

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, February 4, 2016

PARTICIPANTS:

PPAC Members:

ESTHER M. KEPPLINGER (Chair)

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the United State Patent & Trademark Office

BOB BAHR, Acting Deputy Commissioner for
Patent Examination Policy

DANA COLARULLI, Director, Office of
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ANDREW FAILE, Deputy Commissioner for
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ROBIN EVANS, Director, Technology Center

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PARTICIPANTS (CONT'D):

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VALENCIA MARTIN-WALLACE, Deputy Commissioner
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PAMELA SCHWARTZ, Vice President of Patent
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PTAB:

NATHAN KELLEY, ACTING CHIEF JUDGE, PTAB

SCOTT BOALICK, DEPUTY CHIEF JUDGE, PTAB

UNION MEMBERS:

CATHY FAINT, Vice President of NTU245

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P R O C E E D I N G S

(9:00 a.m.)

MS. KEPPLINGER: Thank you for coming. It's great to see all of you again and some of our new members. I think maybe what we should do, since we have a few new members, is go around the room and everybody say who you are.

And maybe, Charlie, you could start over there -- Charlie Pearson?

MR. PEARSON: I'm Charlie Pearson. I'm the Director of the International Patent Legal Administration here, and I'm subbing for Mark Powell today, who's the Deputy Commissioner for the International Patent Cooperation.

MR. BAHR: Hi, I'm Bob Bahr. I'm the Acting Deputy Commissioner for Patent Examination Policy.

MS. MARTIN-WALLACE: Good morning. I'm Valencia Martin-Wallace, the Deputy Commissioner for Patent Quality.

MS. CAMACHO: Good morning. I'm Jennifer Camacho. I'm the Chief Legal Counsel at Gen9, Inc., in Cambridge, Massachusetts, and I am a new PPAC member, so I'm honored to be here today.

MR. LANG: I'm Dan Lang, member of the PPAC and Vice President of Intellectual Property at CISCO.

MR. THURLOW: I'm Pete Thurlow. I'm a member of PPAC and a new shareholder in Polsinelli Law Firm.

MR. FAILE: Hi. Andy Faile, Deputy Commissioner for Patent Operations here at USPTO.

MS. LEE: Good morning, everyone. Michelle Lee, Director of the U.S. Patent and Trademark Office.

MS. KEPPLINGER: Esther Kepplinger, Chair of the PPAC.

MS. JENKINS: Hi. Marylee Jenkins, a member of PPAC. And since we're doing law firms, Partner at Arent Fox in New York.

MR. WALKER: Mike Walker, PPAC.

MS. MAR-SPINOLA: Good morning. Julie Mar-Spinola, Fin John Holdings, Chief IP Counsel, and PPAC.

MR. SOBON: Wayne Sobon, PPAC.

MR. GOODSON: Mark Goodson, PPAC.

MS. SCHWARTZ: Pamela Schwartz. I'm the President of the Patent Office Professional

Association and a member of PPAC.

MS. FAINT: Cathy Faint, Vice President of NTU245, member of PPAC.

MR. SEIDEL: Rick Seidel, Acting Deputy Commissioner for Patent Administration.

MS. KEPPLINGER: Thank you all, and welcome. And for the members of the public that are with us in person and perhaps joining us online, we appreciate your participation, and should you have any questions or comments along the way, we'd be happy to take those.

So, we have a full agenda today, and it's my pleasure to have Michelle Lee make remarks.

MS. LEE: So, thank you very much, Esther, and good morning again, everyone. It's a pleasure to have you here at the United States Patent and Trademark Office.

It's always a pleasure to welcome new members to PPAC, and Jennifer mentioned that she is a new member, and we are delighted to welcome her here. Like all committee members, Jennifer brings a wealth of experience to her position. In addition to her work as Chief Legal Officer of

Gen9, she's represented multiple clients in the life science industry, including biotechnology and synthetic biology companies; pharmaceutical and medtech companies; investment banks, venture capital firms, and other industry stakeholders. So, we very much look forward to her contributions and working with her.

I also want to thank our outgoing PPAC member Paul Jacobs for his service on the committee. He's done a tremendous job, and thanks to Paul as well.

As I'm sure you're aware, it's been anything but a quiet few months here. Just last week we experienced a blizzard that forced the federal agencies to close their offices for several days. Fortunately, thanks to our telework program, 77 percent of all USPTO employees were teleworking at peak times in spite of the snow. So, you all know we're a fee-funded agency, and we do not get revenue unless we produce work and work products. So, that makes a huge difference both to our stakeholders but also to our financial situation.

Of course, as well, on December 22nd we

suffered another unexpected challenge when we had a major power outage that resulted in damaged equipment and required shutdown of many of our USPTO online and information technology systems, including filing, searching, and payment systems used by our customers and examiners across the country. John Owens later on today will provide more details on the outage and its impact during his presentation, and he can answer questions that you may have about that event.

But I do want to thank all of our stakeholders and employees for their patience and support in this outage and to thank, in particular, the hundreds of employees and contractors and service providers who literally canceled their holiday plans and worked through the holidays, without my even asking, to restore our systems quickly and promptly within a matter of days. It was truly a stellar team effort, and I think it shows the repeated dedication that I have seen in leading this agency of our team in fulfilling the mission and servicing our stakeholders.

I should also mention that for the first

time in our agency's history we now have four permanent offices up and running with regional directors leading the helms of each of those offices. In addition to Christal Sheppard in our Detroit office and John Cabeca in our San Jose office, we now have Hope Shimabuku leading our Dallas office and Molly Kocialski leading the Denver office. Both Hope and Molly, the two new recent additions, are highly qualified and welcome additions to the leadership team. In the months ahead, they will be playing a key role in developing and delivering the full potential of these regional offices to the benefit of really innovators and entrepreneurs across the country. And as many of you know, I came to the PTO first as the regional director of the Silicon Valley office, and I am very excited about the potential that these offices have for really helping the PTO execute on its mission and servicing our stakeholders.

Now, before I turn things over to our various program experts for their updates, I'd like to briefly touch upon a few other issues of potential interest to the committee and our

broader patent community.

Early last month I gave a keynote at the Consumer Electronic Show -- CES -- in Las Vegas. I am told that I was the first director of the United States Patent and Trademark Office to speak there in its nearly 50-year history. The miles -- and I will say, literally, miles -- of exhibits that were there had the latest cutting edge innovations, and we had the opportunity to speak directly with many of the entrepreneurs and innovators that were there at CES, and it really speaks to the spirit of discovery and innovation that President Obama spoke to in his final state of the union address. If I look at the halls of CES, I am very optimistic about the future of our country and innovation in this country.

Also for the first time, we had a very talented team of USPTO team members on the ground in Eureka Park. And for those of you who don't know, Eureka Park is the part of the CES exhibit floor where the startups are. And that was absolutely the right decision. We got so many questions about the basics of: How do I file a patent? How do I register my trademarks?

What's the difference between a trademark and a patent and a copyright, and how best can I use those intellectual property tools to achieve the business goals.

So, we were very excited to be there, and we look forward to additional opportunities in all technology areas where we can be on the ground really sharing with the public how intellectual property can help them achieve their business goals. So, we're very excited about that.

Of course, public engagement has been a critical component and one of my top priorities on the Enhanced Patent Quality initiative. Valencia Martin-Wallace, our Deputy Commissioner for Patent Quality, and her team will provide details of our exciting progress momentarily. I think she's up next.

Among other things, you'll hear about the strides that we are making on improving performance and tracking progress on our Enhanced Patent Quality initiative. And you can keep up with the progress that is occurring here at the PTO by tuning in monthly to the patent quality

chats on the second Tuesday of the month. If you cannot attend live or via Webinar, they are archived, so I would encourage you -- each month they feature a deep dive into a different topic. There are lots of topics being addressed and discussed in our Enhanced Patent Quality initiative. We've archived them, so even if you've missed it, go back and take a look at it. You may not be interested in all the topics, but you may be interested in some, and it's never too late to catch up. So, we'd love for more and more people to follow, participate, provide input as we begin what is really a long-term initiative on behalf of the agency that we are completely committed to.

You'll hear also later on today updates from our Patent Trial and Appeal Board, which is ultimately providing a faster, lower-cost alternative to district litigation to test the validity of a patent.

And, not to steal any thunder from Shira or Mark's presentation, we're excited about the work that we're doing through their office in streamlining the patent examination process

internationally. The centerpiece of these efforts is the patent prosecution highway, otherwise known as PPH, which provides for fast-track examination in participating offices. Our stakeholders report that PPH provides significant savings to U.S. applicants, as much as \$10,000 or more in certain applications.

At the end of the day what we are striving for in 2016 and beyond is really an international patent system that operates in the efficient, balanced, and easy-to-engage-with manner. Our recent development I'm particularly pleased to report on is Global Dossier. In its initial phase, it provides all stakeholders -- both examiners and the public -- with access to dossier information.

So, what's dossier information? It's patent filing information of all of the IP five offices. That's United States, Japan, Korea, and the European Patent Offices through a single portal. So, you can now go into a single portal to access the patent information for all those offices. This not only saves time and money by having files in a single place but also improves

patent quality by giving examiners and the public access to more relevant prior art, especially the hard-to-find foreign prior art references, earlier in the examination process.

And, of course, there's much more on the agenda today, including updates on operations, budget, and patent reform legislation.

So, let me just conclude by thanking all of our PPAC members for your continuing wise counsel and invaluable contributions to our operations, and I hope you find today's program both helpful and worthwhile, and I thank you for your contributions.

MS. KEPPLINGER: Thank you very much, Michelle. We really appreciate your leadership as the Undersecretary and Director of the USPTO in pushing forward with these important initiatives and focusing on issues that are so important to applicants, like quality; and the Global Dossier has been extremely well received in the public. It's a very valuable tool. So, thank you for working on those projects.

Valencia, I'd like to have you speak.
Valencia Martin-Wallace.

MS. MARTIN-WALLACE: Thank you,
Esther. And good morning to everyone.

I'm very excited to be here this morning, because as you all know we've been working really diligently on these EPQIs -- quite a few of them. Executive leads have been working and coming up with innovative and really aggressive programs to move this initiative forward.

I would like to focus on a specific for today to tell you what we've been doing, the progress we've made in them, and give you an opportunity to give us your feedback. So, I'm going to jump ahead just to remind everyone of the foundation our quality efforts: Pillar one, excellence in work products; pillar two, excellence in measuring patent quality; and pillar three, excellence in customer service.

So, here you see all of the evolving programs under the EPQI, and the red rings show you the ones that we're going to focus on today. So, rather than me giving you a higher-level look at these four programs, I've invited the executive leads to come in and be able to tell you

what they are doing in their teams and the progress that they've made.

So, the first one up is going to be Clarity of the Record Pilot. The executive lead on that program is Robin Evans, who is a Technology Center director in 2800 and who also has just come back from Denver. She was the acting regional director before we had a permanent director there. So, I'm going to pass it off to Robin.

MS. EVANS: Thank you, Valencia. Good morning, everyone. As Valencia said, my name is Robin Evans, and I am the executive lead on the Clarity of the Record Pilot. I want to first apologize, because I'm struggling with a cold, so this is not my normal speaking voice.

So, as Valencia said, there are three pillars of excellence, and we are striving to make those happen here. One of my supervisors said: Robin, we want C for excellence -- we want a grade of C for excellence. And I said: A grade of C? And they said: Yes, C for Clarity, C for Completeness, C for Correctness, and C for Consistency. And I said: Yeah, that's great.

So, we are striving for excellence -- C in excellence here.

Okay, so the Clarity of the Record Pilot. We have been working diligently with our POPA partners trying to come up with a pilot to develop best practices and how to enhance the clarity of the record. And we want to, during this pilot, study those best practices and how to enhance clarity.

A lot of folks will say: I know clarity when I see it. A lot of folks have different definitions of what clarity is and what it looks like. We always encourage and train our examiners to be clear in their documentation when they are going out with an office action. And we recognize that many of our examiners are doing such, that they are conveying their analysis and documenting it clearly on the record. So we hope that during this pilot we can get some of those examiners in the pilot so that we can look at those practices and capture those, and also in this pilot study other practices and develop other practices where we can enhance the clarity of the record.

And during this pilot we want to make sure we capture those best practices or all of those practices and come up with best practices that we can recommend to the agency for implementation across the corps so we can have consistency across the corps in our examination processes.

So, as I said, the purpose and the goal of this pilot are to enhance the clarity of the record and to provide a deeper understanding. A lot of stakeholders get office actions and they see the result or they see a 102. But they're not really sure or clear about how the examiner reached that end statement. So, we want to make sure or study and try to get examiners and require examiners to put on the record their analysis and to show the stakeholder and the public actually how they came to that conclusion.

So, we want to make sure while we're doing that that we do that during prosecution up front and throughout prosecution; and hopefully, with clearing up the record, that will lead to more compact prosecution because a stakeholder will know just where the examiner is coming from,

whether that be with a special definition or how a claim is being interpreted. It's on the record clearly, and that will allow the stakeholder to move forward.

Greater clarity and reasons for allowance -- many times there will be an interview summary. It will be a rejection-rejection interview summary and then an allowance. And you're not sure why that case was allowed. Maybe applicants sent in a number of arguments and you're not clear on which argument persuaded the examiner to allow the claims. So, hopefully, we will require in this pilot to clear that up so that there's more certainty and reasons for allowance and also provide, you know, better protection at the time of patenting.

MR. THURLOW: Hey, Robin.

MS. EVANS: Yes?

MR. THURLOW: Can we ask questions as you go? Is that the --

MS. EVANS: Sure.

MR. THURLOW: I'll ask you an easy question, okay? First question -- I'll make sure it's easy. As we discussed yesterday, one of the

concerns just from a consistency standpoint is ensuring the examination -- you know, there's such a major focus on the independent claims?

MS. EVANS: Mm-hmm.

MR. THURLOW: But quite often from an applicant standpoint, the review of the dependent claims and allowability aspects of those claims is important, because quite often if we have allowable dependent claim subject matter we put it in the independent claims. So, that's just something we discussed yesterday that I just wanted to emphasize for your review.

MS. EVANS: So, you're saying make sure we talk about the dependent claims?

MR. THURLOW: Well, in the office action there's such a focus on the independent claims, but from an applicant standpoint there are many reasons for dependent claims.

MS. EVANS: Right. Right.

MR. THURLOW: But the subject matter in the dependent claims to the extent it's allowable --

MS. EVANS: Mm-mm.

MR. THURLOW: -- that's very valuable

to us, because we could take that around -- you know, turn it around, put it in the independent claims, get a patent issued, then do continuations and so on.

MS. EVANS: Right.

MR. THURLOW: So, it's all part of examination.

MS. EVANS: Yes, and so we recognize that a lot of times a novelty lies in the dependent claims. So, a part of this pilot is to make sure wherever there is a need for clarity, whether that be in the independent or the dependent claims, that that is pointed out in the record.

MR. THURLOW: Thank you.

MS. EVANS: Mm-hmm. So, identifying best practices and developing some as we go along in the pilot and finding the correct balance of recordation. I'm sure many of you have received office actions that are maybe 10 pages long or 20 pages long and you look at it and you say: What is the added value here? So, oftentimes clarity doesn't mean length, right? It's about getting that right balance and finding that right balance, and hopefully we can do that in the pilot

as well.

And then I'm sure you've heard about the clarity and correctness data capture form, also known as the master review form. We are going to be using a subset of that form in this pilot, and that's clarity and correctness. We're going to be looking at the clarity portion of this form and making sure that we are capturing the right data so that we can find what is important and making sure that in the end when we come up with those best practices that we're able to capture whether the examiner has put those in the record. So, we'll be using that form.

We've actually added some questions to the clarity portion of that form, and we will be testing that in this pilot, too: Is this the correct question? Was it worded right? Does it capture what we want to capture? And, in putting that in, did it provide clarity to the office action?

And then you'll hear more about post-grant outcomes later, but we're hoping that clarity of the record will assist in those analyses, too.

Yes. You turned it off.

MR. SOBON: Hmm? Oh. I think the second point is one of the points that are most concerned to the user community, that in this effort -- which I think is very commendable -- to focus on unifications as best you can across all the examiner corps and art units, how the record is recorded, is that you go overboard and record or say too much that it might actually cause a lot more unuseful work as applicants try to re-correct a record they think has gone awry, especially given the importance of that record being placed in litigation and in the IPR process. So, I think that's going to be, it seems to me, one of critical things, as you go through your pilot program, to hone in on what the right balance is, and that's not going to be easy for anyone. But that I think is one of the most important points.

MS. EVANS: Thanks. And we will be looking at that during the pilot, because -- I agree with you -- that is important, and we're trying to find the right balance. Not too much, not too little but what makes the record clear and

what is needed. Now we do understand that some stakeholders may not be used to that, and so we recognize that coming back from this there may be more that the examiner will have to answer if applicant feels as though they need to refocus the office action.

So, as I said, we always encourage and train our examiners to be clear in their documentation. But we understand that the IP landscape is changing, and so we think this is a great time or the perfect time to focus our efforts on clarity to make sure that the work product that we're developing continues to meet and answer those questions of the changing IP landscape. So, that's why we're taking this time to do this pilot, to make sure we can come up with best practices to implement in the examination corps to find those areas where we can enhance clarity.

So, enhanced documentation. These are the areas of focus: Enhanced documentation of claim interpretation.

Now, we understand that the record is vast and that there are a lot of areas that we

could focus on, so we're not focusing on every area. We're going to take a few and look at those, and "special definitions" is one of those.

So, where the examiner has a special definition in a claim or thinks that they have a special definition, go back to the specification, look for that, and point it out in the office action and say: We're relying on this special definition so that it's clear on the record.

Optional language and functional language, intended use or result, whether that be in the preamble or the body of the claim, so you know if there is an intended use how the examiner is treating that. So, we're requiring them, if they see that, to put it clearly on the record in their office action.

And we recognize that all of these are not going to be found in every case, but where they are in the claims that the examiner answered those in those in the office action. Means plus function and nonfunctional descriptive material.

And then the last one is computer-implementive function -- so, where there's a specialized computer function that the

examiner clearly puts that on the record when they were doing their examination.

More precise reasons for allowance. I spoke on that earlier, and we want to make sure that the examiner not only says which claims are allowable but why those claims are allowable. So, we are requiring reasons for allowance. Now, that may not always be a statement. Where necessary -- where necessary because that may not always be something that they're writing at the time of the allowance. It may be something that they can point back to in an argument if the applicant sent in a number of different arguments. And the examiner is relying on this argument, found on page 3 of the response, and then they will point back to that so that it's clear, when the case is allowed, why the examiner allowed those claims.

More detailed interview summaries. We want to make sure that the examiner captures the essence and the substance of what happened between applicant or their representative and the examiner and, more importantly, to provide, in the interview summary, the next steps: Where do

we go from here? What happens next after this interview? There may not always be an allowance but just so everyone is clear what's going to happen next: Are we going to wait for something from the applicant? Is the applicant expecting something from the examiner? So, we want to make sure that that is clear in the interview summary.

And then, last, there is a pre-search interview at the examiner's option, and this is where an examiner picks up the case and they're not clear on which direction they should go for their search, that they can call applicant up and discuss some issues in the case so that we make sure we get the best prior art area search at the beginning of prosecution. And hopefully that will get the best art in the record and lead to more compact prosecution.

Yes.

MR. SOBON: A couple of things on that slide if you can go back to that.

MS. EVANS: Sure.

MR. SOBON: On interview summaries, I think the concerns or issues there again are a matter of balance. I think from the user point

of view absolutely I think there could be a lot more work done in terms of the final things arrived at, better explanation of that, and next steps. The one area that I think there may be disagreement about but I have a very firm belief in is that part of the advantage of an interview summary is in fact to provide a kind of safe space to explore potential options that might help resolve the case or not and offer those in sort of a temporary form to see if that makes sense or not. It would be very chilling for that conversation, in my view, to reduce the benefits of interviewing if every single blow by blow of that conversation got recorded or that was the intent of it. I don't think that was where you were going with that, but that I think is a natural concern that users might have about this need to "have clarity of the record." So that's, I think, one major I guess caveat or concern.

I'm thrilled about point 4. As Andy will know, for years I've been focusing on -- the pre-search interviewing I think is one of the best things this office can do.

I would just say, Pamela, I had long

conversations with Robert in the past years about this as well. I do encourage the examiner corps to really try to take on this as not make work something further to do but something that can really save time.

I think that so many applicants get very frustrated that the first office action that's used in the examination did not really search what really they thought the invention was. They thought they wrote it down clearly; they thought they wrote good claims that were focused on it and then they get a search report that doesn't seem to or takes a super BRI approach to what the claim language is, and there's just not a meeting of the minds that it could be solved in 15 to 20 minutes of a simple conversation about what are you meaning by your invention and allowing the applicant to maybe file preliminary amendments to narrow claims because in the light day they're not as clear to the average reader as they thought. So, I really do encourage that as part of your program into the examiner corps to take that on. I think it's something that once people do it, it would actually be seen as a really best practice.

MS. EVANS: Thank you, and we are hoping that as well.

