UNITED STATES PATENT AND TRADEMARK OFFICE

PUBLIC ADVISORY COMMITTEE MEETING

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MR. FOREMAN: All right, if everyone's ready? We'll go ahead and call this meeting to order, the public session. I guess the first order of business is for Peggy?

MS. FOCARINO: Right, okay. I'm going to start off by giving you the usual operational and pendency quality initiatives that we're currently doing. And I'll turn it over to John Love, who will talk a little bit about some policy updates.

So here's where we ended up at the end of the Fiscal Year, we had a little over 450,000 applications filed; Utility Plant Reissue Applications, and almost 28,000 design applications. We talked a little bit about our filing growth, we had anticipated a 5 percent filing growth rate over '07, and we actually realized 5.7 percent growth rate.

Our attrition rate, right there 9.5 percent, but that also includes promotions and retirements. So if you back those out we
experienced a little under 8 percent attrition rate for examiners who left the agency.

And then just to give you a look at our examining staff, almost 6,100 examiners currently, 414 SPEs, we have 100 Quality Assurance Specialists, we have a growing number of trainers, speed type trainers in our Patent Training Academy, so we have 48 of them.

MR. PINICOS: Does that attrition come with the one that you talked about, John, that's here on this factoring out promotion, retirements, etcetera?

MR. DOLL: The 7.9 percent below estimate takes promotions and normal retirements.

MR. PINICOS: And so the 9.5 includes the promotions and retirements?

MS. FOCARINO: Yes, right and basically that represents a loss in production line employees. So then just to give you the filing trend over the last dozen years or so. We had a growth rate of 5.2 percent last year, and then this year, I said we just had 5.7 percent growth
rate. If you want to take a look --

MS. FAINT: Do you know if more recently there's been a different filings?

MS. FOCARIO: We are -- we don't know that right now, but we're looking at it and we have our forecasting office that's currently looking at that to -- for any tie to the economy. Trademarks definitely has a more direct link to the economy and their filing trends then we have experience in patents.

But this just gives you a look at our filings. Our filings continued to grow, first actions are increasing in our backlog if you take this out to the out years you will actually -- the lines will actually meet at some point and cross. So we are hopefully by the next couple of years be going to be into our backlog. So getting a little better on that.

Here's a look at the Pendency. The first action pendency, as well as total pendency in each of the technology centers. So we have quite a range from a low of 19.5 months to first
action in 2800, to a high of 20 -- 32 and a half months in our computer or communications area and the same thing for total pendency. High total pendency, again in the communications area and the lowest first action pendency in 2800.

We had a hiring goal for the last 2 fiscal years of 1200 examiners. We exceeded that hiring goal in '07 we had 1215 hires. In this past year we've brought in 1211 hires. And then you can see the attrition rate though this past year was 583 examiners. So we see a continuing improvement on our retention rate and obviously that's important for us as we look at reducing the backlog.

We had a three and a half percent allowance error rate in 2006 and 2007. This year in 2008 we had a 3.7 percent allowance error rate, that's the end checking. The statistical validity of this is plus or minus a half of a percent so we're still -- all those three numbers there are basically within the same statistical error rate range. Our in-process compliance rate continues
to improve. We had 90 percent in 2006 and we
finished 2008 at 92 and a half percent. And if
you go back and look at our baseline year, which I
think was 2002 we had an 82 percent in-process
compliance rate. So we've put a lot of initiative
in place to try and improve the in-process
quality.

The error rate has been all over the
place as you can see. But lately from 2005 on you
can see the trend downward and hopefully we can
continue to improve on that. And this is the --
we've had this historical measure for the last 30
plus years, and this is the end checking of the
work.

MR. DOLL: That low point in 1981 is
when Peggy and I were examiners.

MS. FOCARINO: And then the allowance
rate. And you can take a look at this, the
allowance rate has gotten as high as 72 percent
back in the late '90s and we finished 2008 at 44.2
percent.

MR. FOREMAN: How is it trending --
MS. FOCARINO: Right now first quarter to date we typically experiences a low allowance rate at the beginning of the fiscal year. So it's around 40 percent and looking back at last fiscal year that's where it was also. So we experienced a gradual increase.

This just shows the two together, the two previous lines. They track pretty much together, the error rates and the allowance rates.

MR. WITHERSPOON: May I speak?

MS. FOCARINO: It's up to the chair.

