website, login with a
single set of credentials, what can I do? What
can't I do? What status can I see? How will it
look? How will it feel? Do I want a
configuration like Google where I can choose how
the screen is laid out and little fancy things
like that? Or do I have a specific set of tasks
that I know I want automated? Do I want an RSS
feed coming off my page that feeds a client on my
i-Phone that tells me when an action has been
taken on my patent? These are the things that are
going to propel into this century of technology.
It's not too far away to consider it. The reason
it's not is some of those systems that I have
found just need to be replaced and I don't want to replace them solely with the technology to make them stable. We will want to bring something to the applicant community and to the public of value, and of course to the examiner. You may even think of the examiner interface being something very similar, My Patent Examiner, where an examiner may be able to choose the look and feel of how the system is organized on the screen for their own personal taste but still be provided and function all of the tool that they have today to a single interface or reduced number because today there are all these applications that have to work together that complicate the environment, and to be quite honest, sometimes they're a little clunky. We're going to want to get away from that particularly as we look at a nationwide workforce where we embrace the concept that people can be anywhere and instead of static transactions or static connections with lots of transactions being the weak link of the chain that eventually breaks and then people lose work or have to reestablish
connectivity, the Web offers secure way with
dealing with that which is unbeknownst to many
people, when you're on the Web, all the data that
you get and send doesn't exactly get to the same
place. There are protocols I place that allow for
retransmissions and it's seamless to you, but
there's a lot of stuff going on on the back end.
We want to get there. We want to get to a more
resilient system and a more customized system for
both the examiner as well as the public. Of
course, I've reached out to this organization to
help me plan how to do that, how to ask for that
feedback, and will work with Patents, Trademarks
and TPAC to do the same.

Finally, I'd like to talk for a moment
about the changes that we are undergoing here at
the USPTO on the count system. It is a big and
scary thing for the CIO and you should know that.
Peggy said to me, You know how important this is.
Right? I'm like, yes, we know. We know how
important it is no doubt about it. I had the
conversation with Mr. Kappos myself. But the PALM
system, EDAN and PFW will all have to be changed. It's not just PALM. PALM is a centralized system. In fact, if you were to make a diagram and see the center of our universe, it would probably be labeled PALM, and all kinds of connections go into it and it is a particularly unstable system, but we are working very hard to write a solid set of requirements that are almost done. I have looked at them myself. We are working very close hand in hand with SERA and Patents. We are very confident that we will do the best that we can and we are going to hit the date that's before us. And we're going to be very careful as to not break the system in the process which I'm sure you're happy to about, Robert. I wanted everyone here to know that it is critical on the minds of the CIO that though we make many changes a day, there are days we make hundreds of changes a day to the system and every once in a while something does break and we try to recover from it as quickly as possible with good risk planning. But there is always a risk especially when there is the unknown, and
that is the risk here. Lots of our systems are
still largely undocumented and I know enough now
to know that some things that don't seem to be
risky could be. So I'll leave it at that and
allow you folks to ask questions.

MR. MATTEO: Thank you very much, John.
It's very much appreciated. Are there questions
from the floor?

MR. ADLER: I was listening to the
problems and the difficulty of trying to design
and get the money to build and maintain. I'm just
wondering have we ever thought of this totally
differently like renting rather than buying? In
other words, going to somebody who's an expert in
software and saying free software, come in and fix
our systems and charge us a monthly fee? Why do
we have to own it? Why do we have to build it?
Why do we have to maintain it? Why can't somebody
else do that? You're not going to be able to do
it with 450 people. Right? You already know
that. And there isn't any money. So I don't see
how we're getting out of the box. I don't see how
we get out of the current system by continuing to
do what we're doing. Do you follow me?

MR. OWENS: I do, actually. In fact,
I've given some thought to this both from a
hardware and operations perspective because when
Mr. Kappos got here he asked, Why do you run a
data center, John? You can go rent data center
time. That's absolutely true. I knew that. AOL
had data centers all over the world most of which
were rented. I'll break it up into a bunch of
different boxes. Let's just talk about virtual
hosting. I couldn't give the systems that I have
today as undocumented and as fragile as they are
to another organization because I couldn't tell
them how to run it. I really couldn't. It's just
not written. It's hard to believe. But I just
couldn't do that. The cost would be overwhelming.
The support and being able to resolve problems
quickly just wouldn't happen.

Then we looked at let's over the next
year look at the most difficult of the 200
systems. We did 20 this year with the AIS swat
team, the Automated Information System swat team.