And to your point of the interview summary not being a blow by blow, that's something that the examiners don't want to do either. That's a lot. You're in a conversation -- an interview is a conversation -- so, what we want to do is capture the essence of that conversation: What were the main points? You know, not if I add this, will it be allowable, but what are the main points of that? What was your argument? Did we agree? If we agree, did we come to a meeting of the minds? And then where do we go from here? So, it's not a verbatim conversation, but it's really capturing what is important in that interview, that outcome, and the next steps.

MR. LANG: I just want to give three cheers for this initiative and, you know, how it I think really addresses one of the critical gaps in our patent system as it's perceived in the IT industry in terms of being able to read patents, understand what they mean, advise clients, and then, you know, have right now I think excessive expensive litigation and more litigations that

are necessary to resolve what the meaning of patents is. So, I think this is, you know, very well focused and appropriate, and I look forward to hearing about how it's going to -- how quickly we can get it moving and scaling it.

On the interview summary point, I just wanted to jump in say that I recognize that the interview summary shouldn't necessarily be a complete log of everything that was said. But what's critical is that one can read it and understand why it was that the case, you know, may have been allowed after the interview, whereas today one reads the file history and often one has no idea that the claims seem quite properly rejected under the prior art, and then there's a very productive meeting -- apparently a productive meeting between the examiner and the applicant after which agreement was reached with an understanding of why. I think if we could address that point we will have achieved a major goal.

MS. EVANS: Thank you, and as I said we're also trying to find the right balance. So, that will hopefully fall out in this pilot as

well. We probably will have some that capture too much, and then, you know, we will have meetings, as you'll hear shortly, where we'll discuss those and try to find the right balance and get suggestions from the examiners, because this is their office action, and they're the ones that are going to have to carry it forward. So, we need to make sure that they are on board with where we're going from here.

So, as I said earlier, we have been working with Pam and her team, and she has been a part of this team, and it truly has been a team effort to develop this pilot and to try to find out what should be included or excluded as we work to find those best practices and want to scale it up.

So, we have decided that the pilot will run for approximately six months, and because it is a pilot, because we're studying this and trying to find the best practices, this pilot will not affect the criteria of the examiner's patent.

The examiner pool that will be in this pilot will be approximately 150 participants. We need at least about 150 participants to get the

statistical analysis that we would need to garner the data that will come from across the disciplines, all of the utility areas in the corps, as well as junior and primary examiners. But we didn't want to go too low, because we need that -- GS-5s, -7s, and -9s are still being trained on the patent examination process, so we want to start with the GS-11s through -15s, who have at least two years of experience in the office.

The examiners will be randomly selected, so hopefully we will get an average examiner, some who are doing this, maybe others who are not. So, we will have randomly selected examiners participate in the pilot. This means managers. We will have approximately four managers per TC, and that will depend on the number of examiners who are in the pilot and to make sure we have our resources covered. And because we said it would not affect their path, the managers in the pilot will not be overseeing or coaching and mentoring examiners who they normally rate -- so, not their own examiners.

MR. THURLOW: Robin, does that include

some examiners on the hotel program that aren't actually (inaudible)?

MS. EVANS: Yes, yes.

MR. THURLOW: Okay.

MS. EVANS: So, examiners who are hoteling can definitely participate, and when we set up the training we are setting up a WebEx option and a WebEx-only option so that we make sure that we pay attention to those examiners online coming from a regional office. When you have people sitting in front of you and people online, we recognize that sometimes, you know, it's not always -- the person doesn't always capture those folks online and get their input. So, we want to make sure that we have our WebEx-only option so that they get the attention that they need and we get from them, and it's a collaborative effort and training (inaudible) positively.

MS. MAR-SPINOLA: Excuse me, Robin.

MS. EVANS: Mm-hmm.

MS. MAR-SPINOLA: At what point do you think the best practices will be incorporated in the training for the new examiners?

MS. EVANS: So, that would be something that Operations would have to deal with afterward, and that I believe would be in talks with the union. So, I don't have an answer for that. But we will have data we will provide to Michelle to provide to the corps and go from there. So, I don't know.

MS. MARTIN-WALLACE: I can give you a little bit more information. We also have -- is one of the programs (inaudible) -- part of the program, clarity of the record training. That training dives deeper into certain areas to provide that clarification -- 112 reasons for allowance, interview summary -- as to how to clarify your record in order to get the best office action possible. That training is going on as well. So, we have these cross-efforts. This pilot is focusing on something very specific, but we also have programs to further develop all of the corps in clarity in these areas as well.

MS. EVANS: So, as I said earlier, we will have training not only at the start of the pilot but also during the pilot. As we look at

office actions and get some feedback from our quality assurance specialists, we will provide ongoing training.

But, more importantly, we're going to have quality enhancement meetings, also known as QEMs, so that we can have a discussion between the managers and the examiners and hear from the examiners what they think their best practices are, you know, and have the managers show some good office actions -- some office actions or maybe some interview summaries where some more clarity would need to be implemented or maybe to cut it down a little bit. Maybe there's too much information in those. So, we will have our QEMs there.

The enhanced clarity office actions will only be in select cases. We don't want to overwhelm the examiners during this study so it will not be every case but they will be randomly selected cases. However, every reason for allowance and every interview summary that the examiner participants do will be done according to the requirements of the pilot. And then of course the examiners will be compensated for the

time that they spent during the enhancement of the office action, because we want to see how much this will cost, this effort, both in time and resources during training and QEMs.

MS. JENKINS: A question.

MS. EVANS: Yes.

MS. JENKINS: And maybe you touched on this, and I'm just trying to take it all in.

Will I know as an applicant that you're doing this to one of our applications?

MS. EVANS: No, you will not know as an applicant if we are doing this, because it's going to be randomly selected cases. Hopefully, if you will see one, you will see that it has more clarity above what the examiner normally does. But they're randomly selected examiners and randomly selected cases, and it's not all of the cases. So, one of the things we didn't want to inform the applicant -- because you may not -- that case may not have one of the things that we're focusing on in it, and so we didn't want you to feel like, hey, you didn't do it here or you didn't do it there. Hopefully, as a whole, if you have one of those you will see it in the office action.

Yes.

MR. WALKER: Robin, thanks. That's a very good question, Marylee. And I do think there's a fine balance to Wayne's point. I mean, it's good to get input from the user community about this, but at some point this is really the Office's call, because clarity of the record is of interest to most, I would say, in the user community, but there may be some who are not so interested in it. So, it's a fine balance for the -- input from the user community I think has got to be tailored to the Office's overall goals.

The other thing I was going to mention is just the international aspect of this, because what I get excited about is thinking about, you know, harmonization and work sharing and, you know, expanding clarity of the record more broadly. And my question I guess is have you looked at other offices to see what they do in terms of clarity of the record to see if there's any points of addition that you could pick up internationally to see how others do things in terms of clarity of the record or not?

MS. EVANS: No, we haven't yet, but

that is a good point, and hopefully we can touch on that and --

MS. JENKINS: I know (inaudible) of record -- no pun intended -- but Charlie is writing that down.

(Laughter)

MS. EVANS: Good point. Thank you.

MS. MARTIN-WALLACE: And also I can add a little bit to that, that while we have not focused directly on clarity of the record in some of our discussions with International, but Andy and I and Mark have met with some of the other offices as well, and we are working together to see what are the areas that are consistent that we can learn from each other. So, we have already started on a larger scale. We've already started doing that, and I'm happy to report that I think we are much further along and have been asked by the other offices about what we're doing in our techniques and processes for them to be able to look at.

MS. KEPPLINGER: One question I have, and of course making the record clear is a great thing, but we used to always get an interview

summary at the point of having the interview, and that doesn't always happen these days. And my one concern is that when you put written remarks into the record generally you choose your arguments very carefully; you choose your words carefully.

And so it can be -- it can have a chilling effect if the examiner is trying to, you know, say what you argued but in their own words, which often in my experience has missed the mark. And so what I would ask is that there be some well, this is what I'm going to write; is this actually what your argument is -- as opposed to the examiner trying to say that.

And the one thing -- a lot of times the record -- if there's not really an agreement in the interview, then applicants' statements can make the record clear should that case become allowable in the end. And that's, to me, a better outcome.

I agree with Dan. When you look at a record and it seems like there's a good rejection, and then suddenly there's an interview with not much record and the case gets allowed, that can

be unclear. But if there's not actually: Oh, yes, if you do this I'm going to allow it -- and an applicant comes in with full remarks following the interview and arguments -- then the record seems clear.

And then that is a time, Esther, where if needed the examiner will point to those arguments so that it's clear that that was what typicates to allowance.

MS. EVANS: So, I said earlier that we were going to use the master review form or a subset of that to review the cases, and our quality specialist will do that. But we're also going to provide individual feedback and assistance to examiners based on those reviews and our QEMs to make sure that we're all on the same page and to get those best practices developed and refined, so to speak. So, we're going to be doing that during the pilot.

And then we will gather statistical data from the reviews of the pilot, and we're also going to have control cases so we'll have a control group. That way we can see if the core as a whole or the control group went up as a

whole -- you heard Valencia talk about training that's going on throughout the corps -- and so maybe the clarity of the office action increased because of a certain training that went out to the corps. So, by having the control group, we can see where that came from.

And then we're going to provide surveys to the pilot examiners and the managers: What worked? What didn't? Did you get enough information? Was it too much? What did you need more of? Were the QEMs helpful? Was the individual assistance where it should have been? That way, when we do, hopefully, roll it out we can have a better understanding and a better way to go.

And that's it. Any questions?

MS. MAR-SPINOLA: I think mine are more comments than questions, but I do want to say I think this is a great pilot program, and I think its success will be beneficial to everybody: Stakeholders, Patent Office, and for businesses obviously.

There are three things that come to my mind in reading this, and I understand it's at

early stages, but I would say tools, metrics, and uniformity will be important: What kind of tools are going to be used in this pilot program? Are templates going to be developed so that there is uniformity not only in terms of the practice itself but the types of information that can help? I think it will also streamline efficiencies, maximize efficiencies.

But part of clarity is the comprehensiveness. There are other (inaudible), you know, this -- but for clarity I think for me what matters is not only what kind of information is there but how is it relevant, right? and I think that if it's uniform then the stakeholders and the practitioners will I think learn to better communicate to make sure that they're contributing to the clarity of the application as well.

And then on the metrics, I know you have the statistics, but I guess I wonder -- and I guess we'll find out after the program -- how do we know if the program is a success? And maybe it comes down to having the stakeholder, the applicant, be able to provide feedback as well.

MS. EVANS: Thank you for that, and I'm glad you mentioned that one of the things we discussed when we were talking about the pilot was maybe coming up with some form paragraphs during the pilot that the examiners thought would capture or help others capture those best practices and ways to enhance the clarity of the office action. And so if we come up with those form paragraphs, we will talk to Operations about implementing them corps-wide.

And then, also another thing that we talked about was having a notebook, both electronic and physical -- notebook for the participants in the pilot, as well as an internal Website, where they can keep all of their training materials, notes, and agendas from their QEMs. So, that will be indexed later on when they're out of the pilot but they still want to continue with this clarity, that they can go back to those notebooks and those templates and use those to continue to enhance the clarity of the record. So, that will be something that they will take with them.

MR. THURLOW: Robin, just one very

quick example. I'm not sure how much has been discussed, Valencia, if this has come up. One thing that I was discussing actually with Esther this morning over breakfast was a very specific example.

Many practitioners do what we call Freedom to Operate opinions, where before a client or a company introduces a commercial product into the marketplace we review the competitors' portfolio.

Quite often and most recently it's happened a couple times to me where an application has gone abandoned, because the applicant has not responded to an office action within six months. In the past -- I remember many years ago the examiner would call and say: Did you intend to abandon this application? And then they'd say yes, and they'd put it on the record, and my understanding is that from there you couldn't revive it.

In many situations -- I don't know if you (inaudible) that -- in other situations where it just goes abandoned for failure to respond to an office action, you can revive it based on

unintentional reasons. So, when we -- let bring you into my world. When we're given clearance to a client and we have this application that's just been abandoned just for failure to respond to an office action, there is always that threat out there that it can be revived. In some situations, it's been revived two, three, and I think Esther mentioned a situation where it's five years later.

So, that's out there, and I would say maybe it falls under this umbrella of clarity of the record. Maybe the change would be that examiners are more -- I know there are some directors and SPEs in the audience here -- that they can just make that phone call. But from a -- I think that would help in some instances.

MS. EVANS: Thank you. Yes.

MR. SOBON: For measuring outcomes, are you anticipating maybe doing something like a double-blind thing where you take the results of those things and compare -- have people that -- some other SPEs look at them, don't know which ones came from which program and you kind of do an evaluation from a quality point of view

and glean what comes out of the results instantly?

MS. EVANS: So the -- yes. That's the answer. Yes. So, we have our quality OPQA reviewing those cases, a quality assurance review in those cases, and some of the managers in the pilot will also review cases and where they match. Again, two blind reviews to kind of look at those. But we also have the control group as well to kind of look at those and see what the corps is doing, you know, based on the control group and to look at those and compare those as well.

MS. JENKINS: But touch on one of Julie's comments, too, and just reiterate it another way.

I strongly encourage user feedback from the community, because what the Office may consider to be clarity is not what the applicant at all considers to be clarity or we do not want to be held to that particular clarity because of money, because of strategy, for a number of reasons.

SPEAKER: It's wrong.

MS. JENKINS: Yeah, or it's wrong. And so getting the user community feedback before

implementing any of these steps, I cannot -- we're strongly encouraged. So.

MS. KEPPLINGER: One other thing in terms of reasons for allowance. Sometimes an examiner will hold to a rejection even though it's incorrect, push for a seemingly minor amendment to the claim, and then say well, that's the reason that the claims were allowed -- when really it's the entirety of the claim language and arguments that were made, and I think that's a potential pitfall that increases, because it's the whole record that's already established that lends itself to why the case is allowed.

MS. EVANS: Absolutely. Just one word, but it's a limitation in combination, and that's one of the things we will talk about in our Quality Enhancement --

MS. KEPPLINGER: Well, in fact, that limitation might never have been necessary, but you do it because the examiner wants it. It was already, in our view, allowable. But in order to get the case allowed, it was a limitation that didn't matter so much, but in the eyes of the examiner it mattered, so.

MS. EVANS: And that's really what we're trying to capture -- what was the examiner thinking? -- so that you know throughout prosecution, you know, and you can get there at least before it gets to allowance. You'll have that conversation about what is important and what isn't.

MS. KEPPLINGER: But, with all due respect, that's a great risk, because that limitation that got put in might otherwise be not novel, you know, conventional, and it really wasn't. So, all I'm saying is that what ends up is the potential for a lot of back and forth between applicants and the Office about what we really think is what makes it allowable.

MR. FAILE: So, to add in to the conversational metrics, which I think is a real good one, picking up on Julie and Marylee's point at least, I agree with the user input point. I think the best point for that is probably once we've run the pilot we've theoretically come up with a list of best practices that were tested in the pilot or were derived as a result of the pilot. We've done some analysis, and at least we think

there is a delta between the prior office actions and these with this enhanced quality. We'll have a list there. I think that's a great time to say: We've done the pilot, and the outcome of the pilot is this list of best practices executed in this certain way. And that's a great point for having a further conversation with this group and with all the stakeholders on that.

We'll also know -- very important to a point that was just made -- we'll also know about what time it takes to do these particular activities, because an important part of the conversation is not only these are the activities we think would enhance the clarity of the record, but they would comment this level of the cost in terms of examining time to do that. So, we'll have those pieces of information, and that would probably be the best time to have a larger discussion about this is what we would do, it would cost about this, and let's discuss it. That makes sense.

MR. WALKER: And one thing to look at in terms -- I'm just thinking about in terms of the time input there -- is it's hard to measure,

well, impossible to measure, how many IPRs are not being brought because the quality of the record is so good. And certainly -- and that was the question I was going to ask Robin, just a rhetorical question, but if you went back and looked at some IPR decisions and said: This case was based upon a lack of clarity of the record, and had the record been clear had that prior art been more fully explained, you know, an IPR would not have been necessary. You know, it was the Freedom to Operate issue, one of Peter's Freedom to Operate issues, to say: Oh, we can't tell what it means; we've got to get it figured through an IPR. So, I don't know if there's any feedback loop. That may be too complicated, but if that is ultimately the savings you're not going to have these IPRs because clarity of the record is presumably better.

MS. EVANS: We didn't (inaudible), but we did discuss the tracking cases (inaudible).

SPEAKER: I'm sorry, can you --

COURT REPORTER: I'm sorry. A lot of this will happen after the pilot ends, and you will see the benefits later on down the road.

MR. LANG: Yeah, I'll second what Gwen said, and, you know, we recognize that these initiatives take time, they take, you know, real work by the examiners, and we know that the PTO has to carefully allocate what it spends resources on. But I rank this being near the top, and we know what the Office is doing to save money down the road for the whole (inaudible) community.

MS. KEPPLINGER: This has been a great discussion, but I think we need to move on to the next topic. (Laughter) Thank you, Robin. So, yes. The next topic -- the next program we're going to look at the topic submissions for the Case Studies Pilot, and the executive leads on that program are Brian Hanlon, Director of the Office of Patent Legal Administration, and Tony Caputa, the Director of the Office of Patent Equality Assurance.

MR. HANLON: Good morning. As Valencia said, I'm Brian Hanlon, the Director of the Office of Patent Legal Administration. I'm going to talk to you this morning about the Topic Submission for Case Studies Program, that we're

doing as part of the Quality Initiative.

This program really is designed for the Office to be able to work with our stakeholders, obtain information from our stakeholders, and really leverage their knowledge and experiences so that we can improve the quality of what we do here at the USPTO.

We're asking for the assistance of our stakeholders in identifying issues that they see that we should be studying that we don't currently study as a way to improve the quality of the work products that we do, the processes that we have, anything that happens during the prosecution of an application from filing until issue.

You may know this. The program started out originally as a program that we proposed at the original summit talking about applicants having the opportunity to identify specific cases to us so that we can look at the cases and analyze them for quality issues.

But we received a lot of comments from our stakeholders saying that that was not the best program for us. So, they made recommendations for us to change the program; and in response to

those recommendations, we did change the program, and the program that we have now is that it's topics for -- high-level topics that relate to quality. That's something that we can study, as I mentioned, that we don't currently study; and, as a result, we can find quality improvement areas that we're not focused on at the moment.

So, in December of last year we issued a Federal Register Notice announcing the program. The program period is open until February 12th of 2016 -- so next week -- so, you can submit your topics for us to study by next Friday. We have currently received about 34 topic submissions, and we're still receiving them. We just received a couple yesterday in fact.

MR. WALKER: Pardon me. I have a question about the submission, so.

MR. HANLON: Yes.

MR. WALKER: I looked at a number of the submissions. I don't look at all of them but probably half. They seem really short. Were they edited, or was that what you wanted from the user community in terms of feedback -- in other words, you getting what you wanted or expected in

response of the Federal Register Notice?

MR. HANLON: Yes and no. To our exact point, we did not edit any of them. In the Federal Register Notice, we had asked for a particular format and a particular amount of information in the Federal Register Notice. And, in fact, Tony's going to talk about what an ideal submission would be for us. However, some folks I think maybe did not follow that format or did not have an opportunity to follow that format, so they just provided us with a quick statement with respect to what their thought is. Obviously, the more information that you can convey to us with respect to your submission, your topic, the better it is because we can have a better understanding of what you mean, how we can use it, what we can do with it. And if you've looked at the topics, we have had some folks that have really given us very good topics and followed the format that we laid out in the Federal Register Notice.

MR. WALKER: So, a bit of an overview of the program. As I mentioned, we're really looking to leverage the experience of our -- and

what they see when they're interacting with the office. It's a perspective that we don't see, and so we're trying to find out what they have experienced, what they think is something that we need to look at, and then based on that we can develop some type of a case study and then look into that, see the issues, and see what the concerns are that they've raised.

As I mentioned, these submissions also will basically expand the pool of what we look at now. So, we're not looking to redo what OPQA already does -- the Office of Patent Quality Assurance -- but we're looking to broaden that.

And then each study that we're doing -- each case study we're doing will focus on a specific topic, and it will be just an analysis of that particular topic so that we are focused on what it is that we're determined to work on.

So, some of the goals that we're looking at for this study -- obviously to better understand what we're doing, what the applicant's perspective or stakeholder's perspective is of what we're doing, and it's to identify where we

have quality issues that can be improved on. If it's an issue of training; if there's an issue of maybe we're sending things out to the public, to our stakeholders that they don't understand; maybe there are forms that need to be changed; maybe there's confusion in something that the Office is doing -- then we can look at that, study that, and then determine what the next steps are to improve that and change those problems.

Also it might be an opportunity for us to identify what are best practices by certain examiners, and then we can utilize those -- and as going into Robin's program and some of the other programs -- to train examiners on what are the best practices of other examiners.

So, this program is -- and the suggestions to be submitted, the topics to be submitted, are not limited to just examination or the examination of an application by an examiner. This is everything that the PTO does from the time the application is filed until the time the patent is issued. So, if it's pre-exam, if it's post-exam, any of those topics that you would like us to study, please make the submission and

suggest that topic and we will look at it. As I said, it can be a process; it can be a form; it can be anything that we work on that in some way you believe can help us improve the quality of what we do and what we send in work with our applicants on.

So, with that, I will turn it over to Tony.