MR. FOREMAN: Oh, please don't ask me.

MR. WITHERSPOON: Could you back up?

MS. FOCARINO: Sure.

MR. WITHERSPOON: One more.

MS. FOCARINO: One more, okay.

MR. WITHERSPOON: What do you attribute this to?

MS. FOCARINO: The sudden decline in the allowance rate? I would say there's a lot of quality initiatives that we put into place over the last few years and I think that they have had
an impact on the allowance rate. There's no doubt about that. You know, some would look at the quality of the incoming application also, but we really don't have an objective way of measuring that. But --

MR. WITHERSPOON: Okay. Thank you.

MS. FOCARINO: I keep going back. You don't want to go back. Okay. Let's talk about some of the initiatives. Really focused on recruitment and retention efforts. We've got our Training Academy, which is modeled after a University style training. We've expanded telework in various ways, we've got pilots going on that are looking at alternative approaches to examination, and we're working with our stakeholders and a lot of these efforts. We have our Peer Review Pilot; we've got an accelerated exam program. We began a first action interview pilot this past year, we've experienced an increase in our electronic filing, and we are doing a lot on a work-sharing front with other patent offices around the world.
So I mentioned our hiring previously 1211 examiners in our strategic plan we anticipate hiring that number for each of the next several years so we would have an examining corps of 8400 examiners by 2014. So that's a lot of examiners. We've really put a lot of effort into our recruitment. We've got television ads, we do newspaper print, magazines, we've got radio ads, we've got Internet things initiatives going on. If you go on our website and click examine the possibilities you'll see quite a nice little video of you know the career opportunities here as a patent examiner. We've had a lot of career and job fair participation and really gone out to a lot of different venues this past year to try to reach out to every segment. From college students to second and third career types, to downsizing private industry, so.

And another thing we've been doing is partnering with universities. We go to universities before we actually do interviews and we have a lecture that's given to students to give
them a really good idea of what a patent examiner does. And then what's also helped us in our recruiting efforts and why we've been able to achieve our goal the last couple of years, is we have recruitment incentives in place, which is a monetary recruitment bonus, and I think this has really helped us get good, very good quality candidates. Vince?

MR. GARLOCK: Sorry to interrupt, but you could just -- if I can take this slide back. I have a question for you.

MS. FOCARINO: Okay.

MR. GARLOCK: The exploratory of alternative approaches to examination in collaboration with stakeholders. What does that entail?

MS. FOCARINO: Well, we've had -- we had the PPAC effort this past year, where we had gone out and had focus sessions. I think there were 10 different focus sessions, and we solicited input from various stakeholders, including our examiners of what does the IP system really need, and what
would you like if you would have alternative
approaches, or alternative products, or anything
that would change the IP system. So, we have
complied the list and cooperation with it was a
PPAC effort and probably the next steps will be to
decide you know, what to do.

Some of the things that are around there
that are in the fallout in the top 10 suggestions
we are currently doing or have done pilots on.

MR. GARLOCK: Thank you.

MS. FOCARINO: University outreach, done
a lot in this area. We have a couple of our
PS-15's; some of our best -- that we took offline
to just travel around to different universities.
To educate students on intellectual property and
to really get them thinking about careers in
intellectual property and understanding the
impacts of intellectual property, from downloading
music illegally and that kind of thing. And then
just getting our name out there, the sort of the
branding of us USPTO and some of the good things
that we have to offer.
So we've been partnering with NC State and we're trying to develop a curriculum, so that students can actually take certificate courses in IP and hopefully this will be a potential pool of future hires that would come to us with a knowledge -- a pretty good knowledge of the patent process, and IP when they come in the door.

And then we're currently working with MIT to develop some courses that again would prepare students to be patent examiners or to be functioning in the intellectual property environment. And then Eastern Michigan University has also had an interest in partnering with us, to develop programs.

So there's a lot of potential here and we're pretty excited about it and also getting university professors, experts in certain technologies to come in and train our examiners, because we really need people to come in and help us train, and to keep examiners abreast of what's going on in the field.

This gives you sort of an idea of with
all the hiring what's happening to our experience level. The first and the left shows you the average grade of our examiners is currently just over grade 11, but then the years of service you can see that on average, examiners have less then six years of service in the office, and by Technology Center if you look at the lowest; the yellow and the sort of the light blue lines, those are the computer, architecture, software, communications, multiplexing area that we've done a lot of hiring. High growth areas and very low seniority level, so that presents some management challenges as you can imagine.