What do we think? I think that some of our
systems we actually can save and others we've
determined now after looking at them and
documenting them and putting patches in them to
make them more resilient, they just have to be
thrown away. I would not be afraid of going to
third parties and asking, Could you just build me
system X? In fact, I'm doing that with data
dissemination. It is a very large problem, and I
kind of going to see how that goes. The one nice
thing about the data dissemination is I can very
easily and quickly with the work I had done last
year and what I believe we need to disseminate
because I actually know what we need to
disseminate and want to stick to the international
and XLM standards that exist today and how that
data is formatted, I believe I can define that
system, so we are going to go partner, a zero-
dollar contract, for a very large system. It will
entice a lot of hardware, a lot of design, a lot
of architecture, work with that company,
hopefully, to build the system and architect it in a way that meets our requirements because we will be specifying how that system is developed and architected and let them do the work because I want to make sure that it is virtualizable, that it is scalable and that there is monitoring and so on built in, and we're using this as an experiment and we're going to see how it goes. If this goes very well, I highly expect to embrace exactly what you're talking about whether it be free or paid to get the work done. Our problem in the past that really prohibits us from doing this is the same thing that prohibited us from writing a lot of, before I got here, fixed-cost contracts. Fixed-contracts work great in a development environment if you can completely specify what you want in detail, because if you change it along the way, change requests in a fixed-price contract are what kill your costs and manageability and maintainability and seriously screws up the whole effort. We do mostly level of effort here because we have not defined the discipline of actually
doing those steps, those early steps in design, architecture, code requirements and then evaluating based on metrics the returns from the contractors.

The good news not only did I identify that in the roadmap, but I identified it in a way that allowed me to address some of that. We've put in a process this year. We're starting to do baseline metrics because we didn't have metrics last year in many instances and we're starting to write the discipline. This data dissemination will be a fixed-price contract for a fixed deliverable with written requirements in a written architecture and will be the first of the four to go. I'm leery about doing that with too many things at once not knowing how it will work, but I think it is very important to look at how this is going. I might do several of these in parallel, but one of the first things that I think we could do here is if we define the online look and feel that we want, I would certainly take that user interface --
MR. ADLER: Is that the pair thing?

MR. OWENS: Pardon?

MR. ADLER: The pair project separating from the examiners? Is that what you mean?

MR. OWENS: No, I mean more along the My USPTO, my custom environment. I'd like to take that and say here's another one. We've clearly defined due to comment what we want. I'll pay someone a fixed price, go build it given the infrastructure that's available, the combination of public pair which is part of data dissemination, or we could talk about the combination of east/west in a completely Web interface. That would be another one that is possible in this environment.

MR. ADLER: When you described these you didn't really call it pilot for anything. You called it a new initiative. Maybe if you're thinking of it as a pilot you should talk about it that way. In other words, there's an opportunity here to change the way he's doing stuff. He's already talking about doing it.
MR. MATTEO: He's actually already doing it.

MR. ADLER: He's already doing it.

MR. MATTEO: I have the benefit of having gone over this with John a great number of times. That was part of the genesis of the plan. I'm going to speak for you for a second here and oversimplify. It's sort of a double duty.

MR. OWENS: Yes, I could use that.

MR. MATTEO: Double duty from the initiative so that you do accomplish the data dissemination task, but you're also trying to flesh out a potential vehicle and hopefully learn from it so that you can roll out new things. Part of the problem is a lot of these systems, there are so many linkages and dependencies and, frankly, just lack of clarity around what the linkages and dependencies are, having been in this world myself, bringing in an outside company to I want another one of those, fix it, is not exactly reasonable, not exactly possible.

MR. ADLER: We certainly want another
one of those.

MR. MATTEO: I was oversimplifying.

MR. ADLER: We want that works. I didn't mean that in that way. I mean just a better way. We don't want to have to jerry-rig.

MR. MATTEO: That's exactly right, but I do think, Marc, your point is well taken. I just want to give John and his group credit for having completely thought through all of this and having actually done all of that. In terms of messaging purposes it wouldn't necessarily be a bad idea to get credit for the strategic thinking that went into this, talking about it just as you did as a pilot that we can use as a vehicle, a proof of principle, a learning vehicle that still accomplishes a goal.

MR. ADLER: I think that would be a better message. It's the same work, just a different label. That's all.

MR. MATTEO: But it's also a detriment because I know it so well, it's just engrained. I didn't even think to make it explicit. You're
MR. ADLER: I didn't hear it that way, so if it is, great.

MR. MATTEO: I've been living it with him.

MR. OWENS: I will tell you I certainly will take that under advisement and try to bring a highlight to that fact. I can tell you the reason I have particularly not used the word pilot. At least among technologists, when you use the word pilot or beta or attempt or try, there is already a predispositioned mindset to say it doesn't have to succeed. I don't want to provide you another thing that doesn't work.

MR. ADLER: I don't interpret it that way.

MR. OWENS: I know.

MR. ADLER: That's okay.