MR. CAPUTA: What I'm going to cover is more information on: What is a case study? What are we looking for from the public in the topics submitted? Specifically, what are the specific attributes we're looking for? The format of how the topics should be submitted, and it is (inaudible) submission -- like Brian was saying an ideal situation or submission.

A case study is a review of a single target issue. This is in contrast to the standard quality assurance reviews performed by the Office of Patent Quality Assurance, which reviews a specific office action in a specific application. OPQA reviews the correctness and clarity of the rejections of record in the office action. We review if the rejections set forth in

the office action are proper. In addition, the action is reviewed to see if there are any rejections which are omitted.

Unlike OPQA's review of the specific office actions in individual applications, case studies may allow the USPTO to investigate how a particular issue is being tested or addressed in a large sample of applications. The new program invites the public to submit topics of case studies.

The topics can encompass any topic affecting the U.S.'s ability to issue high-quality patents. The submission of your topic should be more than a mere statement of an issue or problem, and it would be helpful if the submission explains how the results of the case could be used to improve patent quality.

The preferred format of the submission is to have basically three sections. You have the title, the proposal for study, and then the explanation. And for the title, what we're looking at is just to relay that to the subject of the topic. And with the proposal for study section, the submission should propose a specific

correlation or trend for that. And then in the explanation, the submission should explain how the results of the study should be used to improve patent quality in the USPTO and the patent system.

With regard to -- I think Brian mentioned the situation, too -- if there's a concern on a specific application or examiner, the best route for that is to present it either to the ombudsman program or the sphere of the (inaudible).

Here's an example of what we would -- you know, just a general format. And this is also in the Federal Register, so what I'm presenting here is provided more in detail in the Federal Register.

So, we have the title, which is the pre-first action interviews and prosecution quality. I know we were just talking about that.

For the proposal, it would be something like the situation of having a pre-first action interview's result in a shorter time for issuance and applications that are issued as patents.

And then in the explanation, we're looking to say something to the situation that the

pre-first interviews can minimize claim interpretation and disagreements over the teaching of the art. Resolving these issues early in prosecution can provide the opportunity to resolve such differences before any mutual misunderstanding or communications may arise. And these results result in a more compact prosecution and shorter time for issuance.

In addition to the explanation, it would be good also to have any suggested methodology; that is, do you see how we want to do the analysis? That is, are there any specific attributes of the interview that we should look at, or is there a situation that we looked at -- for instance, primary examiners versus junior examiners? So, any suggestions on how we should focus this case study would be highly appreciated.

So, for how to submit topics, we're asking to email to this email address and, again as Brian mentioned, to submit it on or before February 12th, and then for any further information, here are a couple of links in terms of good further information.

MR. THURLOW: Tony, just a very quick comment. So, just from my vantage point, I've heard a lot about the other programs, the clarity of the record, post-grant outcomes, subject matter of course, 101. This one -- my mistake apparently -- I just didn't focus on enough. But I think it's a good initiative.

There have been a number of people around the table talking about input from the stakeholder community. So, I think this is the perfect opportunity when we go to (inaudible) events and so on and people say the Patent should do this, so I'd say, well, submit something, it's a good opportunity. And then I actually made some of the few -- a very basic one -- maybe this is nitpicking, but even on the title, years ago I found there were more objections to very general titles in patents. I think they're supposed to give more specificity. Sometimes you see, like, a razor head, something very generic. And I saw more rejections of that or objections in the past, and that's something -- you know, one of many areas that could be reviewed.

MR. CAPUTA: Like you mentioned, you

want to have sort of a title sort of relate to the topic that's being submitted.

MR. THURLOW: Right, right, a little bit more specificity and succinct.

Thank you.

MR. CAPUTA: So, also connecting a thread to the prior discussion on clarity of the record, Mike had talked about kind of a nexus between clarity of the record and IPRs. So, you know, a potential study is let's look at a bunch of IPRs. Let's figure out what issue is at play there to turn that particular IPR, and then if there's a clarity of the record component there, that would be a good learning that we'd want to identify, maybe fold in to look at clarity of the record pilot.

So, there are a lot of different, interesting things we can do with the Topic Submission Program that have kind of an interplay with some of the other quality initiatives.

So, that was a good suggestion, Mike.

MS. KEPPLINGER: So, how many do we have so far submitted? Can you say roughly?

MR. HANLON: Thirty-four.

MS. KEPPLINGER: Okay, but we have a deadline of next week.

MR. HANLON: Yes.

MS. KEPPLINGER: Wayne, get going.

MR. SOBON: I was just looking. I would suggest -- you know, I just went on your mobile site, and you might think about in this last week putting one of the rotating banners on your site so that it's something that when people come onto the site they see those kinds of things that are time sensitive and that you're giving input that people would know immediately as part of your mobile real estate.

MR. THURLOW: Thanks.

MS. KEPPLINGER: And maybe also -- I know the comments that you've received, how they break down across the topics that have been advanced, but I think an important one is that it's not just examiner actions that -- you know, receiving input on processes and forms and things. So, you might emphasize that as well, because people may not have thought about that as much.

MR. CAPUTA: What we're doing to try to

encourage people to participate -- we're sending out patent alerts, tweets to actually encourage people to provide submissions. So, we're trying to address it in that manner also.

MR. HANLON: Right, right. The folks who are going out to speak on behalf of the Office off talking points -- so, for example, next week at the Cybersecurity Partnership meeting that the Office is hosting out in Silicon Valley, they're going to speak to this issue also there and encourage the folks there.

MR. CAPUTA: Also we're putting a flyer on the Topic Case Study Submissions and office actions, too. So, that's also going on.

MR. THURLOW: Great. Free t-shirts for anybody that makes a submission, but that's just me. (Laughter)

SPEAKER: How many do you need?
(Laughter)

MR. THURLOW: Big family.

MS. MAR-SPINOLA: When will the selection process be? So, if you get all these submissions, do you intend to address all of them, or will there be a selection process? If so, what

is that process?

MR. CAPUTA: The process -- what we're looking at is in terms of the resources and the impact on the quality. I think one of the first things we're going to look at in terms of decision points is the impact of which submissions would give us a bang for the buck for the high quality. Then we're also looking in terms of the resources that it will take, i.e., the time and the -- people would actually have to look at the case, too. So, we're using those as a basis for making the selection.

MS. MARTIN-WALLACE: And also as Andy mentioned, even within the parameters of this pilot if something isn't been selected, we have all this rich data that we can use in other programs as well to help spur them on.

MS. MAR-SPINOLA: I mean, one way -- because you're addressing or you're looking to the stakeholders -- is once you get that list of submissions, maybe allow the public to select the top three or something like that. That way, you know, you'll know that you're meeting at least a good part of the target

audience on that as opposed to just internally trying to figure that out. So, that would be a suggestion.

MR. THURLOW: Thank you.

MS. MARTIN-WALLACE: Okay, thank you. And for the quality updates, we're just going to have one more update -- the Post-Grant Outcomes Program -- and the executive lead on that program is Jack Harvey, the Acting Assistant Deputy Commissioner in Patent Operations.

MR. HARVEY: Great, thank you. Thank you for having me.

I'm also a Technology Center director in 3700. So, today I'm going to talk about this initiative, and simply put, it's a program to provide examiners information in education of all post-grant proceedings, anything that happens after the patent grant -- just as a very high level.

And so we have three objectives. One is to provide examiners with prior art that is being submitted in the IPR process, examiners that have a related case that are somehow related to the child of the case at the board -- provide

them with the prior art.

The second is to have training as a result of what the examiner does with that prior art and the activities that go on with the examiner that has the art from the IPR proceedings and turn that around into a feedback loop whether it's to enhance search training or claim interpretation or something to that effect.

And the last initiative is to -- I want to say bring back periodic reviews from post-grant proceedings at CAFC or any other education resources and bring them back to have examiners learn from what happens to their application when it becomes a patent. You know, what happens after that.

All right, so objective No. 1: What we've already done and we're looking right now is we're identifying the patents that are going under IPR review right now, and we're finding the child cases for those patents. And this initiative, very simply put, is we are going to direct the examiners to those proceedings and show them what is being submitted in the IPR proceeding.

Right now, examiners aren't -- even though it's a public access, they're not -- in the normal course of examination, they're not going to those PTAB proceedings as a source of prior art or a source of information on what is going on with the parent case. So, we want to bring that to the attention of the examiner.

I think you'll hear later today a little more about the IPR process and what has been going on there, but I think there have been over 4,000 IPRs filed. And this particular pilot, we're going to probably reach about 40 to 60 applications a month I think will fit into this category, the category being that the child case is in the examination process. So, the examiner still has an opportunity to look at the prior art and then make a patentability determination. So, the ultimate outcome here is to enhance patentability by bringing more prior art to the examiner, but not only just prior art but prior art that a third party thought was very important to the parent case.

You can ask questions along the way. Okay. The second objective is to learn from what

happens after we give the examiner the prior art and to see if the examiner utilized the prior art in an office action, for example, or why is it that the prior art wasn't in the case? Perhaps lead the examiner to other areas to search, enhance art databases to capture this prior art to make it available to examiners across the different technologies, and I also added a claim interpretation.

So, we want to delve into the process that the examiner goes through once they have the prior art from the IPR proceedings and see what value it added, and then relay that in training or some other feedback mechanism to improve the process from that point on.

MS. CAMACHO: Jack?

MR. HARVEY: Yes.

MS. CAMACHO: Are you finding that the applicant is not citing the art from the IPRs? And once you provide it to the examiner, will it be of record?

MR. HARVEY: That's a good question. So, we asked ourselves that same question, because there's a rule that applies here.

(Laughter) And so -- right? It's good to follow rules.

So, what we did is we took a small sample. We looked at a hundred cases, 100 pending applications that have a related parent going through IPR, and we went and painstakingly looked at every document that was cited and compared it to what the IPR submitted and what is in the file today, understanding it's a snapshot in time, right? It's a snapshot at that moment. And we found that about 50 percent of the U.S. patents that were cited in the IPR were in the U.S. case, so there was some overlap. But only 25 percent of the non-patent literature was in the U.S. case -- or in the pending application. Again, it was a snapshot in time.

MR. THURLOW: Stunning. That's stunning, yeah. But I mean --

MR. HARVEY: It's a snapshot in time. That doesn't mean it wouldn't get there. But at that moment there was a disconnect. If it had been 100 percent, our focus might be a little more towards shining a light on what -- you know, examiners look through hundreds and hundreds of

references, and so we could still get value from this process by shining a light on what a third party thought was important.

And I don't remember your second question.

MS. CAMACHO: Whether the art would be of record once they provided it to the examiner whether or not they use it for a section.

MR. HARVEY: And that's right in the hands of the examiner, just like you would search any other database. This is art that the examiner would look through and search and cite if they deem it necessary and appropriate. Just the same examination process, nothing special -- we don't propose to do anything special with that at this point.

MS. JENKINS: Let me just pick up on that, because I need some clarification -- ha-ha.

So, one point that I feel very strong about and very happy about, too, is that when we had a PTAB presentation in New York -- Peter may remember this -- I asked Chief Judge Smith: You have all these IPRs going on, what are you going to do with all that data? Are you going to go back

and help train examiners and give them insight? So, I think this is -- and learn, hopefully, right? And I'm really pleased to see this.

Going back, though, to the idea that you were going to go with the IPRs and then look at the children cases, are you going to do that for all of the existing IPRs? Are you only going to do that for IPRs starting from a particular date, because the obligation, which I know is going through everyone's head right now of what obligation do we have as applicants to disclose art that's in an IPR with children cases? And then this also gets more expansive when we get to the international space, because we're doing Global Dossier, and we're providing all this data to the examiners and they should go and look at all the data for the international cases and cite that as well. So, I think there's a real -- I don't want to say the word "concern," but there is a line and an obligation as a practitioner to make sure you disclose art that needs to be disclosed. But then the Office is acting as a proactive disclosure in a sense. So -- do you see what my concern is? So, we all want to do the

right thing. So, everyone hear that.

(Laughter)

MR. HARVEY: Sure. There was a question from -- okay, I'll answer the question. When we do start this process, we are going to start with all pending applications that are in prosecution now. So, if there is a child case which has been allowed and it's removed from the examiner's desk, in effect we are not going to include that. So, whenever we do start this, we are going to take a snapshot. These are the pending cases that relate to the IPRs, and we're going to start with that. And then we're going to revisit that list every month -- we're thinking every month -- and refresh that list from that point on, right?

So, the first group of applications is going to be a rather large group, in the hundreds, and the examiners are being notified. But every month we'll revisit that list as new applications become available. We'll then include those along the way. Does that answer your question? Okay.

Yes, sir.

MR. SOBON: Yeah, this may be -- touching on what Marylee brought up, I'm not sure if she's really sensitive to this, explicitly on me bringing it up again under the operations point -- but there is this -- I'm curious about whether in the long run Global Dossier is intended to also -- would be capturing in Windows all the art being cited in parallel IPR cases, so those are brought to the desktop of examiners as a routine course since it is, in some sense, a parallel family action that's happening that would be art. And there's a broader sense -- it's been (inaudible) a number of times in the last week -- of since you now have -- developing the IT systems, it should be able to handle something we talked about before. It could eliminate the McKesson Therasense obligations of applicants to cite parallel cases in a family if you can easily just do this from an IT system and have that provided so you can eliminate that need to do a lot of paperwork and make work for something that the IT system has already provided to examiners on their desktops linking all parallel cases, including IPRs and

PGRs.

So, I think that's just a general theme for the Office, I think, to ease the burden on applicants, ease their Rule 56 burden of failure to, you know, keep all that synchronized as it's coming in, because it is already -- the ideal is under Global Dossier if it's really expanded to include all these pieces, to provide that in one panoptic view of the case.

MS. KEPPLINGER: And just if I could follow-on for a second on that. It's a very good point, and it would be most helpful, and I think also if you have a system like that that gets the art into the case, it gets it into the case at the earliest possible point. As you noted, you looked at these cases at a particular point in time. It doesn't mean that the applicant isn't going to get that material in front of the examiner, but ideally it's in front of the examiner when they pick up the case to do the first action. And so you're in an excellent position to accomplish that.

MR. CAPUTA: I have one more slide. I'm going to talk about the pilot in our process,

and I'll address your comments.

The last objective, real quick, is to just educate the corps. Since I've been here over the years, we have had yearly briefings on court cases and things like that, so we're going to, basically, revitalize that process but make it more sector- or technology-specific so we can have more, shorter one-hour briefings to examiners to educate them as to what happens to their application once they allow it but also learn from court proceedings and things like that. So, that's the last objective. Oh, that was number three.

So, this is just a summary, and I had mentioned, you know, shining a spotlight. If nothing else, we are pointing the examiner to the prior art that a third-party thought was most -- of interest to a related case. Likewise, we think this directly will impact quality, especially if the examiner is given a piece of prior art that date they didn't have access to or they didn't locate.

And then it also -- as a side note, and I think would be -- it will bridge -- right now

there's really no connection to any examiners in the PTAB, and so this is a means to introduce the examiners to the Patent Trial and Appeal Board proceedings and things of that nature.

So, next steps. We want to monitor -- we are going to pilot this, and we're working with our labor unit on launching a low-tech pilot at first. I'll mention the IT systems in a moment, but as of right now we are thinking of a very low-tech email system letting the examiner know: Hey, you have an application which you are examining, and there is a related parent case that is going under a PTAB review; here is a link to the PTAB petition; here's the petition -- PRPS, I think; PRPS I believe is the database they currently have -- and to give examiners a little quick reference guide, this is what you'll see when you get there; this is how you identify the prior art.

And that's how the pilot is going to go. We haven't come to terms as to the length of the pilot, you know, how many cases. But we are working to get that rolled out here in the next month.

Our long-term -- and while we're doing this, we want to keep in mind a cost benefit analysis, right? So, as we're looking at what the examiner does, you know, is it a benefit, you know, or is it that in 100 percent of the cases the examiners have already found the prior art and it wasn't very helpful. So, we're going to determine that. But our long run is if we do determine that this is viable and something that is desirable by the examiners, we want to incorporate into our new end-to-end system.

Right now our computer systems, as you probably already know, are going through a revamping, and we've gotten our IT person talking to the PTAB IT person, and we're hoping that they can get the two ends to meet here shortly. So, that's the end goal. And it will have a presence on the examiner's desktop. We are talking about having a tab, and so it might lead right into the Global Dossier information, as you've all pointed out, so.

MS. KEPPLINGER: Well, one thing that occurred to me -- I'm talking before, but it occurred to me -- if these are children, if the

current case is a child, the examiner is already under the obligation to review everything that's in -- all of the art that's in a parent. I mean, that's currently in the manual, and it is an assumption that -- I mean, you only have to cite the art from a parent if you want it printed on the front of any patent that issues. But currently, at least in the manual I thought, says that the examiner is required to review all of the parents and what art is in there.

MR. THURLOW: A quick point. I think this is terrific. I also think -- and just educate me here -- there's a wealth of information. We can all be overwhelmed by data. But, you know, when we go to PTAB, everyone's always excited about the PTAB trial proceedings. But the ex-parte proceedings, you know, I think the numbers can mean 20 or 30 percent are reopened after they pre-appeal the appeal, and for the reason that they reopen, there may be some helpful information in there, similar to what you're looking at now, to consider, especially when you consider -- you know, so I would recommend reviewing that.

MR. HARVEY: Jack.

MR. WALKER: I have a question over here. So, going to District Court proceedings or that may be upheld by the Federal Circuit. So, just tell me what you want to do. So, a patent is held invalid by District Court. They'll appeal whatever. So, is the training back to -- or is the feedback loop to the examiner who granted that patent, or is it a broader training based upon what happened?

MR. HARVEY: We would collect proceedings and, you know, have them grouped together in training modules for the examiner in the technology-specific. Hopefully -- we're thinking technology-specific might be the best way to go --

MR. WALKER: Yeah.

MR. HARVEY: -- but not one-to-one training. No.

MR. WALKER: Okay.

MR. HARVEY: We're thinking more broad-based to hit more people so that Examiner A can learn from what Examiner B went through.

MR. WALKER: Good, good. I think from

the biotech chemistry point of view, the 112 issues are the ones that will come up in the District Court proceedings and can be a good point of broad education to see what happens to some of those patents when they're actually litigated.

MR. HARVEY: Okay, great. Thank you. That's all I have. Thank you.

MS. MARTIN-WALLACE: So, that's the three. There was a fourth circled under the programs. That's Quality Metrics, and that you will receive an update during the operations update on that. And I think you've identified what we're trying to do with these programs as well. They're all supporting each other, so we have the exact leads in all of these programs that meet on a biweekly basis and discuss what's going on in their programs and how it affects the other ones so that we're taking a holistic look at quality here. And you pinpointed that during these discussions.

So, I have to apologize to Bob, because I've taken all his time. We love talking about our programs, but I think he has a short update on subject matter eligibility.

MR. BAHR: Oh, thanks. I'm right into it. Basically, these were -- you know, we published an update in July 2015. We got a number of comments. We got comments, which was actually about half the number we got in the previous guidance on §101; and these were, I'm going to say, the highlights of the themes that were reflected in those comments. Many of the comments -- well, more than half said that it was a step forward, but a number -- also more than half -- suggested that there are improvements that could be made.

The primary suggestions are, with respect to what's required for a prima facie case: The rule of evidence at a 101 analysis; the application of the guidelines across the examining corps; how examiners identify the abstract idea and call it out as, you know, an abstract idea; the rule of preemption; and the analysis and its use in the streamline analysis. And then there were specifics, some criticisms, and comments on the examples that we had. So, these were basically the comments we got on our update.

What else has happened? Since the July update, there really haven't been a lot of changes on the legal landscape. Obviously, the Sequenom. There was a denial of a request for a rehearing en banc, so in that time I'm going to say nothing happened in that case.

There were 10 nonprecedential decisions, and of these 10, 9 were Rule 36. We just basically need a stamp at our firm and send it out. So, there's not a lot to be gleaned from that.

And then there was one precedential decision within the last two weeks. This one -- I think it was precedential more for its civil procedure aspects in that I guess the defendant raised the 101 issue very late in the trial proceeding, and the Federal Circuit said that's still -- it wasn't an abuse of discretion to consider that good cause, because the legal landscape had changed so much in 101 that it wasn't unfair to the patentee for it to be raised that late.

So, that's basically what has happened at the Federal Circuit. Now, there was a group

of decisions, a group of cases argued in December on §101, and I think there's also a group being argued tomorrow on 101. So, we may get more guidance, hopefully, in the near future.

Any questions on this so far? So, when we looked at the comments, this is basically our actions -- let me go back. We've done some trainings on the abstract idea workshop, basically going over two of the examples from our July example set. We're also working on a set of examples in the life sciences area.

And with regard to office actions, a lot of the themes of the comments are, like, people were not really arguing with us so much on the law of 101, it was more on how it's applied in office actions making rejections to 101. And so we think that the biggest gain we can make is to provide more training to examiners on what we want to see in an office action, you know, making a rejection to 101 -- basically, you know, what you need to do to identify an abstract idea and to decide whether or not something is an abstract idea and what you need to do to analyze whether the claim has the something more that would show

validity in terms of an inventive step or you have something, an inventive concept, that would be more than just an abstract idea. So, we're going to work on the training for examiners and discuss what needs to be in an office action.

Oh, come on, there have got to be some questions.