We've really focused a lot in the last couple of years on retention. Also, I think over the years we've been really good at setting a hiring goal and meeting it. But then we didn't put a lot of resources or really think a lot about how to put initiatives in place to retain good examiners and to really be an employer of choice. So we've focused a lot on flexibility, I think we have some extremely flexible programs.
We have telework initiatives, which allow our examiners to work from home one day a week, and then we have a hoteling program where we've allowed our GS-12 examiners and above to actually work from home four days a week. And it's -- we currently have about 1500 patenting examiners in our hoteling. And then we have very flexible work hours; examiners can come into work anytime between 5:30 a.m. and 11:30 a.m. in the morning, and most of the new examiners come in about 11:30 a.m. in the morning.

And then recruitment and retention bonuses, the recruitment bonuses are paid out over the first four years of and examiners employment here. So really after the first couple of years it functions as a retention bonus. And we only have two years worth of data right now, because the recruitment bonuses have only been in place for two years. But we're really anxious to see the data as we get to the third year and beyond that, because what we've seen historically is if we can keep examiners after the third year, then
our attrition rate goes down to less than 4 percent.

And the higher general pay refers to a special pay scale that we're currently on and we hope to get approval for another 2 percent, special pay request from OPM. Bob?

Yeah. The Training Academy was begun in January of 2006. We've had over 2000 examiners go through the Academy. It really is an efficiency of scale economy of scale force. We have more consistent training to larger groups of examiners, and we continue to refine the curriculum and the Training Academy will not only continue to improve it. And I think that we've gotten some very good results out of it, but as I said, we continue to improve that.

And then last year we had a foreign examiner training class, where we trained I think 6 -- was it 16 John? Sixteen foreign examiners from 6 different countries put them through pretty much the same curriculum as our U.S. examiners and that was very successful. And then the Chief
signed his position as -- and currently we don't
have anyone in that position, but it looks like
we're about to fill it with someone. So that
we'll have a full-time person here to train our
examiners in some area of technologies, probably
going to be like multiplexing. We have high
growth, a lot of new hires and we need someone in
here that can really focus on heavy technology
training. And free up our SPE's, to train more
examiners that have gotten out of the Training
Academy already, but still need oversight.

So this is our you know part of our
effort and part of our strategic plan initiative
to bring in people or resources from the outside
to help us train our new examiners and our
examiners who are already here.

MR. PINICOS: Speaking of what you just
mentioned Peggy, how does that transition with the
thousands of new examiners going the Corps? How
do you see the high level of training -- how's
that -- how's the -- tapes supervision working
out. That there's I imagine a challenge when you
have a certain number of SPE's and mentors that
come into facility growth.

MS. FOCARINO: Right. And what we've
developed is a transition team, so each technology
center has a transition team, and they work
closely with the Training Academy to assimilate
the examiners once they get out of that eight
months training, into their technology centers and
continue to be trained and mentored, and so it's a
continual process. And as I said, we continue --
it's trying to -- I guess there's some feeling on
the part of some of us, and I probably would have
had this feeling too that no one can train an
examiner better then I can. So we get an examiner
out of the training academy, and you know, I think
what we're seeing is, the training and the academy
is getting better and better, so that they -- when
they come out, the examiners come out of the eight
month program, they're very -- much more
independent, and the supervisors are pleased with
the level of competence that they're getting from
the examiners for the most part.
So it seems to be the transition team, in working -- in reaching out to those examiners when they're still in the academy, seems to be working well, where you develop the relationships earlier and you don't wait until they get to the technology center. So we're doing a lot more of that, it seems to be helping. Robert.

MR. BUDENS: There's two sides of this position, Peggy. Are you having one of those for each tech center?

MS. FOCARINO: No, we're not. And, you know, we currently have one person it looks like that we will bring in. And we have had people function in this position, but for a very short term. We had a nano tech boot camp and we had a couple of other types of sessions like that that were very technology specific, where we brought in an expert for a period of time, had them teach a course. This idea really is to have someone in here as a full-time employee that can continue to train. But there's not a need in every technology, so we're focused first in the areas of
the greatest needs, and I believe that this
position that I'm talking about, that it looks
like we're ready to bring someone in, would be the
multi-plexing area, so --

MR. BUDENS: What's the criteria for
this position? I mean does this person have to
have some intellectual property experience out
there or is it purely a --

MS. FOCARINO: It's purely --
MR. BUDEN: -- technology --
MS. FOCARINO: -- purely technology.