MR. OWENS: And that's okay, but this is an educational for me too because now I know that the public doesn't interpret it that way is very important. What I wanted to do is say I am going
to provide to you a new method by which we will disseminate all of the publicly available at the USPTO, it will be separate, it will not impact examiner systems, it will be redundant, and this is the way it will be built. Of course, I consider everything that we do here a learning experience. We are just now getting internally the knowledge of what it is like to manage an Apache server which has been in existence 15 years plus. We are now getting into what is virtualized clouded type technologies, what are the intricacies of the technical details that we need to do, and this is another experience that we will learn from hopefully and improve upon and improve upon working with not only a zero-cost with certain types of technologies but also writing a complete fixed-price contract here, fixed price at the price of zero in this instance, but a fixed-price contract with all the results and managing it by doing all of the important due diligence up front. Part of the problems that I believe that we have sustained here by observation
only is that over years things have just been
developed and things just kept getting added and
added and added and the foundational levels of
those buildings that we were adding floors to just
were never built to handle that.

MR. ADLER: I understand all that. I
can live with that. I'm just trying to get you
out of continuing to do that.

MR. OWENS: And that is my goal. I want
you to understand that it is my goal. I think
that publicly calling it a pilot of learning is
something that I will pay attention. It could
bolster support.

MR. MATTEO: In the interests of time
unless there is something pressing, I'd like to
wind down the conversation.

MR. ADLER: Thanks.

MR. KIEFF: The companies that are
providing the zero-cost contract, what are they
getting?

MR. OWENS: I don't know. We have an
RFI out now. We're going to write an RFP. One
company out of those who provides an answer to the RFP which doesn't exist yet, mind you, will be awarded the zero-dollar contract. They will get the data on bulk after the system is built first. They will have to provide it in the form of the system here that they're going to build for us with our guidance and architectural principles. They will be able to get it first but must disseminate the information in the exact same format with the exact same security measures we put on it to the public before they deliver any other project with any enhancements that they so desire to sell or otherwise for free, and in a timely manner.

MR. KIEFF: Thanks. I was just curious.

MR. OWENS: The RFI is up there and available. If you look at the federal government Website, you'll see the USPTO section. It is spelled out there. There are a couple dozen comments and answers, and if you have any, please it's still open and you can comment.

MR. MATTEO: I think that brings to a
close the presentation. Thank you everybody from
the PTO and for your kind attention and guidance.
What I'd like to do is wrap up the public session
with a few housekeeping issues. I did want to
call everybody's attention online and in the room
to the PPAC Annual Report. This is a bit of a
teaser. It is coming. I want everybody to be
aware that the annual report is a statutory
requirement of the PPAC and it provides our
thoughts and perspectives on the operations and
strategies and direction of the PTO. The delivery
date is November 3. I suspect it will go live
online sometime there after. I don't know the
specifics, but we'll be keeping you posted on
that.

In line with that, I had mentioned
earlier in the presentation that each of the PPAC
members has aligned themselves with a particular
topical area and they are the go-to people. I
thought it would be interesting just to go around
the table to have everybody to tell us their name
and what are the typical topical areas in which in
which you're the go-to person. I'll start. I'm Damon. OCIO not surprisingly is the one that I've been working most closely with. Louis?

MR. FOREMAN: I'm working on the Outreach 2008 Report along with Andy Hirshfeld.

MR. ADLER: I'm Marc. I'm working on the quality initiative and the pendency actions.

MR. PINKOS: This is Steve. I'm working on the legislative section of the report reviewing legislative activity over the last year and how it impacts the PTO, as well as internal processes of the PTO with a particular focus on the Office of the Chief Performance Improvement Officer.

MS. TOOHEY: I'm Maureen Toohey. I'm working on human capital and on international efforts.

MR. KIEFF: Scott Kieff, finance.

MR. MATTEO: Thank you everybody. What I wanted to do is put that out there for PTO information purposes but also for general public consumption purposes. Please consider these people the go-to people. Of course you can come
to anybody with particular areas of interest. Finance for example, Scott, OCIO, myself, outreach, Louis, et cetera. I want us reaching out to you and facilitate your reaching in to us and make us available as possible and hopefully guide you a little bit.

The only other thing I did want to chat about very briefly is to throw out some very potential meeting dates for our next PPAC meeting. We have just to pick 3 months as the boundary, tentatively January 14 or January 21, both Thursdays. I don't expect anybody to respond to me now, but I want to throw those dates out, and if people can start getting back to me with their initial availability, hopefully we'll be able to hone in on a date pretty quickly. That works at about the 3-month boundary. It also puts us hopefully beyond the holidays.

That brings to a close the public session of the PPAC. What I'd like to do is call for a roll vote as to whether or not we should enter into executive session. A show of hands for
executive session. It's unanimous. That
concludes the public session. We'll proceed to
the executive session after we make the
appropriate logistical changes. Thank you.

(Whereupon, at 2:30 p.m., the
PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

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

/s/Carleton J. Anderson, III

Notary Public # 351998

in and for the Commonwealth of Virginia

My Commission Expires: November 30, 2012