(Laughter)

MS. KEPPLINGER: Well, the examples -- the life science examples will be a great thing if you can get them. I know it's a difficult thing to make them without examples, but of course diagnostics is a big unknown.

MR. BAHR: In some ways it's -- I'm going to say in the computer and the business methods on computer. There are more cases there, so there are more to go from, where in the life sciences there's just not a whole lot there.

And of course with Sequenom, you know, the anticipation of everyone in the world is that there will be a petition if the Supreme Court (inaudible) probably be taken, so the timeframes for that -- you know, we could be talking about it next year. So, that's kind of the downfall of

that.

Any other questions?

MR. SOBON: One thing -- and again, maybe it's for next time. I think we've had some statistics, but I think to give you some richer statistics of how many cases in these (inaudible) art units are being rejected under 101 would be useful to see. Other outsiders have been trying to catalog it, but I think your analysis and then posting that would be helpful to track --

MR. BAHR: That actually goes into the --

MR. SOBON: -- how big a problem this is.

MR. BAHR: Sorry, I didn't mean to cut you off.

MR. SOBON: No, that's fine.

MR. BAHR: Now, in the quality -- one of the quality initiatives is to have that master -- you know, the uniform review form. Right now we capture whether we make rejections, but we don't really know whether that rejection is, you know, a prior art rejection or a rejection for patent eligibility. We'll be able to

announce it more (inaudible) capture that information and provide these statistics.

MR. SOBON: (Inaudible) what I've been hearing from the user community, obviously everyone's very concerned about this from a (inaudible) systemic level from the judiciary into how it's being put into practice by the examiner corps.

And, you know, I think a wish of the user community is that the Office, in looking at precedent, realizes those cases are very specific cases while they announce sort of general principles and lay out some frameworks -- those cases are very, very fact-specific -- and that the Office be very careful, not sort of jumping too high in response to one impulse into the system or two or three.

And so I think that's -- and obviously you struggle with that every day about where that right balance is, but there's just very great concern that 101 has now become the new sort of de facto rejection in a whole swath of cases. Some of the most important innovative areas, you know, just even from the United States

perspective, of U.S. Industry are being rejected now under these precedents. So, that's obviously the concern you're wrestling with, and the balance. I think that probably Alice makes a lot of the comments you've received. But I think getting more rich statistics about what exactly is happening would be very helpful there as well to see how big of an issue it is.

MS. JENKINS: Just real -- on that, too, I think it would be fascinating to see, before these decisions, what the allowance rate was for those particular groups and what now the allowance and issue and abandonment rates for those groups are. I think if you track any of the examiners that are handling any of your cases, you'll note that many of the examiners haven't allowed a case in a long time, so.

MR. BAHR: I don't know the specific examiners, but obviously a case like Alice is going to have an impact on decisions. I mean, it would be weird if it did not. But your -- you know, the counterpoint is, of course, it should not have an undue impact.

MR. SOBON: Exactly. I mean, if you

look at the Alice case, it was very thin on things like pseudocode and modules and, you know, the computer programming apparatus of what it was doing, right? But we were finding that classic software cases that five years ago we would have thought are completely within the four corners of technology are having 101 rejections because it's just a whittling down and reduction (inaudible) to -- those are all standard things in component, component, component, component, component; and all you have left is now this abstract idea, and now that gets rejected. That would make mechanical inventions all unpatentable, too, because I would say there are only five Euclidean machines; they're all, every single, you know, this thing is now nothing but an abstract idea.

MR. BAHR: I agree with you, especially for the second part of the test to look at things as just component by component, because if you use that sort of analogy, nothing would even survive under 103, because everything is basically closed down.

MR. SOBON: You'd close down.

MR. BAHR: Right, so, we appreciate

that. We're trying to rein that in.

MR. SOBON: But that actually is the lived experience by a number of applicants that in practice it is a reduction out of (inaudible) where the pieces are just taken apart and all you have left is just a -- it's just a, you know, crazy story. But I once had a raccoon come in the house and it was washing the cat food in the water bowl and had nothing left. So, there's sort of this thing that you're just sort of washing away inventions until, like, oh yeah, there's nothing there, so that one's gone, too. So, that is actually the problem of 101 right now.

MR. BAHR: Thank you, and I didn't think I would be hearing about raccoons today.
(Laughter)

MS. KEPPLINGER: With that analogy --

MR. BAHR: I have a mental picture now.

MS. KEPPLINGER: With that analogy, I think we can take a break. We're a little behind, so let's come back here -- let's take a short break until 10:50, so that's almost 10 minutes, but let's try to get back as soon as we can.

(Recess)

MS. KEPPLINGER: Okay, welcome back. Thank you for coming back to your seats, and I will turn it over to Andy for a few remarks.

MR. FAILE: Okay, good morning. So, for the Operations update, we're actually going to change the order of the two presentations you see on your agenda and do the quality metrics first, and then we'll go into some of the stats in the Operations area.

So, normally when we do the Operations update, we have a lot of the pendency and filing stats and kind of go through those in detail, and we also generally talk a little bit about our measurement of quality and the quality composite. And there's been a lot of developments in that particular area now, so we thought we would start with that and have Rick go through that and then have Bob pick up the stats part on the second half.

So, I'll turn it over to Rick for the quality metrics discussion.

MR. SEIDEL: Thanks, Andy. Good morning, everybody. Where we are today is really the result of, you know, last year's efforts, right? We had our summit; we had our Federal

Register Notice. And through that we got a lot of valuable feedback and at a very high level cut to the chase right in the very slide.

So, where we are today really is this is going to be transition year while we find our way, okay? And what I mean by "find our way," first and foremost in the past, probably back in 2010, actually with PPAC, we came up with this idea of a quality composite, and the quality composite was seven components. And I can talk in much, much more detail but that's not what we're here today to talk about. But long story short, we will not be moving forward with the quality composite in FY17 and beyond.

Part of the feedback we heard --some of the downside with the quality composite was how do we capture quality metrics simply and effectively. And, more important, in the past arguably it would be directed toward correctness. We've heard quite a bit about clarity certainly early this morning but throughout this journey from the inception of the quality summit almost a year ago.

So, moving forward, certainly

correctness. We all know what correctness is, statutory compliance, and clarity of our work products will really be the focus for our future efforts.

QIR -- big data if you will, our PALM treasure trove of data -- we'll continue the leverage to look for opportunities for improvement.

So, here's really a snapshot of where we've been and where we are and even where we plan to go. So, again, just very briefly, the quality composite: For the past five years we've been looking at four reviews, four types of reviews performed by the Office of Patent Quality Assurance:

- The final disposition compliance, right? And that's final rejections and allowance propriety.

- In-process compliance, which would generally be first actions or non-final rejections.

- And then a deeper dive that came along, the first action on the merits review. And there, the important thing about that is we

touched on this idea of clarity, but it was more binary. Was the examiner's position clear? Kind of yes or no. And we'll come back to that shortly.

•And then the search review. Was the search done in the appropriate places?

So, they're the first four components that we're all familiar with that we've been doing for several years.

I talked about QIR. QIR, again, leverages our PALM data. PALM data captures every transaction in every case, and it aggregates up at the corps level. But you can also drill down to tech center, examiner, art unit. There are a lot of different ways to slice and dice QIR data. So, we'll continue to focus on QIR.

The past several years I think even before the quality composite, we had the external quality survey. We've gone out to our stakeholders randomly and asked certain questions, and I think the basis of that evaluation has remained the same. We've added a few questions to it year to year, different ones

throughout the cycle.

Internal quality survey is really how are we doing? We ask our workforce certain questions: Are we improving? Are you getting the training you need? Various other things.

So, long story short, all these things add up to our quality composite.

Moving to the right side of the slide, those first four quality review forms are going to funnel into a single form, and we've talked about that I think.

There has been some discussion this morning about the master review form. The master review form is a single -- it's correctness and clarity data capture. So, it really looks at, statute-by-statute, are the correct things being done? And then it also breaks out some clarity aspects of a particular statute as well.

So, the long and short of it is this master review form will be an opportunity for OPQA reviewers to capture data on the cases they review -- the presence or absence of certain things in the particular application they review.

Transactional QIR will be continued.

It will have the same points.

MS. KEPPLINGER: You can go.

MR. SEIDEL: Okay. Transactional QIR -- again, we'll leverage our PALM resource, maybe different looks at it, moving in a different direction but again we'll use what we're calling big data to help us focus on opportunities for improvement.

Getting to the last two pieces -- the quality surveys, internal and external -- we'll continue to implement them. We'll continue to ask how we are doing both externally and internally. This year, though, we won't include it as part of our quality metric. We'll use the data; we'll evaluate; we'll make improvements based on the feedback we get. But in terms of a quality metric approach, we will not be including that.

And then the bottom line in bold red, discontinued for the quality composite.

Esther.

MS. KEPPLINGER: You know, Rick, I had a question about the evaluation of the search quality, and it's my understanding that it's

required for -- did the examiners -- if they do automated searches, they're supposed to record in the file record what searches were done.

MR. SEIDEL: Okay, yes? (Laughter)

MS. KEPPLINGER: Okay, we had some different information yesterday, which puzzled actually, Mark and me. So, we just wanted to make sure that that is a requirement, that any searches that are done are necessarily recorded in the file wrapper, because it's hard to evaluate the quality of the searches in fact if you don't record it.

MR. FAILE: I don't have chapter 900 in front of me, but I'm sure there's something in there that would obligate us to record the search. We'll certainly look into that -- look into the contours of what we're supposed to be recording. I'm looking at Bob, because he's looking at me.

MR. BAHR: Yeah, I mean, I don't know exactly what -- maybe it was recorded less robustly than you would like.

MR. FAILE: Yeah.

MR. BAHR: But there's certainly some obligation to put in where you searched if it's

not a --

MS. KEPPLINGER: It was just a comment that was made that implied that it was voluntary, which --

MR. GOODSON: Yeah, the comment made was: Well, yes, they do the searches, but it's up to them what they choose to record and not to record. And Esther and I just kind of sat there saying: Okay, how does that affect IPR's PTAB quality. We were perplexed.

MR. BAHR: Yeah, I'm just -- I mean, I could see a circumstance where an examiner goes down like a wild goose chase and realizes that it's just the wrong search and doesn't record that, and then it starts a serious search and reports that. If some -- I don't know.

MS. MARTIN-WALLACE: So, there is an obligation to recording your search.

MR. BAHR: Yeah, sure.

MS. MARTIN-WALLACE: And OPQA does do, as part of their review and as part of the master review form, a review of randomly selected cases for search as well. But the specifics of it -- we can get that information to you. But, yes, there

is an obligation.

MR. BAHR: As long as it's being done over here.

MS. CAMACHO: Perhaps that could be something that you add to your clarity of the record review.

MR. SEIDEL: Okay, next slide. So, without getting into too much detail about the master review form, again, as I said, it looks at the various statutes, and the reviewer would do an item-by-item or point-by-point review of the application based on the master review form.

The outcome that we really are planning to leverage this year is correctness and clarity. So, the first piece in terms of correctness -- we've done that for many, many years. I think -- well, I won't go as far back, but maybe ever since the inception of the Office of Patent Quality Review have been looking at correctness, and that's evolved over many, many years.

The reason there's a TBD there is twofold. One is the form itself. Remember we're funneling four separate forms into a single

one. Ideally, we're capturing the same things, but it may be a different type of review. And, secondly, just the basis. It's much more in depth. We've got clarity components in there as well. So, we're waiting to see what the outcome will be. I think we can map it back to our historical correctness data. But the goal would be as the master review form we get more and more knowledge, we get more and more reviews, we'll have a better understanding of is this the right -- does this compare to our prior correctness and so on. So, the TBD is more looking historically back to what we have.

On the other hand, clarity -- clarity is very elusive. And I wrote something down that Robin Evans said before. I think we can all attest to this: We know clarity when we see it. But how do you measure it?

Clarity is typically very subjective. We can say, yes, that's clear; it's really clear; hmm, not so much, maybe it's not so clear. So, the clarity issue really needs to be teased out a little bit more.

One option would be to say it's either

clear or it's not clear. But on the other hand, we have several components by statute, and it may be if there are 10 items of clarity in a particular statute, if five of those boxes are checked, the presence of those clarity best practices, if you will -- maybe that makes it clear. If there are only four, maybe it wouldn't be clear. On the other hand, it could be a score. It could be a five-point scoring system.

So, there are a lot of different ways to go. How do you objectively measure something that is inherently very subjective? And I think that's our challenge, that we will continue to evaluate the master review form; see what information we can glean from it; and, based on those results, develop a path forward likely after mid-year in the third quarter. So, we're still waiting to get some more of the master review forms completed, aggregate the data, and determine a path forward.

So, that's where we are today. We'd appreciate any suggestions folks have in terms of how do you turn the subject of evaluation of clarity into something objective that we can

measure? I think that's the biggest challenge that collectively the team sees moving forward.

MS. JENKINS: Rick, just when you say "statute," I guess I get all concerned and not wanting to see such a rigid parameter to be set out. I think that this is something the Office should develop and improve upon and go back and reconsider and see if you've made the right decision in 2016 or maybe needed to change it or do something different in 2020. So, I think it's a document that should be fluid. It should get stakeholder community input and be something that the Office continually strives for but is not subject to statute. So, those are my two cents.

MR. SEIDEL: So, the -- I'm trying to --

MS. JENKINS: Esther has provided clarity, I'd say. (Laughter)

MR. SEIDEL: Was that clarity good, bad, or would you like to give it a numeric value? (Laughter)

MS. JENKINS: It was excellent, but even if -- I don't want to see -- I remember doing civil legislation a long time ago on domain names and was very adamant about not having to set forth

10 different types of bad faith registration in use, because people are creative and will learn different ways of changing it. So, my point is simply do it internally within the Office.

Obviously, look to 112 for statute reasons -- Esther explained what you were trying to say -- and develop a program that is helpful for everybody but is something the Patent Office can change and improve upon later on.

MR. SEIDEL: So --

MR. FAILE: Sorry, Rick. So, just to jump on Marylee's point, the two parts -- correctness and clarity -- and maybe this will be helpful, the statutory compliance part obviously comes under correctness. We're looking at the position the examiner takes with respect to a statute and is it correct or not, you know, at the end of the day. That's more of a binary yes or no.

The clarity part, what we're trying to capture there is a little bit of a more granular improvement upon what we would capture today. As Rick mentioned, our look at clarity today is kind of binary/digital, on/off, yes or no. What we'd

like to do is figure a way to capture a little bit more of the graduated scale. It's really clear. It could be more clear. It's exceptionally clear, et cetera.

The questions in the master review form that a reviewer would go through and each one of the positions an examiner takes in an action are designed to kind of tease out some of those different levels.

And, to Marylee's point, it's certainly a first to have in a baseline: Are those the right questions? Are we teasing out the right levels as a TBD at this point? So, as we go through and capture more data through the master review form, inevitably it's an iterative type of process where we would go back feed our results back into the questions themselves and probably do some refinement there.

The big point under clarity is just we're trying to capture a little more than the digital on and off and feed that back into our training process and elsewhere.

MR. SEIDEL: Just on the other point in terms of feedback, we are planning to go out with

the Federal Register Notice probably later this month to share some of these ideas and solicit the input. And, again, the big one would be the clarity piece. We'll be sharing access to the master review form, so you'll be able to see what those criteria are. So, ideally we'll have an opportunity to consider even more feedback along with the early results from use of the master review form.

So, the last piece I want to talk about is under the QIR umbrella. In the past, we've looked at percentage compliance, if you will, of let's say percent of actions that are -- percent of disposals with fewer than three actions, okay? And we had a certain number, and we set goals and targets. So, that was a very high level look at trying to reduce -- or move towards compact prosecution.

Over the course of the years, we've heard, hey, maybe that's not the best measure and not the best of QIR. So, we've reevaluated where we are. We actually had some SPEs go in and take a look and get some feedback. We had an SPE survey about what are some of the better

directions to move in evaluating QIR. And ultimately we came up with three pathways forward: The first one is going to be a reduction of rework and what can we do in that regard? A second one is reopening prosecution. And then a third one is consistency of decision-making.

So, by identifying these things in a QIR-type environment, we're shining the light on folks that are at the far end of a spectrum -- outliers, if you will. So, taking reopenings, for example, we actually have taken a look at some data where we populate, reopen after final rejection, reopen after appeal, reopen after pre-appeal, and we've looked at FY15 data, and in some instances it's what you would expect, right? Maybe 012 types of reopenings over the course of the year. In other instances, it would be very, very high, and not that there's anything wrong, it could be very legitimate for good reasons. Potentially the Alice decision caused a lot of reopenings. But the idea here is to get data, shine the light on the data, and investigate a little bit: What's going on in

there? Determine what's the root cause.

So, ideally, we're identifying opportunities for improvement, looking at outliers, investigating, and then determining a path forward whether it's 101 coaching; it's training; it's a different type of training. But that's the plan moving forward and how we're going to be using our quality index report, and we're focusing on those three areas.

The re-work would be, you know, second or multiple nonfinal rejections, multiple restrictions, and aggregating all of those instances up to across the board by examiner over the course of a year. And that would give us an idea of, hey, some instances of many, many reopens may warrant further attention.

And then the last one that we focused on is consistency of decision-making, and that's more -- it's a classic situation, two examiners side by side in the same art with different decision-making outcomes, and we can use allowance rate here. Why would working in the same docket, the same class and area, result in one outcome being X and another one far away from

X. So, there may be some very good reasons. It may be a particular type of filing within that docket. But, again, the idea is try and shine the light on some of these outcomes that at first blush would merit a further investigation. So, that's really what we're trying to do.

And the last thing I'll say on that is from a quality metrics perspective, moving forward the path would be looking at correctness and clarity. The QIR data is more of an internal process improvement, and really it goes along the lines with many of the other quality initiatives that we have. It folds in or it leverages best pieces of a lot of the EPQI initiatives.

So, with that, I think my presentation is finished.

MS. MAR-SPINOLA: I have a question. And I have a lot to learn, still, about the metrics here. From an enforcement standpoint, I wonder to what extent this information will be part of the public record, if at all. If it's not, then it's not an issue. But if it is, things like the degree of clarity, right -- could somehow impact the enforcement or the challenges or whatever,

right -- because it would be able to -- I think it could be used to say, well, internally the Patent Office said this was relatively unclear or it's very clear or not clear. I think the two ends are okay. I still -- I worry about the in-betweens and what kinds of problems that could create for issued patents or whatever.

MR. SEIDEL: So, traditionally, we have not captured or shared the results of individual cases. In recent years they've been rolled up to a corps level, so out of 8,000 reviews I think that we did last year, you would not get the case-by-case results of all 8,000. Instead, you would get the aggregate results of those 8,000 -- if that addresses the --

MS. MAR-SPINOLA: It does, thank you.

MR. SOBON: As a matter of law, the Office has successfully resisted any type of subpoena in litigation for anything including examiner depositions and/or I think this data as well, correct -- for litigated cases.

MR. SEIDEL: To my knowledge, yes.
But --

MS. KEPPLINGER: I mean, I think you're

correct. Occasionally, examiners have had to give depositions. So, it's not been completely blunted. I know one examiner was actually on the stand for 12 hours. But it's not very often.

MR. BAHR: Right. We've never had to give out the OPQA the insurance data.

MR. GOODSON: Question for Valencia, and it's all related, and I guess in some ways this is the ultimate question. You know, two persons similarly situated with the same disease who go to a hospital have different outcomes because they have perhaps different doctors. And I'm not picking on the examining corps at all, but to what level are we assured that the decisions are repeatable regardless of examiner? And it's a very tough question, and it's -- you know, it's a nightmare.

MS. MARTIN-WALLACE: It's something that we struggle with. We have over 8500 examiners. We have over 600 supervisors and quality assurance specialists that train and mentor them. Part of what we're doing with the master review form is making sure that we provide that consistency. So, OPQA is using this form

now, and it's going to be implemented into the corps, as well, in phases so that everyone is using that same standard. And part of developing that master review form is having people from OPQA, OPLA, Operations to have input into what's in the form, how we're using the form, and how to get that information back to the examiners, because ultimately, as you're saying, we want each examiner to hear the same thing regardless of which supervisor or quality assurance specialist they're hearing it from.

So, that's what we're doing now. And also in our training process, we've started using cross-cutting teams in developing our training modules as well so it's not just one specific group that's developing it whether it's from OPT or not. We have OPT, OPQA, Operations, OPLA all involved in the development so that we reach that consistency.

MR. FAILE: So, to add in into what -- it's a great question, Mark. It's the big \$64,000 question, right?

So, what we're striving for, particularly in the last part of the QIR that Rick

talked about, consistency in decision-making, is trying to make the consistent output from the corps in decision-making as best we can within the tolerances of the system itself, which is -- the scale is enormous. You know, we have over a million cases in prosecution at any one time and several hundred thousand office actions and positions being taken.

We do have the QIR -- let's just say a big data way to go in and look at things that we think are statistical abnormalities with respect to each other. And the general process is we look at that when we have outliers, so many standard deviations away from the norm.

That doesn't necessarily mean anything is wrong; that means we just have an outlier. That might be the preferred behavior. And we go in and do, like, a root cause analysis of that and try to draw that up and make it consistent.