We're looking for PhD's that, you know, that are
experts, and whether it's multi-plexing or
cryptography, some of the areas that we have a lot
of newer examiners and we need to train large
numbers of them. And then we have -- and I'll
talk about this in a little bit, we have a new
technology center that's focused specifically on
networks, multi-plexing, cable and internet
security, and we really wanted to bring people in
from the outside to help train that group of
examiners.
Hoteling program, I think it's right now we have about 1,500 that are participating in it. Examiners can work from home, as I said, almost full-time, four days a week. And our goal for each year until 2014 is to add 500 examiners to the program. We have a lap top program where we allow examiners that have been here for one year and that are grade nines to have a lap top if they're performing fully successfully. And the idea here was to have them have the ability to work overtime from home. It's a very successful program. We've gotten gains in production, and also increased examination time, and obviously, improved job satisfaction.

So these types of programs with increased production and increased examining time will definitely, you know, work towards that, getting into that backlog issue.

We started a hoteling pilot program the year before last and it was very successful. So now we have a program where we have almost 90 technical support staff hoteling. And they have
very objective productivity and quality measures
also.

And we have our new tech center, 2,400
is supported totally by a virtual technical
support staff, and so that's very interesting.
Some of the examiners didn't even know that their
technical support staff was not located on campus
here.

MR. FOREMAN: The same rules apply for
them when they -- out this?

MS. FOCARINO: Right; this is the
outreach project with the focus sessions.

Interviews were conducted to get feedback. We got
over 1,000 comments, and we tried to hit every
segment of our stakeholders. There's a lot of
suggestions, from deferred examination to, you
know, different levels of examination, interviews
ey early on, very early on with the examiners, that
type of thing.

MR. PINICOS: How about some of the
comments that weren't suggestions?

MS. FOCARINO: Oh, some of the comments,
well, Andy -- I think is --

WENDY: He's here.

MS. FOCARINO: Andy's intimately familiar with the 1,100 comments.

MR. LOVE: Painfully familiar.

MS. FOCARINO: Peer review pilot, this is very interesting, of course. We began the pilot last year and was isolated to tech center 2100. We only had 75 applications volunteered, and you know, ten pieces of prior art submitted per application is the max, but the average that we got was four. We extended the pilot recently to the business methods area, class 705. That was an area that expressed a desire to participate, so we're monitoring the participation rate and we'll see how that goes. But as you can tell from that, there's not a lot of participation in this pilot.

MR. FOREMAN: What's the overall thought on the program? I mean is it speeding up the examination process or is it really not providing --

MS. FOCARINO: It's not speeding it up.
And I think in the vast majority of those 75 cases, the examiner found the same art that was submitted or they didn't think that the art that was submitted in the peer review process was any better than the art that they had found. But there were some cases where the examiner did use the art submitted, they thought it was better, but not ---

MS. BYRNE:: I think it's art ---

MS. FOCARINO: Yeah, seven, yeah ---

MS. BYRNE:: -- peer reviewed art.

MS. FOCARINO: -- seven.

MS. BYRNE:: Yeah.

MS. FOCARINO: So it's not a large number by any means. But I think our, you know, our view on this is that any time an examiner can get prior art before them and it's good prior art, we welcome that. The accelerated exam program began a couple years ago. And this is one that we've experienced an increase in participation level, but, of course, the applicant has to provide us more information up front, and they
have to file electronically, they have to agree to
an interview, and they also have to limit their
claims.

So we've had 358 allowed since the
program began. The average number of days to
complete prosecution was 182, and the minimum was
18 days. A pretty high allowance rate for this
program, almost 70 percent allowance rate for
fiscal year '08, and it's been very, very well
received. The participants feel that not only do
they get a faster decision, but they have a very
high quality patent.

MR. FOREMAN: When you compare that to
the allowance rate overall of 40 percent or 44
percent, why would you say that there's such a
disparity between the two numbers?

MS. FOCARINO: Well, I think --

MR. FOREMAN: Is it bad comments coming
in on the other side and these are the ones that
are well thought out?