Another point is that we don't own all the variables ourselves here at the Office. So, if you're just looking -- Rick gave the example of an allowance rate: Two similarly situated primary examiners, both been here 14 years, both

in the same docket. We can isolate some of those variables to look at more of an apples-to-apples inside the Office, but there are other variables that come into play, too: Application incoming, the quality of that; the prosecution with specific different practitioners; et cetera.

So, to the extent we can minimize and isolate variables at our end and look at, we intend to do that with our new quality metrics process. When you look at the system as a whole, we're all a part of that, and it becomes a much more complex problem to try to get a consistent output.

MR. GOODSON: Well, then there's the very slight issue of human frailty. It's going to happen.

MR. FAILE: And you add that in there, too.

MR. GOODSON: Maybe I missed this, but when will we be able to see the form?

MR. FAILE: The FR notice for the form would be --

MS. MARTIN-WALLACE: The FR notice for the form. It's not for the form; it's for quality

metrics as a whole, and that's coming out. Rick is working with Bob on that. The actual form -- we are still working through our agreement with POPA, because the art classes who'd use that form are represented by POPA. So, we're still fine-tuning that. Until we have our final agreement, we won't be publishing the form. But when we do, it will go out on our Web page for everyone to be able to see what we're doing and how we're doing it.

MR. SOBON: So, just on that note, we talked about this with the PTAB yesterday. You know, one of the key advantages of and the purposes of PPAC is to provide you kind of thoughts while you're still in process. So, to the extent you can share -- you know, obviously, this will not be public, but for you to share the draft form with us and also the draft notice before publication, we really are standing by and are ready to give you thoughts that we have -- and some can be useful, some not -- but to just remind, that's part of what we're here for.

MS. MARTIN-WALLACE: Absolutely, and we will do that. Thank you.

MS. KEPPLINGER: Maybe we can move to Bob's presentation.

MR. OBERLEITNER: Okay, so, I'll start with the patent operations update. So, starting with the first slide we have the unexamined patent application inventory. You see that at the end of January we had a little over 561,000 unexamined applications in the new application inventory. Last year we were at 610,000 applications, but you also see at the end of the slide here at the end of FY15 we had a little over 553,000. So, basically a significant decrease from where we were a year ago this time, with a slight uptick from the end of last fiscal year. But that's pretty typical first quarter achievement with all the different holidays in the first quarter as well as with the earned leave that employees are taking.

MR. SOBON: At current staffing levels, what is your consideration of full employment or the appropriate level of backlog? Where would you be hitting -- try to hit?

MR. OBERLEITNER: So, our working backlog -- it depends on the size of the corps at

the time - essentially we're looking at about a year of work.

MR. FAILE: Yeah, so, just a quick ballpark answer to your question, Wayne.

For the current size staff, when we get down to our 10 months' target, multiplying all that out, you're looking somewhere in the neighborhood of 360 to 400 potential applications for that 10-month inventory for examiners. Very, very large ballpark numbers.

MR. OBERLEITNER: Next slide. This is RCE inventory. So, where we are currently is 35,300. We've been holding pretty steady for the last four months with that type of an inventory, which represents a significance decrease of where our inventory was around February of 2013. You'll see the purple line in the middle of the chart where we institute the RCE count changes. We had a backload of about 112,000 at that point.

Next slide shows first action pendency and total pendency. The top line is our total pendency. At the end of December we were at 26.3 months. Our end-of-year goal for total pendency is 25.4 months. The bottom green line represents

first- action pendency, as of the end of December. We are at 16.4 months, and our end-of-year goal is 14.8 months.

We're on target for the 10-month first-action pendency and 20-month total pendency that Andy was referencing earlier. We're shooting to achieve that in FY19.

The next slide is examiner attrition rate, which is currently is an overall attrition rate of just under 5.6 percent. We ended the fiscal year at roughly that same range. Our attrition rate minus the transfers and retirees -- that's the red line, -- we're currently at 4.19 percent, and that's slightly lower than where we ended up last fiscal year at 4.32 percent.

In comparison, the most recent government attrition surveys that we had access to were in FY13, and that was a little over 6 percent. So, we're doing better than the government average from the last data that we had.

The next slide shows monthly serialized and RCE filings received through October 2014 through December 2015 -- again, this is a monthly

look. You'll see that at the top we have the serialized filings in blue and the RCE filings in red. Basically, the serialized filings are going to make up about 70 percent of what our total filings are with RCEs making up the remaining 30.

Last year FY15 our filing rate overall was essentially flat. It was serialized coming in around 1 percent. So far, through the first quarter we actually have an increase of filings, upwards of 6 percent, a lot of that coming off of RCE filings. We're going to continue to monitor that, but we are at this point holding to our projection of an overall 1 percent increase by the time the fiscal year is over.

MR. THURLOW: Real quick -- so, that's a pretty big number, 6 percent in the RCEs. I mean, was there a certain -- was it across the board, or was it a certain class of cases?

MR. OBERLEITNER: Most of the current RCE filings are in the Business Methods areas.

MR. THURLOW: Oh, Okay.

MR. OBERLEITNER: We are seeing some increases overall but, again, it's in the first quarter where we're going to monitor it as we go

throughout the year to see if there are any changes. I mean, as we've talked about, there have been some recent case law and other factors, so we'll continue to take a look at and monitor the trends.

MR. FAILE: So, to add to Pete's comment, to kind of break that 6 percent through the first quarter down a little bit, the serialized filings are up about 2 percent about this time last year. We were predicting about 1, so we're a little bit up in the serialized filings. The big contributor to that 6 percent is the 30 percent of RCEs being up somewhere near the 17 percent mark. The biggest contributor to that RCE 17 percent increase is in the Business Methods area, so just kind of a quick breakdown of that 6.2 percent.

MR. OBERLEITNER: In the next slide we're looking at design filings, so through the end of December we have a little over 12,000 applications that have been received, and you can see the steady increase that we've experienced in design filings. We're projecting this year to be an increase over last.

For the unexamined inventory our backlog in designs has been increasing, and at the end of December we were almost at 41,000. We were at 40,700. We ended up last year at a little over 39,000, so we are seeing growth in that area. We're hiring this year in the Design area and, again, we're going to continue to monitor how the design application filing applications go.

Then a similar look to the earlier slide on the utility filings here. The design first action and total pendency, top line being the total pendency at 20 months as of December and the first-action pendency at the end of December in Designs was 13.7 months.

MR. THURLOW: Much quicker in practice. 13.7 seems long. Just seems like it's shorter in practice, but maybe that's a good thing. (Laughter)

MR. OBERLEITNER: Track One filings is the next slide, slide 11. You can see the totals. Every year we have been increasing, and the first couple of months of this fiscal year are no different. The January numbers that you see are partial numbers, so we expect that to go up a bit.

So, you see the steady increase. We're getting a little more than last year, but we still project that we will be under the 10,000 cap by the end of this year.

This slide shows a little bit more information on Track One pendency. Our average time from filing to petition grant is little over a month. Average time from petition grant to first action is 2.4 months, and from petition grant to final disposition is a little over 6 months. Average time from petition grant to allowance is 5.2 months. So, still on average, -- we have been working through cases very quickly.

This is an overall look at the Track One results through the end of January, and since we've had Track Ones and we've been tracking these, the relative size of the bars in the various areas have been relatively steady.

MR. SOBON: Given the -- it is actually very successful for applicants to do -- to go to Track One but it is expensive. Have you -- has the office done user studies or surveys of those who choose or don't choose to do Track One and

reasons for it and analysis that, you know, the program may be -- should be -- if the office could afford it could be as part of a new fee study and could be expanded? Where, you know, (inaudible), you know, yes, you only reached the 10,000 that's because of me with the current price point. Could the office afford to have a cheaper price point and have more people enter that program now that you're getting the backlog down? You know, those kinds of questions. You know, it's -- we're midstream now. We have number of years under the belt. What could we think about in terms of change or adjust in the program?

MR. OBERLEITNER: Right, so we've done anecdotal queries to stakeholders during various speaking engagements and asked whether they have used the program, why and why not. With respect to changing the price point, at this point, we have not determined appropriate to make changes. But as you said as we start getting into the steady state of 10 and 20 month pendency, it may be something to look at.

Okay, with the next slide - first action interview program. Since the inception of the

program, we've had 6,700 applications enter into the program. You can see over 4,000 pre-interview communications and 3,800 almost 4,000 total allowances. Slightly more in the number of interviews. And at the bottom there, the overall allowance rate. That number of 12 percent represents all of the cases and first action allowance rate for the aggregate number of cases is around 12 percent, but for this program the rate is almost three times that.

Last couple of slides, we're going to look at the PPH program. So PPH applications with petition requests, you'll see the cumulative filings from 2010, and we're presenting these in calendar year, you can see the steady increase in that type of application and the petition requests that we're getting. The next slide, PPH applications with petitioner requests over the last 12 months again steady increase, people utilizing the program.

MS. KEPPLINGER: Any questions for Bob? If not, we're kind of behind time and I actually do have two quality questions from the public. And the first one is how will the USPTO

react to public pressure against particular examiners with low or high allowance rates? I think that's probably about operations.

(Laughs)

MR. FAILE: Okay, so I'll take that one. So it kind of goes back to Rick's presentation. So one of the things that we do want to do -- and again, it's a little bit more of a complex problem than it may seem on the surface. One of the things we do want to do is utilize QIR to establish do we have outliers with respect to allowance rate? And again, to me one of the -- there's a couple different concerns there. One is we have seen some data interestingly enough where we're not necessarily on the same page with the person that's presenting their allowance rate data. The -- we have a definitional question. We're calculating allowance rate this way and we see it calculated in other ways. So one of the first things is to make sure we're doing kind of an apples to apples. On the second part is again, trying to get at what are the -- all the variables that contribute to an allowance rate? Certainly part of those are

all in the office within the examiners purview, all within the cycle of prosecution that they do. But there's some other outside variables too. So trying to nail all that down and look at it kind of in a holistic way is a challenge in and of itself.

What we intend to do with the quality metrics and the quality efforts itself is to take a look, use big data, to take a look at what areas we need to focus on, go into those areas, and do root cause analysis and try to see if we are -- if we should have an allowance rate that's closer in for two similarly situated people. One of the similarly situated examiners -- one of the larger questions, and I throw it up to this group to help us with this as well is, you know, I don't know that we'll ever have this range as acceptable, this range isn't acceptable. I think the best we can do is when we have a large range or define it by a number of standard deviations away from the norm, that's certainly an area to go in and look at and make sure what process is in place there and all -- is everything being followed correctly. I think that's probably the best

we're going to get, but I certainly welcome any input from this group on other ways to look at that.

MS. MARTIN-WALLACE: And if I could just add a little bit to that on a higher level of looking at the quality as a whole. We've had very aggressive efforts for outreach to come out and communicate with the public and get their feedback about what we're doing right, what we're doing wrong, what would they like to see differently. And so we're incorporating all of that into this quality initiative and we're doing the same thing internally. We have meetings with our examiners and also discuss the things that they're seeing about the applications that are coming through the door and how that affects what they can do in their examination process. So on a higher level than just the allowance, we're trying to incorporate from all sides and come to a common understanding of this process and what's expected from the patent community as a whole inside and outside of the office.

MS. MAR-SPINOLA: So I think that is a natural weave-in to the clarity issues, right?

Clarity of the record on the examination.
Because I don't think you can arbitrarily have a number of allowances per examiner let's say for -- it just doesn't make sense because there are so many other factors. Whether the quality of the application itself or that it's just a difficult or a complex subject matter, right? But I think that it -- if the record is clearer than you can see why allowance was protracted or not granted or granted quickly. And I -- so I see these programs starting to merge into a nice packet that has an overall benefit of quality, just to comment.

MS. KEPPLINGER: Your comment about apples to apples feeds into the second question which is an important issue moving forward regarding quality is also how to deal with the rising number of outside entities measuring examiner performance. If you had any comments on that --

MR. FAILE: Agree, (Laughter) it is. I mean one of the interesting things and maybe it's something we talk about in this group is harmonizing different definitions of things used

in the patent office, I'll just say in general. We use a lot of acronyms here and you've heard a bunch of them today. Probably some of them we should have defined for you. QEM is quality enhancement meeting by the way, and that means a meeting of examiners. So I think one of the things is if we had more of a common understanding of definition of terms that we use, we're probably at least able to get -- to weigh into that pool together with the same understanding. So one of the things as we're giving presentations, if there are terms that are unfamiliar, we'll try on our end to better define what is a serialized filing mean for example. And certainly ask us questions when those come up. And they may be unfamiliar to either PPAC members or you think the public would benefit from a little explanation of a certain terms.

MR. THURLOW: Just to give you an example of those we discussed, I mean, a lot of the law firms are getting phone calls from companies that say your clients want this, this is the data from a particular group or art unit. What examiners are doing, what the percentage is.

And our data is so clean that we're getting it right off of PAIR. And there's been issues with the quality of that data and that's why many -- I can't speak for everybody, but I think many people have questioned the value of that data. But there is, as the person that wrote in, there is a big market on there on that data and something the PTO should struggle with because there's been a lot of issues with whether that data is actually accurate or not.

MS. KEPPLINGER: Okay, thank you very much. Thank you. I think we're about 15 minutes behind. So I think we should move on to the international presentation. Shira?

MS. PERLMUTTER: Here we go. So good morning. Glad to be here again. And I thought what I would do today is to just give a brief update on some highlights of international developments. So I'll mention four things. One is the recent PPH with Brazil. Second, the ID5 inaugural meeting. Third, some -- I wanted to just flag our upcoming international meetings. And then finally a word about the status of TPP.

So PPH. We are extremely excited about

the recently launched PPH, Patent Prosecution Highway, which is a pilot program between the PTO and INPI which is Brazil's IP office. And as you probably recall this was a very high-level political achievement because it was a centerpiece of the U.S. Brazil Joint Statement on Patent Work Sharing that was signed in -- last June by the Secretary of Commerce, Penny Pritzker and her Brazilian counterpart. We were very pleased to be able to finalize the terms of the framework in November and we launched the pilot program together on January 11th, so just a few weeks ago. And as you probably know, the scope is in Brazil limited to the oil and gas sectors. That's the pilot nature of the program essentially. This is, from our perspective, a tremendous accomplishment. It will allow qualifying U.S. businesses to expedite the examination of their patent applications in Brazil. And given that their IP office has a backlog of more than 10 years now, that could make a huge difference. And of course, that will facilitate U.S. innovators getting timely protection in what is the largest economy in South

America. So in addition to the significance just of the pilot program in itself, we are hoping it is just a first step in many more such initiatives and that it will just lay the groundwork for us being able to move forward in a lot of projects with Brazil. So we are, as I said, very excited about it.

But what we do want to make sure is that we are fully utilizing it so that both sides see the pilot program as having been a success and will want to move forward. And in order to do that we're engaging in a lot of outreach efforts to make sure that American businesses are aware that the program is there and encourage them, those applicants that qualify in the relevant sectors, to take advantage of the program. And so if any of you are doing business in that sector, it would be great for you to take advantage of it and also we would love everyone to spread the word as much as possible.

So the second topic, industrial designs. So I reported on this briefly at the last meeting given the increasing importance of industrial design protection and the increasing

globalization of markets, a decision was made by, of course, the five biggest IP offices around the world, that it would be a good idea to form an Industrial Design 5 or ID5 group similar to IP5. And we hosted the inaugural meeting December 3rd and 4th here in our offices. Now it's the same countries, of course. So it's the U.S., Korea, Japan and China and Europe region rather than country. But for Europe it's OHIM rather than the EPO that's handling the design issues.

The ID5 is focusing initially on four overall topics. One will be to improve consistency and registration policies, cataloging office practices and promoting interoperable procedural frameworks. And then finally protecting emerging design formats such as graphical user interfaces and animations.

So we -- the main accomplishment of the meeting was signing an agreed statement which I believe was distributed to everyone. And you'll see it's short and sweet, but it's a beginning and it recognizes the importance of promoting the development of a user-friendly industrial design protection system globally. And it agrees to

establish the ID5 as a new industrial design framework with an annual meeting to be hosted by a rotating secretariat. The offices also identified 13 separate projects to start working on over the next year. So it's beginning with a bang and with quite an ambitious agenda.

So these projects all involve looking at ways to encourage practices that will improve user efficiencies on a global scale. And that includes the creation of a website to facilitate the sharing of what the ID5 is doing and the developments that it is putting forward to share those with the public.

There was an agreement that SIPO in China will host the next meeting in the fall of this year. And the meeting concluded with a user session to describe to users what had been accomplished and to get their input on what their priorities were for the organization. And the groups in attendance included, of course, the usual suspects. So it was the ABA, the IPO, AIPLA, and their foreign counterpart groups. We did get a lot of positive feedback. The user groups told us that they thought the issues that

were addressed were timely and important, and that the goals did match with user priorities. So we were satisfied with that result.

So just to turn to upcoming events. The week of February 22nd will be very busy for us. We will be welcoming our international counterparts here first for the Group B+ harmonization subgroup and second for the Trilateral Heads of Office meeting.

So the Group B+ as, I think, everyone knows was originally formed in 2005 with a goal of pursuing patent law harmonization because it was not possible to do at WIPO politically. So it's called B+ because it includes the U.N. Group B industrialized countries and it's plus because it's also the European Commission and the EPO. And over the past year a subgroup of the Group B+ offices which included the U.S., Japan, Korea, Germany, and the U.K. developed a high-level principles paper to help move forward discussions on substantive harmonization. And I believe you have that as a handout as well.

So working from those principles, we're now engaging in studies and consultations with

industry representatives. And the work is being taken forward in four separate work-streams. So there's Grace Period which is being led by EPO, Conflicting Applications being led by us, Prior User Rights being led by the JPO, and Implementation Options being led by the Hungarian IP Office.

So on February 22nd we'll be meeting with representatives from Industry Trilateral. So Business Europe, the Japan IP Association, and then IPO and AIPLA here to talk about potential ways forward in each of those four work-streams.

And then following that meeting we're going to host the Trilateral. So we'll have the president of EPO and the commissioner of JPO here. And this is now the 34th year of formal cooperation between those three offices in the Trilateral framework. So next year we'll be able to celebrate the 35th anniversary.

And the Trilateral has done a lot. It -- the work that it has accomplished includes developing processes that we rely on today like paperless searching and electronic filing. So obviously we keep evaluating what the future

paths should be and what should be dealt with in each of these different groups. This year the Trilateral will be discussing a number of items of common interest such as, of course, again, substantive harmonization, procedural harmonization, and also the Global Dossier that, I think, Mark presented on at the last meeting.

And then finally just a word about TPP. So I reported on the relevant provisions of the TPP at the last meeting. We are now very much focusing on implementation. That is important not only once the agreement is in force in terms of making sure that every country has adequate implementation to meet their obligations, but it's also important even before the treaty becomes a reality to make sure that stakeholders and members of Congress are satisfied that the obligations will become a reality. And in a way that is helpful and appropriate.

So USTR is currently working on developing an implementation plan and there's a lot of Hill interest. We're getting a lot of inquiries about what our role will be and, of course, we'll be very actively involved in

helping both with the analysis of what needs to be done in our partner countries, and also giving them technical assistance and working with them to ensure that laws are updated appropriately. I also -- we also talked last time about the extent to which we can provide more information or answer questions about TPP. USTR is working with the White House to develop an analysis that can be made public of the various provisions and talking points. We are very much waiting to be told exactly how all of the provisions should be presented and described. In the interim though, we are also prepared to and very eager to be helpful in any way. So if people have specific questions or issues they would like more information on, if you let us know we can go ahead and develop responses that can be helpful.

So that's all I have but I'm happy to answer any questions.

MR. WALKER: Okay, Shira congratulations on the Brazil PPH. That's an outstanding accomplishment. I did have on question. How is oil and gas selected as the area for pilot?

MS. PERLMUTTER: Well, essentially I think to have it be an area where there would be a lot of interest in Brazil where they had industry that would be interested, where they would be seen as something where both countries had relatively equal levels of innovation and expertise. I don't know if Summer or Pete, you want to add anything to that.

MR. MEHRAVARI: (inaudible) As Shira mentioned this is a very difficult negotiation to get this agreement signed and it is really the -- what would Brazil sign? It really turned out that oil and gas was their priority and we sort of took it. But as Shira mentioned it's a -- not -- it's a two-sided agreement where Brazil looks at the oil and gas, but on our side we will accept all technologies. Thanks.

MR. THURLOW: My question I guess is more broader. I assume Japan and Brazil, they attract their applications and a lot of things. Probably don't have a PPAC and things, but I'm sure they track their filings and see what's going on. And do you have those conversations with tracking and seeing? And the reason I say that

in my 15 years of doing this, Brazil, it's just more and more that finds to not want to file there for many reasons. It just took too long really. They don't enforce them and it's not -- just too problematic to be direct. So to the extent you can convey that in a nice way, please do. But the issue -- the surprising issue is I think Japan is going down a similar road where just in the last week talking to different people about Japan, very expensive, takes too long. Is it really worthwhile? They don't enforce it in Japan. So if I was Japan and I had won an innovation economy that U.S. has and that many other countries around the world, I would think that is something they want to look at closely. It's my -- if you can comment on it.

Then separately, TPP is an issue to the extent you can help. I've seen some recent articles in the New York Times with members of Congress and others saying that it's going to affect our laws in many different areas and a lot of people are questioning that. So to the extent that you can share information with us when that's available. There is a lot of interest in TPP and

any assistance that you can provide would be very helpful.

MS. PERLMUTTER: Sure, I mean we're not expecting to have to make changes to our IP laws. So the question is really more of what other countries will do and whether it will be sufficient. Because as with any international treaty, what the treaty says is just a starting point and the question is what can you convince people to do in the implementation process which will flush out and sometimes even go beyond the actual treaty requirement.

MR. THURLOW: I'm not sure -- I'm not saying -- obviously you're not wrong. I'm saying the article was saying do you realize this is going to change the data -- privacy data collection or some things? And I'm not sure if that completely is getting out there.

MS. PERLMUTTER: I think the only changes that would be made -- there are certain changes that, as far as I know, may be necessary in areas outside of IP dealing with data collection. I'm not -- I don't have expertise in that, but I think that may be but not on our -- not

in our IP laws. We're not expecting that. And it -- when Dana -- I think Dana's coming this afternoon to talk about legislative options. We discussed this and he can fill you in a little more on the politics on the Hill on this as well.

On the cost and delay in getting patents issued in Japan or Brazil, the questions about backlogs and expense are major topics at the top of the agenda every time we have bilateral meetings with other countries including Japan and Brazil. I know certainly -- obviously we talk at Japan all the time in lots of different contexts and all these different groups and so that's always part of the conversation. We also have formal bilateral meetings, or I guess I should say informal bilateral meetings, with Brazil at least once a year and often more. We generally meet with them at the annual meeting at (inaudible), the general assemblies, all the member states. And then often there are other meetings that happen during the year. And we're offering assistance in any way we can to help with the backlog and they know that they have a problem.

MS. JENKINS: Just a quick question.

PPH has been -- it appears successful and I think it's something the office should consider -- continue to pursue. Is there a strategy over other countries of next steps of going after additional PPH friendships I guess? (Laughs)

MS. PERLMUTTER: There is but again -- do you guys want to talk about it?

MR. MEHRAVARI: So originally we start with the biggest offices, of course. The most cross-filings to really promote the work-sharing capabilities and the decrease of pendency. Currently, we're really focused more on the countries with the highest pendencies. So for us, Brazil was a big accomplishment. We're also looking right now to the ASEAN region and also other places in Latin America. Once we had that -- kind of that key group of countries, we then expand to the global PPH which is the one standard for all the PPH which we're now trying to move all the bilateral agreements to the global PPH. So again, I think it really -- it -- right now it's focused on the countries with the highest pendencies. Finding ways for applicants to

really get that on the ground up, a little more accelerated into those offices. We're looking more strategically right now in terms of -- especially with Brazil. Thailand also has a big issue with pendency and that's been another -- a new sort of goal for us as well.

MR. PEARSON: If I can, yes. We have one initiative in the PCT was to formally adopt the patent prosecution within the legal framework of the PCT itself and it did receive a great deal of support. At the same time a few of the developing countries opposed it feeling it was a step toward harmonization which they oppose just out of hand. And Brazil was one of the leading opponents to formally introducing it into the PCT. So this bilateral agreement we have now with Brazil I think is maybe just a starting point. Maybe their viewpoint will change, hopefully, so we can make it more widespread.

MS. PERLMUTTER: Yeah, I would add, we have a number of indications that that might be the case. And Francis Gurry, the Director of WIPO has been also reaching out to try to help convince people that PPH is not some sort of

secret plan for substantive harmonization, but it really is something that can be beneficial to all countries in helping to deal with the backlog without interfering in their sovereignty in any way in setting up their standards for protection.

MS. KEPPLINGER: Okay, thank you, Shira for your update on the progress in the international front. And Charlie Pearson, I think you have this section.

MR. PEARSON: Okay, yes, I'll try to be as brief as I can here. I cover a few topics that the patent's cost center is dealing with and in the international area. Of course, the IP5, these are the top five largest intellectual property offices in the world. And then the organization was set up to improve the efficiency of the examination process for patents worldwide.

It's been established more than eight years now. The first meeting was held in May of 2007 and it -- of course, it did consist of the five big offices; the EPO, Japan, Korea, China, and the USPTO. And these offices collectively handle 80 percent of the worlds patent applications and 95 percent of the PCT work. So

it's very important.

Now the Global Dossier is one of the projects that the IP5 has been dealing with. It's a set of business services which will modernize the global patent system and deliver benefits to all stakeholders. And of course, these stakeholders involve examiners and external users, applicants, and the general public. And currently we have a Global Dossier Taskforce which is meeting right now. It's rather unfortunate that it's overlapping with this meeting, but it's user groups that are providing input to the whole process. So --

MS. JENKINS: Charlie, the meeting here, literally here.

MR. PEARSON: Literally here, yes. They're in GIPA. (TRACK 2 inaudible) in the last couple days and so today I get to be with you, so.

And of course, a major function of the Global Dossier is to allow access to application files by other offices, applicants, and the public. And it shocked me earlier this week in the IP5 Working Group 2 meeting that was occurring earlier this week, the EPO indicated that in 2015

there were 700,000 accesses to the U.S. patent files by EPO examiners. And I thought it was amazing that they would make that admission that they would rely upon our work. And then China sort of outdid them. They said they had 800,000 accesses to our examination files. So it looks like the system is serving its purpose of work-sharing.

Okay, and of course, this -- the Global Dossier Taskforce is made up of the five IP5 offices as well as WIPO as -- and there are also user groups, industry groups, the AIPLA, IPO, the Japan Intellectual Property Association, the Korean Intellectual Property Association, Business Europe. And the PPAC is involved too. That is the Patent Protection Association of China. So there may be a little intellectual property issue that this body may want to deal with.

So, anyway, the first meeting of the Global Dossier Taskforce was held -- was in The Hague in 2013 at the EPO. And the purpose was to assess potential improvements to the processes supporting the global patent system.

There was also a second meeting last January of 2015. At the second meeting very specific priorities were defined by industry. And the meeting that is being held this week at the USPTO, the taskforce is discussing the status of those items and trying to determine which are most feasible to move forward with.

Now of the -- there was five different projects that the industry was interested in in moving forward with and one of them was an alerting function whereby when there was a change to an application, some document had been issued, the applicant and possibly the public would be notified of that change. And this would be for all family members.

Second item is the move toward an XML-based documents. Of course, this has been something that has been desirable for a number of years and the IP offices -- the IP5 are trying to move the -- in that direction.

A third principle would be to harmonize applicant names across the IP5 document collections; patent document collections.

A fourth item would be to provide legal

status where there'd be (inaudible) of the degree on sharing legal status data for patents and applications.

And a fifth item would be a proof of a concept that says the -- what we call the active component which would demonstrate the feasibility of cross-filing documents or changes over the entire IP5 system. For example, a change in bibliographic data or possibly a PPH request could be filed in one office and it would have effect in the other offices. So these are the items that are currently being looked at.

Okay, now The Hague agreement became effective in the U.S. This is the centralized acquisition and maintenance of industrial designs that became effective in the U.S. in May of this year where applicants would file a single international design application. It would receive a single international registration and it would have effect in one or more designated parties.

Now as I said it became effective in the U.S. in May and the most recent statistics I have were for 2014 where there was just over 4,000

industrial -- international design applications filed worldwide. And since it has become effective in the U.S. there's been over 130 international design applications filed at the USPTO as an office of indirect filing. And there's been almost a thousand of these international design applications filed worldwide which designate the U.S. And the U.S. now is just beginning to examine these applications, as so are our design group is having a new challenge put before them. It was interesting to see earlier where design examiners are going to be hired and the increase in design applications. So that's another -- maybe another aggravating factor.

Okay, Shira touched on the ID5 here, so I won't go into that. There was -- these are just a listing of many of the items that were agreed upon to study in the IP5.

And lastly, PCT. There was a meeting of the PCT, MIA, the Meeting of International Authorities in Chile last month. Now these international authorities are the searching and examining authorities from around the world.

Approximately 20 offices represented it. And there was two big issues being discussed. Quality is being discussed in the PCT 2 and I think it's one thing that we have to be aware of here within the USPTO and also a concept of work- sharing. It's very important sharing search strategies and relying upon work done by other offices so not to replicate the work done. And in 2015 there was 217,000 PCT applications filed worldwide. It was a small growth over the previous year. In all, over 25 percent of those applications are filed in the U.S. And so the U.S. Applicants are the number one users of the PCT system worldwide. And there were almost 600,000 national stage entries worldwide with 85,000 of those occurring in the United States. So you can see a good portion of the U.S. Workload does come to us through the PCT.

So -- and that's my presentation today. If there are any questions, I'd be happy to attempt to answer them. Thank you.

MS. KEPPLINGER: Okay, thank you very much Charlie and Shira. That was very informative. We did get one -- before we go to

the PTAB, I just have one quick -- another quality question. Are appeal conference outcomes used to measure quality in real-time?

MS. MARTIN-WALLER: I'm going to pass that one off to Andy as well. He's working with an operations team that I believe -- looking at those as well as statistics.

MR. OBERLEITNER: So appeals conferences used to measure quality in real-time. Thinking about that question.

(Laughs) Yeah, it's certainly something we would feed back and act on if we need to do something different. The real-time, there's no real-time aspect to it that I can think of. So we do look at those and to the extent we need to do something with them we will, but the real-time part of it, I would say probably no.

MS. KEPPLINGER: I think it is a rich -- from my perspective it's a rich area for you to be looking at those outcomes because there are a significant number of those cases; both the

pre-appeal and the appeal conferences which are either reopened or allowed. And that's one of the things that I think the public has looked at. It would -- particular with respect to the statistics that you give out on the correctness of the actions. That data itself seems not to jive completely. So I think it is in areas too. For investigation at least also to see what went wrong in that case. If it needs to be reopened or if there's -- if it needs to be allowed, what was the failing? The examiner wouldn't change their mind or maybe the attorney didn't make the record clear enough. I don't know. Or was there a quality of search problem in that case that all of the best art wasn't filed initially so it ended up having to be reopened. But it is something I think that needs to be looked at in some depth.

MS. MARTIN-WALLER: And Andy has his team working on that area as well. I would say though just in thinking about the way that process is put in place is giving real-time feedback because you have primary examiners, supervisors, or QUASAS that are part of that panel that are discussing those cases as the pre-appeal comes in

and the appeal comes in and gives that feedback immediately, immediately to the examiners. So I think the process was built in order to give that immediate feedback to the examiners.

MS. KEPPLINGER: And then the you link the outcome from that appeal conference to what eventually happens at the PTAB.

MS. MARTIN-WALLER: Well I know that there are statistics that we run as well as in PTAB to that we analyze as to what happens to those cases. And this is part of I believe the -- as you heard from Jack Harvey earlier, with post-grant outcomes. It's a relationship that we're building with PTAB in order to go through that analysis and have a common understanding of what's going on with the cases and what should happen in the future.

MS. KEPPLINGER: Thank you very much. And now we turn it over to Nathan Kelley, the Acting Chief Judge at the PTAB.

MR. KELLEY: Thanks, Esther. And I'm here today with Deputy Chief Judge Scott Boalick, our Board Executive Adam Ramsey, and our lead judges Tierney, Mitchell, and Giannetti. And

hopefully if I say something off-base one of these people will throw something at me.

So I wanted to start today where we always start with our statistics and I want to dwell on this first statistic a little bit more than maybe I usually would. This is our current inventory of ex-parte appeals; our -- what people still might think of as our conventional docket at the board, appeals from patent examiners in the Central Re-examination Unit. And you'll see at the end of January we were 20,642. As of right now we're at 20,269. And that's down from 25,000 plus, closer to 26,000, just about 16 months ago at the end of Fiscal Year 2014. So we've dropped nearly 6,000 off our inventory in about a year and a half. And I think we'll be in the teens very shortly. And what's remarkable to me about this is that there is so much focus right now on the AIA trials for good reason. They're relatively new. It's what people want to talk about. But this is just a remarkable success story. And it's beginning to be felt in the pendency numbers. And I think I said this last time, which is as our inventory goes down there is a lag before you see

a reduction in the amount of time it takes a case to be decided by the board if you appeal from an examiner. And that number is now beginning to drop as well. Last year -- at the end of last year I think it was still about 30 months. Now it's down to 28 months. And as the inventory drops, as more and more of our new judges come up to speed, that number, I hope, will drop much, much more and the system will get back to where I think it should be which is that an appeal to the PTAB is really a viable option from someone during the examination. It's not the last shot or, oh, this is our only possibility is to wait three years to get an answer. It needs to be a real option. An option used when people need it and an option not used when they don't. And I think for a few years the amount of time it's taken to get through our operation has been almost a deciding factor by people on the outside, and I don't think that should be the case.

So it's great news and it -- I believe it'll continue to be great news. If we track the -- go ahead.

MR. BOALICK: No, I was just -- Wayne

seemed to have a question.

MR. KELLEY: Oh, sorry, Mike.

MR. SOBON: Quick question, do you have internal guidance or forecast? We ask -- I asked the same question for the general patent operations for what you think is ideal for a backlog and time to resolution that ultimately you're targeting?

MR. KELLEY: We're -- so right now our output is in excess of about a thousand appeals a month on the ex parte appeal side. And if you do kind of the very rough numbers, an inventory of about 12,000 cases, gives you a pendency of about a year. And I think that that is a good target to shoot for. It's a very hard target to imagine how you're going to reach though because, of course, there's a supply and demand issue happening. If the pendency even appeal does drop so much that it becomes an attractive option, then obviously more people will file appeals. The inventory will go up. The rate of dropping the inventory will go down. So that's something that is going to have to be modulated downstream. But an inventory that allows people to get their

appeal brief on file have the case the docketed at the board, and then a reasonable expectation of a decision in about a year is where I personally would like to be. And I think it's a good goal for us right now.

So we chart the numbers on -- as you see here. This is a -- basically a bi-weekly basis. They do go up and down because of various things. Even things like power outages change the rate at which appeals come to us. But they -- every bi-week, if they don't go down, they just stay about even. So we are on top of it is something we focus on very much internally and the news is very good.

So I'll now turn to the AIA statistics. I'm not going to go over all of our normal statistics package. I just want to highlight a few things and a few things that we intend to change moving forward based on requests from the public about the kind of statistics we released.

I included this slide. This is our total AIA petitions filed to date. Mainly to show the very large number. We've exceeded 4,000 since I think the last time we met. But that

number 15 that you can see, those are our PGR petitions. People always ask about, you know, have those spiked? Are those going up? No, not yet. There have been 15 petitions filed and I think the rounding that gave us one percent, I think that's a very generous one percent. Probably less than half a percent actually.

MR. THURLOW: Nate, just on that topic, as you discuss with the judges and we discussed it at PTAB meetings, CLE events, and so on, is there a reason why in the future you don't expect the PGR numbers to match the IPR numbers? And from our perspective the bigger issue is with the estoppel matches for the 102, 103 issues but for the much broader issues, 101 and so on. So that's presented a concern, but I'm curious to see your feedback on that.

MR. KELLEY: I have heard the same observation about the estoppel. In a PGR, of course, you can raise any issue and the estoppel applies to anything that you could have raised. So obviously if you don't raise something related to -- for example, 112 or Section 101 because you just want to raise a piece of art that you found,

you do realize -- you have to realize that you're vulnerable to the estoppel that will likely kick in later to prevent you from challenging that patent on any grounds at all. That's not -- you know me theorizing, that's what I've heard the public say and I think it's a reasonable conclusion to reach that one of the things holding back PGR filings is that concern.

So again, this is just showing you our petitions filed by fiscal year. And you can see in each fiscal year our IPRs are climbing. What's interesting, at least to me, is that the CBM numbers are sort of dropping off a little bit. In fact, if you extrapolate the 26 number that has been filed in the first quarter basically of Fiscal Year 2016, it just barely reaches 100. So the CBM numbers have been falling. I don't know if there's much to read into that, but there you go.

This is a chart of our petition filing by month. It's up to, I believe, the end of December. What's interesting to me about this is -- so for a long time -- and I'll just talk about the lower right chart which is the cumulative

petitions, IPRs, CBMs, and PGRs. The number bounced up and down. We never quite hit 200. We came dangerously close to it. And once we exceeded 100 we never fell back down below it again. But what's interesting is now that we're out a ways, I won't jinx myself by saying it's leveled off. But at least on that chart it's leveled off. So we see we have 142 in November, 144 in December. We don't quite have the January numbers yet, but if it's a number like 143 --

MR. GOODSON: What were you going to say?

MR. KELLEY: What?

MR. GOODSON: What were you going to say?

MR. KELLEY: Jinx. So we'll see what happens. Okay, this chart is a chart -- I don't want to focus on this chart, but a new one that we're going to have. So this is our breakdown by technology center that the patent came from. This is our best way of categorizing the issues before us by technology. Because of our current computer systems, because of how we look at cases, it would almost be impossible to say we do this

with quote bio-tech cases or this with pharmaceutical cases, or this other thing with business method cases. But what we have at our disposal and we can easily look at is the tech center the patent came from.

So what this shows you is the petitions that come to us and what TC they came from. And so as you kind of move through the years you'll see that initially the blue which is electrical computer, 2,100, 24, 26, and 2,800, that was initially over 60 percent and then it dropped a little bit. So far in Fiscal Year '16 it's 51 percent. At the same time our bio and pharma-tech center 1,600. It is sort of expanding in that chart. And what we're going to have available, hopefully, the next time we get these numbers out if not the time after that, is a chart like this for outcomes. Because one thing the public has talked about is the -- what is the outcome in the bio-pharma space for an IPR versus the outcome in the business-method space? We can't very easily do that, but we can do it with tech centers. So we're going to have those numbers the next time, or at least the time after

that we come out with this data package.

This is another chart that we're going to be changing. This is the stepping stone chart and I've talked about this a couple of times. But this is a chart that shows you for the life of our petitions. And we have one for IPRs, PGR, CBMs for the petitions that have come into our front door and basically left the agency. It's that universe of cases. It's not cases pending. It's not cases where a petition has been filed and not decided yet or there's an ongoing trial. It's cases that are completely done. So it gives you sort of a snapshot of where those cases ended up.

At our last meeting there was a request that the tile on the left, the trial is not instituted, be further broken out so people can easily see was it not instituted because it was settled? Was it not instituted because we denied it? Was it not instituted for another reason? So in the next round of data we should have that side also because obviously people are very interested in the settlement rates, pre-institution, post-institution, and

hopefully you'll be able to get that from this slide the next iteration of it.

So now I want to give you an update on our rulemaking package.

MR. THURLOW: Can you just -- real quickly again to that?

MR. KELLEY: Yeah.

MR. THURLOW: One of the things I'm interested in and the Central Reexamination Unit. You know, from a systems standpoint we all know that the IPR filings and the stats and so on, we're hearing more and more that this is how applicants are using the system or patentees or so on, petitioners. So I am curious of the overlap between patents that are in the proceedings and people trying to use reexaminations and to us, the lesser extent, I think reissues. So I say this out loud just so you know. I mean, Esther always sends around the request for a meeting topics before each meeting. And maybe John Cunningham could come from the Central Reexamination Unit. I mention it. Just -- what, you know, what we're trying to do for our clients and everything is just try to utilize the system and makes these

filings. And I'm just curious how people are doing it. So, I don't know if you have any information on cases where you see more reexamined and you've stayed those reexams.

Another other topic of a lot of discussion about multiple proceedings involving one patent in general, but it's just something I'll probably request more for the next meeting.

MR. KELLEY: Okay, that's a fair point. What we -- what I have seen is more what I'll call tricky cases. Cases where they're sort of bumping up against the line. I mean, we don't -- you know, each of our units has work to do and we don't want to slow units down unnecessarily. At the same time we have cases that are sort of nearing completion at each place at once and each one of those presents its own unique set of difficulties. Because of that there are people in the board and people in the CRU that communicate very, very frequently about these cases and we know about them.

As far as what people are trying to do, the system is the system. I'm sort of agnostic to what people are trying to do. If the rules

permit them to do one thing and get an outcome that benefits them, you know, that's what they should be doing for their client. We have to make sure that we're using our rules as reasonably as possible. To be as consistent as possible throughout the agency.

Our trial rulemaking. So as I think I said last time, the public comment period closed after we extended it in late November; mid- to late November. The rule package itself is about to begin. And when I say about, I mean imminently begins sort of its internal clearance process within the agency. And of course, all final rules have to go outside the agency for clearance as well. We're looking at ways to sort of squeeze that process up as much as possible. My goal, and our goal I should say, is to have the rules available for the public in their final form by the end of March. We're pushing to make that goal. It's possible we won't, but were trying as hard as we can. And a little -- some of the time is out of our hands, but where it's in our hands, we're trying to squeeze review periods up as closely as possible because I know the public is

waiting for those rules. And so I still expect them to be out in the first three months of the calendar year, you know. It could slip but I don't -- right now I don't think it will.

MR. THURLOW: Just -- so as we discussed yesterday and for -- obviously we were in PTABs community meeting yesterday, we were able to discuss these issues in much more detail. But the issue from the public standpoint is the patent on the -- likely will be able to submit the expert declaration. And what's getting a lot of discussion is the effect of the provisions of this. So to the extent, when it applies and when that patent owner is going to be able to submit that patent on an expert declaration and there's many other issues, but that's the most important one. That's garnering a lot of interest and speculation, so. Use that for what you deem appropriate.