MS. FOCARINO: I mean these are the ones
where the applicant has to submit examination
support documents. So they've already gone to the
trouble of doing their own search. And what we
are finding I think is that the claims are more
defined based on what the art -- the art that was
found in the examination support document, that
the claims are more focused and --

MR. PINICOS: Generally the object is
investing a lot of money, as well, so they're ---

WENDY: And they pick and choose because
of that, they pick and choose which applications
they want to file one of these for.

MS. FOCARINO: Yeah; so I think it's
definitely, you know, there's a niche here for a
certain segment of our users. And I just said
we're experiencing an increase in this, and you
can see that we've, you know, had a steady
increase in the number filed, that's per month.

First action interview pilot, applicant
has to request to participate. We began this
pilot recently, and we don't take these
applications out of turn. And what the examiner
does is, a preliminary office action, which is
like a condensed first action, they mail that to
the applicant, then the applicant can come in and
request an interview or not, but the idea is to
get the examiner and the applicant talking to each
other very early on in the prosecution. And this
is being piloted in two work groups in tech center
2100, and Wendy is the one that started this
pilot, so -- and we're currently -- it ended
officially on October 31 --

WENDY: October 31.

MS. FOCARINO: -- but we're currently
--- we don't have a lot -- there's application in
the cue, but we don't have a lot of data yet as to
the disposition of those, so we're going to be
talking about what our next steps are, are we
going to extend it or expand it or what we want to
do. And obviously we need to talk to Robert about
this, because he was, you know, agreeable to doing
a very, you know, limited pilot in a limited area
for a distinct period of time, so we'll be talking
over that -- those next steps with him.

WENDY: Right; the one thing that we do
know is that it was very popular, because out of a
fairly small targeted number of applications
eligible, we received something like 430 odd
requests, so it was actually more popular than we
expected. But because we don't take the
applications out of order, we don't know whether
yet --- we don't have enough data to determine
whether or not this is an efficiency for the
office, or, you know, how well it's received by
the examiners, how well it's received by the
applicants, we don't know that yet.

MR. FOREMAN: What's the method of
collecting that data?

WENDY: From the efficiency perspective,
it would be similar to accelerate examination.
Are we receiving fewer applications for disposal,
meaning does the early meeting lead to a meeting
of the minds and a patentability disposition
earlier, as well as the allowance rate, items like
that. We're doing a survey of the examiners to
see whether they liked the process, didn't like
the process. And from the applicants, it would be
do we continue to get -- do we continue to see

increases in the number of requests, you know, do

they tell us they have an interest in it.

The reason we did it as a pilot is,

first, we didn't know what the -- what the demand

would be, but also so you can find any bugs in the

system before you expand it. And we did -- for

now, each one of those applications requires a

manual tracking by management in the technology

center, because it's kind of exception processing.

And because it was so popular, before you expand

it, you don't want to have to do exception

processing for thousands of cases. So we'd have

to work out some of the bugs like that before we

extend or expand it.

MR. FOREMAN: Is a 24 day test typical

for a pilot?

WENDY: I'm sorry, 24?

MR. FOREMAN: You ran the pilot for 24

days?

WENDY: No, we ran it for three months.

MS. FOCARINO: Yeah, I'm sorry. The
October 7 is just when we had the last look --

MR. FOREMAN: Oh, okay.

MS. FOCARINO: -- at how many, but it actually began in -- at mid year, I believe, right, Wendy?

WENDY: Something like that.

MR. FOREMAN: So you've got good data that I can utilize?

MS. FOCARINO: Right.

WENDY: Right.

MR. FOREMAN: Okay.

MS. FOCARINO: Okay. Electronic filing, a huge increase in what we were seeing in 2005.

We had a very low percentage of applications filed electronically. And we finished out 2008 with almost 72 percent of our applications filed electronically. And we continue to work with firms, corporations, to try to, you know, get them familiar with the system and hopefully get them to use it. This you can't really see very well, but if you look at your handout, this is a structure, and we were piloting this this past year in
patents, and I showed you how many examiners, we
had almost 6,100 examiners, but yet we continue to
have the same structure and operations in terms of
oversight.

So we piloted having a layer between the
Deputy Commission for Operations and the group
directors in each of the technology centers, in
having one person per discipline as an Assistant
Deputy Commissioner. And although for the
electrical area we have two because they're so
large. And basically -- so they're in those red
boxes down there.