MR. KELLEY: In the work in the past when our rules change and we issue a new final rule package there's an effective date. And generally speaking, it applies to like in the case of appeals, appeals filed once it becomes

effective. When you have a case where a rule package is changing, and I'll use page number to word count as an example. It's changing how long a brief has to be. And for some reason -- and it's not yet effective. And for some reason a party before us would really like to use the new rule but they can't. It's always something that they could ask to file a motion to do and maybe they have a good reason to do it. And in circumstances we could do it. And I think a lot of these rule changes are the types where if there's some pressing need. You know, if we come out with a final rule and the final rule changes from say version A of a rule to version B, and it doesn't absolutely apply to someone. If someone's in front of us and says, hey, I'd actually like to use Rule B. I know it doesn't apply to me but you have the ability to waive your rules and here's my reason I want to use the new rule, I think that's a possible motion someone could ask to file in some case. So I don't think there's going to be like a line and people need to sort of strategize about which side of the line they need to be on because frankly from these rules I don't

know how much strategy is really in play. But I take your point and it's something we're thinking about. Yeah, Wayne?

MR. SOBON: As we talked about yesterday in the subcommittee for the benefit of the rest of PPAC we discussed the -- it'd be of interest to us to see the draft rule package before it gets finalized. And you we're going to look at the timing of that. And it may be a very compressed review cycle in terms of fitting it because of all the interdepartmental reviews these things had to go through, but that you were going to take that back and report back to us, correct?

MR. KELLEY: Yes, and we've looked at review cycle and we've built in a period for that review. So PPAC will see the final rule before --

MR. SOBON: Just be prepared for that.

MR. KELLEY: Yes.

MR. SOBON: It'll probably be a very quick time pace --

MR. KELLEY: Yes.

MR. SOBON: -- for that review.

MR. KELLEY: So I want to move on to the

two pilot programs we have right now. Neither one of them -- and these are both pilot programs to either further reduce the inventory that I began this talk with.

So the two pilot programs, again, are the Expedited Patent Appeal Pilot. That's the pilot where if you have two appeals already in the queue you can take one out and move the other one up the queue towards the front. We've met these goals in every case which is two months to decide the petition and four months from the date of the petition grant to decide the appeal. But of course as you can see from the final bullet there are really only 20 such petitions that have been granted and actually decided. So it's not a particularly popular pilot. And, you know, take that as you will. I -- I'm not terribly surprised by that, but to the extent that it's not being used because people aren't aware of it -- this is just me telling you once again, this pilot's out there and you can use it.

The second pilot, the Small Entity Pilot Program. I actually am quite surprised about this one because it provides an opportunity

for a small entity to secure expedited review. They agree to a review based on one claim and that's frankly a lot of our cases anyway. It -- they can't involve rejections under 112. Again, a lot of our cases are like that. And we decide these very quickly just like in the other pilot. And only 15 petitions have been filed to enter the pilot. Ten were granted. The ones that were denied were simply because they didn't qualify for the pilot. There's no sort of merits-based decision there. And this is something again that I actually think it would be nice to get the word out there because there's really no harm in doing this. If you're a small entity and you fit this -- you fit all the requirements, there's no harm in putting your hand up and saying, yeah, I'd like to go to the front of the line please, because you can under this pilot. So to the extent people are aware of people in this situation, you know, spread the word because it's out there and I think it's being underutilized.

MS. JENKINS: Just jump in.

MR. KELLEY: Yeah.

MS. JENKINS: I think that's a problem across the office so I wouldn't -- someone would say don't take it personally. But I think it's because I know we have the same issue for international. People aren't using the Korean and Japanese pilot programs that they -- to the degree that it would be expected. And so I think, you know, I think you have to bear in mind some things are going to work, some things aren't. But I do think it's a communication issue. There's so much information coming out of the office and I think as an applicant, as a practitioner, prioritizing and determining what makes sense, what works, what works for one client and doesn't work for another, it takes a lot of effort, so. But I encourage the PTAB to continue to be innovative to try to find different ways to help the applicant community. I think that's a really good thing, so.

MR. THURLOW: My other suggestion would be there's a -- the outreach group. You know, Mindy Bickel was with Dougherty. They do a lot of work with independent ventures, small businesses, and stuff to the extent that they can

provide any pamphlets or information on it. You know, maybe that would be a different approach.

MS. KEPPLINGER: The other thing would be the timeline that patent's established earlier. Have you been updating that to include all of these additional things with the links to the programs?

MR. FAILE: We don't have any of the PTAB. And one of the requests was to have a post-issuance piece of that. So one of the things that we could get with Nate on is talk about that. But -- so what Esther's referring to is our patent application initiative website where it's basically a graphical representation of the patent prosecution timeline that starts actually before filing all the way through the issuance of the patent. And it's a graphical representation that has little markers at each point. So before the initial filing, there are certain things applicants -- there are certain programs or things applicants may want to know. During prosecution you'll see things for -- such as Track One, the ability of Track One. You can click on that box. You can go to the Track One website and

see all the particular parameters of that program to comply with it. A section for interviews during prosecution. A section for AFCP after final. A section for QPIDS after allowance, et cetera, et cetera. So maybe getting with Nate and doing us some more thing for the PTAB and their offerings, you have a -- one continuum that takes you literally from the beginning of the office and all its programs to the end would make sense.

MR. KELLEY: Yeah, I agree that it would make sense.

So the last thing I want to talk about today unless there's other questions is precedent by the board. This is something that I have tried to focus on increasingly because our decisions -- the institute, as we all know, are not appealable. And there's a lot of law that is involved in a lot of those decisions and we need a body of law to make sure that the public, the board, is all sort of moving in the same direction. So I wanted to just briefly go over the process for how the board makes decisions precedential because we haven't done it a lot lately and my plan is that we do it increasingly.

So I just want to make sure people are aware of what it looks like at the board.

Board decisions have sort of four different designations on them. The top designation -- and I'm not going to go through all this, is that a precedential board decision is binding authority in subsequent matters involving similar facts or issues. So it's like to us like a precedential Federal Circuit opinion is to the Federal Circuit. None of these other opinions -- or, I'm sorry, designations which drop from precedential, informative, representative, or routine, none of those are actually binding on future panels. So it's not until a case gets up to the precedential level that it can be cited and will absolutely be relied on by a future panel so long as the facts fit that situation.

So the question's how do we make an opinion precedential? It's a four step process. And before I go into this, what I'll tell you is that we can't make an opinion precedential before we issue it in the AIA space because there simply isn't enough time to do it. So it usually starts

with an opinion that's already been issued. And anybody from the board and any member of the public can nominate an opinion, say I think this case should be precedential for the following reasons. And then what happens is -- it says the chief judge considers the nominated opinions. And actually we have an internal committee that looks at them, makes recommendations. And then if we decide it makes sense we circulate the opinion to the full board for a vote. And the full board, of course, includes the statutory members of the board, the deputy director, the director, and the two commissioners; patents and trademarks. And so long as the opinion, you know, gets a favorable vote, the director then has to concur with the favorable vote. So Director Lee has essentially a veto power on making a case precedential. And then once it gets past that the opinion is designated as precedential and we follow it. And once we begin this process it works pretty quickly.

Lately -- I guess it was within the past month we designated two opinions as precedential. In the AIA space LG Electronics and Westlake, they

both have to do with what I'll basically call estoppel or a time-bar. The first case has to do with the one-year clock that starts ticking when someone's been served with a Complaint alleging infringement and how that clock is looked at when that Complaint is dismissed partially with prejudice and without prejudice.

The second case has to do with estoppel based on a previous institution that was on a claim-by-claim basis. And so it has to do with sort of getting into the question of when you institute on one claim and not another claim, what's the estoppel effect of that decision on a subsequent petition on perhaps the claim that was not instituted?

So these are both examples of legal issues that -- at -- right now will -- cannot come before the Federal Circuit and there're legal issues that come before us somewhat regularly. And so in order to harmonize our decision-making process it makes sense to make these two decisions precedential and we're looking at others.

And so with that, I'll take any questions. Any -- Wayne.

MR. SOBON: Judge Kelley, I couldn't tell in my mobile device. I don't know if it's on the full site, but the basic outline of your process for precedential decision-making, I think it'd be very useful to just have a simple chart for the public where you have those decisions so they -- so it's very, very visible, maybe with a link even where they can do that if you don't have that already.

MR. KELLEY: I -- oh, it's on our PTAB website. There is a link to our precedential decisions.

MR. SOBON: But I -- I'm --

MR. KELLEY: Can I --

MR. SOBON: -- putting that --

MR. KELLEY: Okay.

MR. SOBON: -- putting down this process and like describing how the process works to the public so it's very clear how these things get decided so that there's -- they understand that input. It's just very -- it's interesting to me. I didn't know the --

MR. KELLEY: I think -- so there is -- the information is on the website, but like

a lot of information on websites it's probably not packaged in a way that's easily digestible or easily found in the buffet of issues you're presented with.

MR. SOBON: Great, is there's a headline for here's our process, right, before all the, you know, the -- where you publish the decisions, so.

MR. KELLEY: I agree.

MR. SOBON: Yeah, look at that.

MR. THURLOW: So since our last meeting, obviously the Supreme Court's taken an interest in patents for the last couple of years. And now they're taking interest in the PTAB case, the Cuozzo. So I have that question. I know you gave me a limited in what information that you can provide, but that. And then I'm actually going to ask a second question first. With respect to the PTAB amendments, when we go to the CLE meetings, PTAB presentations, so on, we always hear about how the PTAB is not granting petitions. I think what we find out is that they're not being filed. And to me it's an important -- as Marylee always says, to get the information out there, I

think it's an important aspect because it really does play a role with DRI. And, you know, in the Cuozzo decision there was discussion of whether, you know, the extent that the claim (inaudible) practice. So, that's important. And then the Cuozzo, if you can just give a general outline of the timeframe and of -- briefly on the issues. And most importantly to me, based on our conversation yesterday, that even after the Supreme Court makes a decision, either way, the sky is not going to fall, the door's going to remain open, you're still going to be able to handle these proceedings, and maybe in general discuss the impact. That was a big long question, huh?

(Laughs)

MR. KELLEY: It gives me the ability to skip over parts.

MR. THURLOW: Yeah (Laughter). I like that, yeah. Please do, please (inaudible).

MR. KELLEY: Okay, so I'll start with the Cuozzo case. Of course, that's the case where the issues are claim construction used by the PTAB during AIA trials as well as the

appealability of issues surrounding decisions to institute. I'm not going to say anything about the merits of that case. The government has already briefed that case three times and argued once before the Federal Circuit. So I think those briefs are the government's position so far and they're easily available. The timing on that case, the argument is going to be scheduled for late April. The government's brief is due -- will be due towards the end of March and we would expect a decision probably by the end of June. So whatever people -- whatever peoples position are in this debate it will be resolved clearly by the Supreme Court by summer I hope.

So that's Cuozzo. And I guess it -- I will say that the sky is not going to fall. I mean I think that's -- I mean obviously we have very qualified judges and they can interpret claims and they can follow case law and they will do that and they will follow the directions of the Supreme Court, whatever it might be. And we will keep moving forward.

On the PTAB amendments. So yeah, there hasn't been a lot of them. I mean, I hear the

observation, oh, the board has only granted this particular many motions to amend. And it sounds little when the only other number of people know about is 4,000 plus petitions that are filed. But in fact, the number of -- and I don't have the number. I'll tell you that right now. But the number of amendments -- motions to amend that have been filed are -- is quite low. Internally, we're trying to capture that number, figure out exactly what it is, and go a little bit deeper and try to figure out when they're denied, why are they denied. They're almost always conditional motions. And, of course, they're not decided until the end of the case. So even in the case like the MasterImage decision which came out in July, that motion to amend will not be decided until that case is -- come to a complete close. And so we're not -- I wouldn't have expected to see an immediate shift in decisions. But that's the most I can give you right now and a promise to come up with better data on the number of amendments because I think that piece of the pie actually serves us well because of how low the number is.

MR. THURLOW: I think my last comment -- and we're obviously running late here. But -- and this is more for the committee since we're all very active, you know, with the ABA, IPO, Boston, California, and so on. I think the focus -- you know, I'm active in the Europe with the bar association for the specific BRI issue in Phillip's case would be in any amicus briefs to provide examples of differences between the two. Not just argue which one it should be, but maybe look at some of the existing cases, provide examples of the different findings, or so on. Do you think -- is that helpful guidance or something -- and not that you can really mention it, but --

MR. KELLEY: I won't speak for the Supreme Court in terms of what's helpful, it -- but if I were an amicus and I was trying to demonstrate the flaw in one's standard or why a different standard should be used, as a court, I would expect to be shown some sort of examples of how it is this is affecting people. But that's -- again, I -- you know, an amicus can tell the court what they want to tell the court.

MR. THURLOW: Thank you Nathan.

MR. KELLEY: Mm-hmm.

MS. KEPPLINGER: Anything else? Well thank you very much.

MR. BOALICK: Oh, Scott, I'm sorry. I was just going to add one thing to Wayne's prior question about the precedential process and it slipped my mind. We recently posted an article describing the various categories of precedential, informative, et cetera, and the process under the what's new items on our website. So we do -- we don't have a graphic, but we've got a description on the website of the process.

MR. KELLEY: That's right, and I remember that now. We did just -- I think it's within the past two or three weeks.

MR. BOALICK: Right, it's been fairly recently that we put that up there.

MR. KELLEY: Right.

MR. BOALICK: But --

MR. KELLEY: We put it up because we had just come out with two new decisions and we wanted to remind people how it works. So it's on the what's new --

MR. SOBON: Make it prominent and make it in a sort of a feature (inaudible).

MR. KELLEY: Okay, yep.

MALE SPEAKER: Thank you very much.

MR. KELLEY: Okay, thank you.

MS. KEPPLINGER: Okay, thanks very much. We have our -- we're to go get our food for the -- we have an executive session following this that will just be for the PPAC. And the meeting will reconvene at 2:35 for the public. But for all of us, if we could go and get our lunch -- and we are -- we're scheduled to begin at 1:00, but if we can get back here as soon as possible, but -- to start by about 1:10 would be great. Thank you.

(Recess)

MS. KEPPLINGER: Okay, welcome back everyone to our afternoon session. And I'm pleased to have the CIO here today, John Owens, Debbie Stephens, and David Landrith. And John Owens, of course, is our CIO. John?

MR. OWENS: Good afternoon. Let's see. So I guess we're going to talk about the elephant in the room. I had a couple of jokes

prepared to try to lighten the mood but people are like just no, it didn't -- it's not going to work.

(Laughter)

So we experienced a catastrophic power outage at the end of the December. Obviously, it was unexpected. So I'm going to explain and try to cover this at a pretty high level. But to clarify the position at the -- not only our facility is in, but also what part we did a recover.

So the United States Patent and Trademark Office buildings here, which are leased through GSA and were designed years ago before, you know, 2005 when we moved in, provide us power and it is redundant. We have an above-ground feed on Grid A of the city. We have a below-ground feed on Grid B of the city. We have two diesel generators, any one of which can power the entire data center and some other facilities. And in between all those is a complex series of switch -- switching gear and two what are known as flywheels. They're about a ton each and they clean and provide power during the gaps when you switch from one supply to another supply. So

there's two of those, only one of which is needed and four sources of power.

Unfortunately, on the day in question, what happened was there was a piece of conduit with a very heavy wire in it with a lot of voltage in it. Enough to vaporize the steel conduit it was in. Literally turn it from steel to a gas instantaneously. The inside of the cable inside of that conduit, that metal conduit, over time rubbed against the conduit until it -- the insulation protecting that wire touched the conduit. Now, you don't ever open up the conduits anymore. Once they're put in 12 years ago they're there. And it did vibrate, it did short. And that short arced through and went to the grounding mechanism that protects the facility. Along the way it was so much power and voltage it obliterated the control system for one of the two flywheels that we use on the power. Somehow to be determined, we're still doing experiments, that charge traveled well over 100 feet into the neighboring fly-wheel which is a completely separate concrete room and blew it out. It took the data center -- so that

infrastructure is provided by our lease through GSA with the landlord here. And it is an infrastructure operated and maintained by them and overseen by GSA.

It was recommissioned three years ago and re-inspected by GSA at our request and everything checked out. Now this isn't an old system. It's not antiquated. It is quite widely used throughout the world and it was reevaluated. Unfortunately, we don't have X-ray vision. No one saw what was going on inside of this heavy steel conduit and this happened. So at the time it happened the entire data center went from completely powered to completely off in a blink of an eye. Actually we're lucky in the room where it happened. Metal vaporized, doors blown off hinges, metal doors. I mean we're lucky someone wasn't killed to be honest.

And when the data center crashed, because it had power and then it suddenly did not, what ended up happening is many of our older computers and even our modern computers, those that run LINUX and so on, do not like the state where they're on and operating. Data's flowing,

databases are being updated, replication's happening in our storage system. And then all of a sudden it stopped. So all the computers wound up in a bad state and many of the computers took damage because the filtration system blew up basically with these flywheels.

So very rapidly we brought up. Many would have noticed that our internal communication and collaboration systems, our network, so on and so far, our email system, our web environment, all of which are located at our disaster recovery site along with all of our paper copies and electronic data, came up within a relatively short period of time when we pointed everyone instead of -- to connect to this facility, connect to that one. And they're all modern systems. Our legacy systems unfortunately were never built for such a condition. The modern ones we're building in patents and -- of course are. But we have not migrated to those yet and there are still plenty of legacy systems there.

My team then faced a choice and I don't know how much of this was covered by Russ, but I

heard he spoke a little bit about this to some of you. But the choice was we can turn it all back on, repair all the computers, and continue to operate. And while the repair is going on or if there was a switch necessary from the above-ground to below-ground feed due to weather or anything else, the entire data center would go from completely on to completely off again. Thus, resetting the environment to a damaged state.

Now during the reconstruction, we decided that we were going to turn on the systems in an order that the systems need to be turned on, with the highest priority systems first. Obviously the infrastructure like storage and so on has to be done first. We were going to look at the environment fix the damaged systems and then shut them back off what's known as gracefully. In other words, on purpose, so that they were in a state ready for when there was backup power and filtered power available and thus, not run the risk of a crash.

The main reason that was the risk was so high. And I'll put it in the words of the

gentleman that's in charge of my spare parts and, you know, hardware operations group. Our room that stores spare parts was just some 25 feet by 30 feet. Looked like the Grinch had stoled Christmas. There was tinsel bailing wire and not much else left in that room by the time we repaired the computers. In fact, several computers were down though people didn't notice. That out of clusters of computers, we used others as spare parts and got systems up and available. And it took days to find some spares because the amount of damaged equipment was so large.

And of course we're in the middle of resupplying head stock now is an unexpected expense. I can tell you that there is a coup plan in case of disaster that we had. It had never been tested. We developed it after I arrived here, that called for a data center being completely shut off due to tornado, fire, some other natural disaster, with a plan to execute, to bring it back online within three days. We followed that plan. We've since updated that plan. It took about two and a half days to bring the data center back up and shut everything off

gracefully. And then once the first flywheel and the power filtration system and the ability to switch between three different power sources came back online, we started turning everything on which we completed just shy of two days. So that's the story.

I'm going to leave it there. I can tell you it was quite an amazing sight. Russ and I and the rest of the team were in continuous constant contact. And I cannot tell you how much effort my team, having been suddenly faced with this disaster at a time when people wanted to spend with their friends and family over the holidays. Everyone through their head into the ring. Everyone came in. People gave up all kinds of personal time to pitch in to restore this facility to operational status as quickly and safely as humanly possible. And we had the cooperation of our landlord and GSA and, of course, other teams from the manufacturers of the parts that supply all this from around the world, literally, flying in parts over the holidays and so on and so forth. So though it was a disaster, the recovery effort, though mammoth that it was, went very well in my

opinion.

I might as well take questions on this part right now so we can just get it out of the way if you don't mind.

MS. MAR-SPINOLA: John, thank you for that explanation. That's pretty dramatic and traumatic, right? I did see some comments during that time about impact and -- in filings, foreign filings, or whatever. Can you or someone here today explain if there were any negative impacts and how they were cured, if at all, in terms of filings?

MR. OWENS: So we've gone through all of the logs and any transaction that had been complete before the power outage has been recovered. We've asked people to double-check. If in the middle of all that, let's say you were uploading your patent filing or there was some transfer of data between one of the other international offices and here, and that data transfer had not been complete, it had just started or whatever, there would've been no record because that transaction wouldn't have finished. So we asked everyone to double-check.

There would be no way for me to tell what was going on there. But the data that I have shows that those things that were done were done, you know, in time and recovered and those things that were not, people have since taken action to upload and tell the office.

MS. MAR-SPINOLA: Is there any grace period for those who might not have realized that it didn't get filed or something like that? That it can be cured?

MR. OWENS: So the one thing I'm not prepared to talk about, though I'm not even responsible for the power -- for the environment, is the ramifications and why things were done on the patent side. I'm not the right individual, time granted, and those type of things. I don't -- I'm the CIO and I don't have the answers to those. Good question, but someone should -- else should answer. (Laughs)

MR. BAHR: Yeah, I just want to -- sorry. Basically we published the usual notice that -- when, you know, the PTOs goes down that we treat that as a federal holiday for purposes of when fees and papers are due in the

USPTO. Now if you said about foreign filing. If you're filing abroad that really shouldn't be affected by us. It's more when you have filed abroad and you're up on your time period to file within the U.S. And so for that we've indicated that we would excuse -- we would treat that the way we treat any situation where we're not open for business. And we're publishing that notice.