And we got final approval for the
structure, so we'll be permanent now. And I think
it's working out very well, because as the
operations continue to grow and grow, it's harder
to manage. It's also hard to be consistent, and I
think it's good to have discipline focus at the
Assistant Deputy Commissioner level. Robert.

MR. BUDENS: Peggy, in this chart, I'm
starting to see something crop up in the
organizational pages, and I haven't figured out
what they're doing. And the position is called
work group managers?
MS. FOCARINO: Right.
MR. BUDENS: I'm trying to figure out
what they are and where they would fit in these
charts and what their duties are and what have
you, because this is -- this is another whole new
-- looks like a whole another level of, you know,
layer of management again now and -- being added
in.
MS. FOCARINO: Uh-huh, right. You won't
see to that level on this chart. But what's been
happening is, in order to manage the growth, we
had to figure out how not to continue this. The
Assistant Deputy Commissioner pilot in that
position was really intended to manage the growth
in the patent organization, but also keep the
number of SES'ers to a manageable level. And then
we looked to layers below the group director, how
are we going to manage at the art unit level, and
should we really have 750 -- 800 supervisory
patent examiners when we have 8,400 patent
examiners, and what could we do below the group
director level to increase the span of control.
So there are pilots going on in different areas
where you would have one speed that manages a
larger group of people, whether you call them a
work group manager. They're not SES'ers, they're
speeds that are functioning at sort of a broader
level.

You know, 2600, tech center 2600 has a
structure where they have speeds that are focused
on training mainly, and then those that are
focused on more administrative, and, you know, the
ER/LR personnel aspects, you know, those kind of
things.

So there's different things going on,
but it's an effort to try to pilot different
organizational structures to manage the growth.
And with a lot of junior examiners, I had showed
you the experience level, we don't have the pool
of candidates necessarily to move into the speed
jobs that --

MR. BUDENS: Well, where are these
people now going to fit into the examiner's chain
of command?

MS. FOCARINO: Right.

MR. BUDENS: Okay. I mean is their
first line supervisor their speed and now their
second line supervisor a work group manager, or is
it still the tech center director? Have we
interjected a whole new -- another layer of line
management, you know, into the chain of command?
And if so, I certainly haven't seen any, you know,
notice of anything, the examiners explain, you
know, maybe I missed them or something, you know,
how they're functioning or what their
responsibilities are going to be and how we're
supposed to be functioning with them ---

MS. FOCARINO: Right.

MR. BUDENS: -- et cetera. This is just
something that's come out of the, you know, we
started getting wind of it here just in the last
week or two and going, okay, what's going on here.

MS. FOCARINO: Yeah; well, there will be
different -- it'll be different for different
areas. And 2600 has basically subject matter experts in those positions, so they are not in the waiting chain, if you will. So it's not necessarily that there's another person in the waiting chain. But certainly examiners should know who their rating official in and their approving official is. But we can sit down, you know, in the next couple of weeks and I can walk you through. There's a lot of different permeations, what's going on in different areas.

MR. BUDENS: Maybe we can talk about it at, you know, our next meeting ---

MS. FOCARINO: Okay, sure.

MR. BUDENS: --

MS. FOCARINO: Right; so on October 1 we created a new technology center, 2400, and it's the network multiplexing cable internet security area. And we put 300 new examiners in there, and we put other examiners in there, too, from 21 and 2600. And also, we took speeds from 2100 and 2600 to form this new technology center.

But it was to group like technologies, a
very high growth area, and to allow us to focus
training resources on this particular group early
on in the training academy by having them all
hired together and trained together and then -- in
the technology center. So we're hoping to get
some good results from this, too. And that's all
for me. So if anybody has any questions, I'll
turn it over to John Love. You don't have any
slides, right?

MR. WITHERSPOON: Can I make a comment?

MS. FOCARINO: Sure.

MR. WITHERSPOON: And just pass along an
idea.

MS. FOCARINO: Okay.

MR. WITHERSPOON: That I first heard
about it long before most people, perhaps before,
back in about 1965, when Ed Brenner was the
Commissioner. It was very common for the
Commissioner to be the luncheon speaker at the
annual ABA meeting year after year. And
Commissioner Brenner used to provide a lot of data
and statistics of the type that we've just seen,
but he also made a point that a lot of the good
work of the Patent Office goes unnoticed and is
not reflected in these data.

In the sense that -- a lot of the work
involves narrowing -- from their condition when
they were first -- until the time of issuance.
And this number such as -- and issuance is
definitely -- but nevertheless, it's valuable work
and it's important work.

And I just wanted to pass that on. I
don't know if a pilot could be measured, but with
the advances and ingenuity of people like you, it
seems to me -- and you haven't. It might be worth
-- something like that -- because I think -- and
if it could be done, I think it would be.

MS. FOCARINO: That's a very good point.

Yeah, there's a lot of good things that are done
that are hard to capture in data form.

MR. WITHERSPOON: But it's crucial.

MS. FOCARINO: Right.

MR. WITHERSPOON: I mean I've been in
this business since 1968, and I actually -- that
this -- so -- issue --

MS. FOCARINO: Thank you.

MR. WITHERSPOON: So, you know -- can
figure out a way to do it, particularly I think --

MS. FOCARINO: Okay ---

MR. LOVE: Yeah, just a few topics I'd
like to go over briefly. The oral argument in the
claims and continuations appeal is scheduled for
the first week of December, and I believe it's
December 5. A big case that a lot of us have been
waiting for has been decided, as you know, I'm
sure, the Bilski Decision under 101 issue, the
CAFC affirmed the office and the rejection of a
process claim that the examiner had made based on
the fact that it wasn't a proper process claim
under Section 101 of the statute. And the CAFC
pretty much adopted our position in terms of the
rationale as to why that claim wasn't a proper
process claim. So we have a team that's -- we've
been waiting for this decision to do a revision of
our 101 guidelines, and we have a team together in
the office that will be making adjustments to the
guidelines to take into account the Bilski Decision, and also the Nightan case, where the -- that's final Supreme Court has denied seniority with respect to the patentability of the -- claim, so that issue is at least dead for now, we think, and the guidelines will be revised to take into account the Bilski Decision.

One thing -- I'll just make one general comment about that decision. The issue from our perspective in that case was rather narrow, that was what's a proper process claim under 101 of the statute. And the court adopted our suggestion, and we think it's founded in the Supreme Court decisions that you need a transformation of an article to a different state, or the process itself needs to be machine implemented, and we think that's the holding from the Benson -- cases of the Supreme Court, so it would be along those lines.

Now, there's a lot of other discussion in that case, and we're going to have to go through that and cipher through it as to how much
of that is going to be adopted into the
guidelines, but that's our view of it. I made a
gratuitous comment I guess that they're
reaffirming the holding in Stay Street that
business methods can be eligible subject matter,
that really wasn't at issue in the case, from my
perspective, but they decided that they would make
a comment on that. And they made some other
comments that we think were along the lines of --
but should be helpful, I guess, and we'll be
looking at that in terms of fashioning our
guidelines. The last thing I'd like to mention is
--

MR. COLARULLI: John?

MR. LOVE: Yeah.

MR. COLARULLI: I was just going to ask
you if I could get the public input into the
decisions of the guidelines.

MR. LOVE: To this point, our process
has not been to involve the public in that. Now,
it's very possible that this -- similar to the KSR
guidelines, it may be considered a significant
guideline document that would have to go through
the OMB process. It's quite likely that they'll
have to go through that review process, in which
case then it would be published and I think would
be, you know, comments would be acceptable.

The other issue is that from time to
time my office has been -- we've been issuing
either clarifications, memos, or memos on policy
issues that we direct to the core, and we made a
decision a few months ago to go back and put all
of these on the web page so that they would be
available to the public, and we go back several
years now -- internal memorandums, and, of course,
they would leak out and there would be all of
this, you know, is this public, is it not public,
what's the big secrecy, so I said, well, let's put
this all to an end, we'll just put them up on the
web, and they're under -- to get to it, it's under
the law and policy tab, then you click on patents
and you go to the memos to the court. So we have
-- we've put up several, not only the ones that
I've issued recently, but some that go back many
years, so we just wanted to take the mystery out
of it and get it all out there in the public.

So that's the -- that's basically
updating the policy area, other than, you know,
the IDS rules and the AC, I think it's been
announced previously that those won't be
implemented during the current administration.

MR. FOREMAN: Any other comments,
questions? I move to adjourn. Second?

MR. PINICOS: Sure.

(Whereupon, at 3:14 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, 2008