MS. MAR-SPINOLA: Well, has it been published or not?

MR. BAHR: Either that, I'm not sure. I know it's posted on our website and the normal process is to publish it in our official gazette, but there's some couple weeks on lag-time in doing that.

MS. MAR-SPINOLA: I mean, I don't know how sensitive people are to --

MR. BAHR: Other things actually.

MS. MAR-SPINOLA: -- dates or whatever, but.

MR. BAHR: (Laughs)

MS. MAR-SPINOLA: Okay, sorry.

MR. BAHR: No problem.

MS. MAR-SPINOLA: Yeah.

MR. GOODSON: I will tell you that John and I had discussions over the phone. The man was in his operating gown going into surgery. It's -- this was -- some of this was going on. There's a lot that he's not saying under advice from counsel from the office. And I'll just leave it at that. I will tell you that I am -- heard the explanation in detail and perfectly satisfied it was handled the best he could have. This is just a -- it's just a freak deal. And when you energized the ground you energized the ground all through the building. We're fortunate no one was killed or hurt seriously, so I don't want to blow this off as a minor convenience, but it could -- just say it could be a whole lot worse.

MR. LANG: Agree, I -- this is Dan. Great work and I -- in recovery and, you know, add the applause for the good news that nobody was hurt which is the most important thing. But, you know, I am also interested. I'm not an expert in power reliability, but when you have a, you know, an infrastructure that underlies, you know, mission critical applications, I mean is there

something that's being thought of for the future to have to avoid single points of failure which this unexpectedly, I guess, turned out to be?

MR. OWENS: Interestingly enough the design -- actually any one of the things that failed either the one side of -- when the wire hit the conduit and it shorted out and blew out the control system for one of the flywheels, we had a second flywheel. So that actually, though very dangerous, wouldn't have stopped anything. It was the damage sustained when it -- when that charge went and affected somehow. And we haven't determined that yet but it is being worked on, okay? The second flywheel's control system and blew it out, that was the failure. Had the wire touched the conduit and the -- that secondary affect did not happen, nothing would have -- you wouldn't have noticed. No one would have -- well, we would've noticed because the fire alarms went off, but you wouldn't have noticed. So it was a -- it's -- there's not a single point of failure in the design. Part of the protections in the system that should have isolated the two failed. And that is being

investigated because from an engineering perspective it should not have happened. Once that -- what is determined there is found, we will resolve it with, you know, the appropriate parties involved with the lease and so on. So I don't know what to -- I don't know what to say. I can tell you that all the rest of the wires in the conduits were inspected and so on during this, so. That issue I am confident we're good with.

MR. THURLOW: I guess the main thing, we're 100 percent now or back in?

MR. OWENS: Well --

MR. THURLOW: Obviously, we're running, we're good, everything is --

MR. OWENS: Yeah.

MR. THURLOW: Happy go peppy.

MR. OWENS: Yeah.

MR. THURLOW: Good.

MR. OWENS: Yeah.

MR. THURLOW: Happy go lucky --

MR. OWENS: Yes.

MR. THURLOW: -- on all (inaudible)

MS. JENKINS: I guess I share everyone's sentiments. I was working over that

period of time. I actually had to explain how you paper filed to people, so. (Laughter) There is a postcard. There is such a thing as express mail. We still can get it filed. But I do feel -- and I also want to commend the office because you were very good about putting on the website that there was a problem. And I know we've talked about this when the system has gone down for other reasons, about trying to get the notice out to explain to people why isn't my system working. I think what people also didn't realize, it wasn't just us as a stakeholder community, it was the entire office. So it wasn't -- you know, it was a whole group issue going on. So as we become more and more dependent on the IT structure, both outside and inside, we're all in different locations. We're looking to implement Global Dossier in the future. I'm sure it's too early, but maybe any thoughts about what do we do in the future or how do we plan for this better.

MR. OWENS: It's (inaudible)

MS. JENKINS: Yeah. That's
(inaudible)

MR. OWENS: Which is a great lead in. If I could just take a minute. So all of our modern systems like you saw; the website, the email systems, so on and so forth, are all redundant. There is a data center here. We have another data center in Pennsylvania with much the same setup. And it took them a few moments because we had to do it manually to point all the traffic from here to there for those services that are available. And all of our modern systems that we're building, patents and trademark next gen, you know, FP&G, all of those systems are deployable on a clouded infrastructure. There were even some -- actually systems in the cloud, GSM and --

MR. LANDRITH: GPSN, correct.

MR. OWENS: -- GPSN and assignments on the web that never went down because they were in an environment that could sustain this building being off grid. All the rest of the new modern systems are like that. We just have to finish getting people moved to them and turn off the old ones because those systems are also partially tied to those legacy systems.

So the new systems you're going to hear about; the new filing system, eMod, and so on and so forth, are built and designed from the ground up like the ones that most people didn't notice, but they were up and running the entire time. And we have the data center and every time we complete one and we get people on it and we shut off the old ones and there's no hard linkages. And the data itself is being backed up in real-time between the two sites. What will -- if this would ever happen in the future, which I really hope it doesn't, at least not in my lifetime, what would end up happening for whatever reason, this site was off, it would instantly migrate without intervention to point to the data center in Pennsylvania. You would never notice. And that's how modern systems happen all the time. Other providers, let's say Google, for example, lose computers every day. Their systems break every day. There's just so many and there so distributed that you never notice. And that's the situation we're building for you in the future. It's taking a little while to get there. But I would -- I am happy to say that the systems

that recovered either are storages of service in both locations which is new, the website, the patent center, and those came right back like that.

The problem is is we're still reliant on those legacy systems, a bunch of the data stored there, the intake system, and so on so forth to which we have not finished replacing. So we're getting there. We're just not quite there yet.

MS. JENKINS: I think too would've helped as well was -- and Wayne will laugh, e-mail. The e-mail was great. It kept everybody informed and that is so important. Just the communication about the systems --

MR. OWENS: Yeah.

MS. JENKINS: -- and what's happening.

MR. OWENS: And that's one of those systems that is fully clouded and redundant right now. I'm sorry, sir. You were going to say something.

MR. SOBON: (inaudible)
the -- until -- some of these legacy systems, especially I heard you say the -- you know, the

affected people, but I guess old timers know exactly how you go to express mail and go put a postcard in. We know how to do that.

MS. JENKINS: I take issue with old timer.

MR. SOBON: These new-fangled people. These millennials don't know anything about. So -- but actually the question has been raised. Until this fully gets migrated is there some interim way you can actually provide even a mail stop or something electronically that if a disaster happens in the future, it could electronically file and submit a fashion to the office or not? Are you looking at that sort of option?

MR. OWENS: So when we examined this last time, and of course, Russ and Rochelle have brought this up and of course, we're always reevaluating and looking, there -- we looked at what it -- when Mr. Kapos was here, what it would take to change the legacy systems and it amounted to, well you got to rewrite them because they were just built for single servers, single points of failure everywhere. So then we started looking

at, well, what could we do if we had alternate systems? And we made some minor changes to systems, but those legacy systems are so tied together that there's really no way to replicate them.

Now as far as an alternate way to file, unfortunately, faxes now a days are literally -- they're computers and they -- they're virtual and they're in the data center and we don't actually have fax machines per se. Everything's received electronic. So when that system went down, it went down here. And had we thought about mail, the problem was is once it's in mail, how do we get it out of that system and get it into the other environment. And do we want to take the very precious money right now because it's been costly operating the old environment, continuously upgrading the, you know, infrastructure, and by the way, building the new one. Do we want to take the money that we've shifted as much as we could into building the new systems and move it toward some interim emergency environment? That then would have its own complications on getting the data back into

the proper legacy infrastructure because there would be no interfaces to do that. I mean you would literally have to do things like print it out, scan it, and -- I mean it would be a mess.

So far -- and I'm happy to hear suggestions, but so far the office has decided to heavily invest in the next gen systems and moving us toward those as quickly as possible. But if you have an idea that we haven't explored I'd be happy to talk about it. Not now. (Laughs)
Okay, so any other questions? We'll move on. I know we're sucking up time but I knew this was going to be big.

And now we're going to get into the modern status of the systems and I'm handing it over to Mr. Landrith.

MR. LANDRITH: So I'm going to go through this as fairly quickly and cover highlights. So if you want -- so that we can make sure not to go over. If you guys have any questions, feel free to step right in.

These are the overview of where we stand on the major projects. At the top is a docket and application viewer. So this was obviously

released in March of last year. We're releasing in February a product that was scheduled in December. This is our first really significant update. We've done some minor updates and it's -- it was certify 508 compliant which is a big milestone for the agency where this is our first fully 508 compliant major application that we are releasing.

The official correspondence. The target there is production release in December 2016. We've done some adjustments to scope resulting in the limited audience release that we'd scheduled for December being moved up a bit to November. And then our full-on pilot release being moved to February. And we have the same kind of situation with the examiner search where we've moved a month earlier on limited pilot, limited audience, and a month later on the pilot release. Just as we've got a better handle on the scope and which releases they should be in.

With CPC we've released enhancements. Most of our work there is now on legacy parody and operational enhancement. For example, this release that we have upcoming later this year is

going to automate certain manual processes for moving the data around the enterprise.

This is the usage slide. I apologize that I omitted the title, but it is Patent Examiners Using the Document and Application Viewer Four or More Times Per Week. So this goes back to -- this actual slide goes back to mid-May where we first got significant blips on the radar. Right now we're nine and a half months out and our adoption for four or more uses by examiners who are using it four or more times a day, it is 61 percent.

MR. OWENS: Four more times a week.

MR. LANDRITH: Thank you, four or more times a week. So there's been no incentives and no mandates here. So I think this is a very remarkable statistic. It's as good as any adoption curve that I've seen in industry or the federal government and it's certainly better than the vast majority of adoption curves. One thing to expect as we continue to go up, is we will reach a plateau because we will basically grab everybody that we can grab without incentives or mandates. And 61 -- we'll likely get higher than

this. If all it got to was 61 percent though, that would be outstanding.

So examiner search. We've talked about that at a high level. Official correspondence. So with the content management system, we've experienced some delays there in the version of the data. It's not a labor intensive process. It just churns away and it's taking a little longer than we anticipated. However, 70 percent of data is being served from this system and it will be 100 percent by April.

Data for PDE has converted nearly 200 million pages of claim specs, abstracts, et cetera from image into XML. The Global Dossier, we released the U.S. IP community access to foreign office published applications with the next steps for doing some refinements including a UI for the citation of non-patent literature.

And then with CPC database, as I mentioned before, we're looking at operational enhancements as well as achieving parity. Question?

MS. SCHWARTZ: I have a question. Do you know the user usage for the Global Dossier?

MR. PEARSON: We do. We don't know it off the top of our heads though.

MR. LANDRITH: We do have that data. We just -- for a Global Dossier?

MR. PEARSON: Yeah.

MR. LANDRITH: Okay.

MR. PEARSON: Do you know that off the top of your head?

MR. OWENS: All right, yeah, okay. Yeah, my understanding is that as I said earlier we had certain information from the EPO in China on the great usage of the access to our files, the Global Dossier. My understanding is that during 2015 that U.S. examiners made use of this 200,000 times; the Global Dossier to access the foreign files. Is that -- that answer your question?

MS. SCHWARTZ: I think so, I'll have to put that in -- I have to put that into the context of how many actions were -- to put that into the context of how much work was. Then 200,000 seems like a large number and just put it into the context and see.

MR. OWENS: I think if you just submit your question to patents and we'll help provide

the data from the system. We track both the interactions with other offices to us as well as how many from us go out. So the data is there, we just -- we didn't have it with us.

MS. KEPPLINGER: It is interesting that I think EPO was 800,000. No, China was 800,000 and EPO was 700,000 or something. So 200,000 is less but at least everybody seems to be starting to use it a lot. And they've had it maybe longer.

MR. OWENS: Yeah, we were of course waiting for the ratification of a treaty or something like that I believe. We were ready, we just had to wait.

MS. KEPPLINGER: Okay, thanks. Any other questions?

MR. GOODSON: Real quick. I -- sometimes I get on in the middle of the night, try to get on PAIR, can't get on because it says it's busy. And I believe it. Do you all track IP addresses only as to continent or country, anything like that? I mean are we pretty busy with people from all over the world searching?

MR. OWENS: So we do track where people

are coming from and we do -- any government access to anything we track where it's coming from, okay? Likely, if it's very, very, very late at night, anytime between midnight or 11:00 Eastern Standard Time and 5 A.M., we could be doing maintenance on the system. Don't forget. In which case you will get -- there would be a notice put up, but you would get basically what you're talking about. But if it just -- it's slow we do track that. We do track people from IP addresses that are doing data mining activities and others. And there have been occasions where some things have been blocked because of the behavior that they are doing is inappropriate to our systems. And then we do our best to notify the individual. But we don't do that on a daily basis.

If there's a date and time in particular you'd like to track, of course, you have my info and --

MR. GOODSON: No, no.

MR. OWENS: -- you could always send it to me what was going on in this time and I'll tell you.

MR. GOODSON: No, I -- it comes up with

a message, hey, the system's slow right now. Come back in a few seconds and then I -- I'm just wondering, with that many people going through your system? This is not a maintenance message.

MR. OWENS: Yeah, actually PAIR is one of the systems for a long time which is why we had to put up the caption that everyone loves. And PAIR and Public PAIR are actually linked together. And they're connected to PALM in the same database system that connects to IFW for eDAN. So when there's -- when one is full it has a negative effect on the entire office including examination. We are looking at rewriting PAIR and HOLE. And that's been on the books for a while. We just haven't started it. But yes, we do get people particularly at night that try to data mine and when they become obstructive we shut them off.

MS. KEPPLINGER: Okay, thank you very much, John and David.

MR. OWENS: I'm sorry if I went over on you. Thank you very much.

MS. KEPPLINGER: Okay, and next we have the finance and budget update with Tony Scardino

our CFO.

MR. SCARDINO: Good afternoon. All right, let's see here. Normally I like to start with a sequential run through of all of our budgets. Often times there are three years we're doing at the same time, but this is the time of year where actually we only have two.

The first one is for Fiscal Year 2016. Since we met last, Congress appropriated our -- enacted a law for 2016 and provided USPTO with its full requested amount. This again is authority to collect and spend up to \$3.27 billion. Also, Congress gave us authority to continue to have access to any fees we collect above that amount. That's an annual thing that we hope the appropriators will include in their appropriations act and they did so at our request. And then there's no restrictive language. Sometimes we have to pay attention to other things that are not monetary that they'll put language into the bill, but they did not do so this time.

In terms of operating, so far in 2016 we've collected a bit more than we planned to collect at this point in time, to the tune of about

\$37 million. Again, this is a quarterly thing. This is mostly from RCEs the first part of the year. We think that was a one-time blip and we don't necessarily anticipate that we're going to collect, you know, four times that amount or extra per each quarter. But of course, it's variable and slightly unpredictable. But it's always good to collect a little more than planned rather than less.

Our year-to-date spending is more than we've collected so far. That's by design. First quarter we always spend more money because we let some contracts out, award some contracts that are full year contracts at the beginning of the year.

For the year, we anticipate collecting on the patent side almost \$2.8 billion and we will spend just a little bit more than that. And again, that means we'll dip into the operating reserve. That's what it's there for. So at the end of the year we anticipate having an operating reserve of almost \$320 million which is a bit more than the new established floor--a minimum that we have for an operating reserve which is \$300

million.

And then moving to '17, the President's Budget is being finalized this week. We are going to print this week actually, probably today. And it gets released publicly next Tuesday as part of the President's budget. All federal agencies budgets are released at the same time. So it'll be on our website. It'll go to Congressional staff. We'll then start briefing staff. Secretary Pritzker will testify, I believe, February 23rd and 25th before the House and Senate appropriations committees. So Michelle Lee is getting ready, briefing her, getting her up to speed; because the Secretary, of course, will field questions on all 12 bureaus under her purview, PTO being one of them. We will not have our own Appropriations Committee hearing.

And the last thing I've got formally is a fee rulemaking, the fee review. We're still awaiting PPAC's support, of course, but we've been working very closely. I think we're, you know, hoping to get something soon and I'm assured that it will be coming soon. So we appreciate

your hard work and efforts on that. Once we get that we'll, of course, take comments under advisement and possibly make some changes to our proposals. And then we will have a Notice of Proposed Rulemaking most likely published later this summer and then we think that the proposed effective date of any fee changes would be sometime in 2017 when the new administration takes over.

Questions, thoughts?

MR. THURLOW: Wasn't that expected to be January 1, 2017 that the -- got pushed back a little bit?

MR. SCARDINO: It was, yeah. Realistically, that was a very ambitious date and we've worked with OMB and others. We anticipate that there will be a stoppage as to when they'll do any more rules through this administration and they'll wait until the next administration. So we'd have to get it in before -- pick a date, July or whenever. And I don't think that we'll get there. We're still proceeding apace and hoping that we'll get there, but we're just being realistic here.

MR. SOBON: Tony, one question. Going a bit below the numbers, it -- can you comment on any details or look at any trending in any particular technology units or for new filings? Any issues with regard to looking forward? Concerns about any potential drop-offs in filings or is it -- or we heard comments that it may be -- the greater growth may be moderating but it's still -- numbers are growing. And also the maintenance fee payments don't seem to be affected yet by any, you know, macroeconomic or policy issues. But can you comment a bit on that?

MR. SCARDINO: And I would basically echo both of your comments. You'll see in next week's budget release, I can certainly foretell this a bit. We are seeing -- compared to last year at this time, we're projecting that filings will still go up, but not at the rate that we thought they'd go up last year at this time. So it'll be slower growth on the filing side. But again, as we get further out, we're thinking it'll kind of revert back to closer to a five percent increase by the end of our window that we look at for budget planning purposes.

And then on the maintenance fees side, we've been hearing anecdotally that possibly third-stage maintenance fee payments would go down a bit as folks kind of decide to let their IP go into the public domain or, for whatever reasons, stop paying third-stage maintenance fees. But we hadn't seen it yet. Not in terms of hard, cold data. But we are looking at it and we are actually looking at it by technology that you -- like you suggested to try to see if we can, you know, project or predict any trends that may change. Because, of course, our whole fee model is based upon, you know, low-barriers to entry and then we make it up on the back end. So if maintenance fees do drop, we would have to look at some other things.

MS. KEPPLINGER: Anybody else? Any other comments, thoughts? Okay, thank you Tony. And last but not least, we have Dana Colarulli who will talk to us about the legislative update.

MR. COLARULLI: Thanks, Esther. Good afternoon, everyone. So my job today is to give you a sense of what Congress might do here in 2016. Well, I was going to say, Mark, thanks for that

opening. The only thing I can tell you about my speculations about what might happen that I make today is that tomorrow they may be very different.

When you're dealing with a -- certainly a presidential election year, the focus does at Congress tend to look at presidential politics. There is some space here, certainly over the next few months, certainly in the April timeframe, lots of opportunities for hearings. Even right now we're seeing some hearings on various different issues including IP happening. And then I think, again, still up through June, maybe even July, at that point the focus for most members of Congress goes to getting back to the districts, talking about presidential politics. Potentially talking about some issues that are important to us, but the hope for substantive legislation at that point becomes much more challenging to move forward.

I think after the presidential election we'll also have some opportunity to potentially move some issues forward right before a new President might take office regardless of what party. So those issues, again, tend to be a

little less controversial. So the opportunity to move large changes in the U.S. industrial policy or IP policy tend to be very, very difficult to do. That said, lots of discussions still to have and we're seeing a lot of that now.

So let me give you a couple updates on the areas that we've been focusing a lot our time on. Certainly in the last couple of years we've been talking about patent litigation reform. And where we are right now, the House and Senate both have bills that have been reported out of their committees. On the Senate side they've also talked about additional compromise language to try to build support. In particular, to address some of the concerns raised by the bio and pharma industries related to the impact of inter-parties review on their particular industries. There's also been other discussions fueled in some part by the House bill that was adopted on venue. You know, is there a way to look at limiting forum shopping in patent litigation. Another kind of big issue as you're looking at what might be wrong in the litigation space.

At this point there is an agreement on the two of them. The comprehensive bills have proven very, very difficult even though they reported out of committee to be scheduled for floor time for the entire House of the entire Senate. You know, we're still hopeful that some legislation could be moved, although at this point I think progress has been stalled to date. Now that's not to say that since we've started this discussion a few years ago, the President raised it in remarks, came out asking the USPTO to engage in a number of executive actions, provide additional resources. We have done all of those things. The Court has taken action as well both in adopting rules last December in a number of cases that have been very relevant to the very same issues that are being discussed in legislation. So many things have occurred in the space. So we're certainly very aware of that and trying to make sure that in any recommendations of support that we make, we take into account; changes that are occurring in the system.

So I think the report for me at this point, certainly looking towards legislation,

trying to see if legislation will be moving forward. And trying to highlight all of the things that have happened that I think have made tangible improvements even over the last couple years as we've been talking about this. So continue to watch patent litigation reform and abusive litigation practices, but we haven't seen any further action on the Hill at this point. The Chairman of the Judiciary Committee and the Senate says this is still one of his top three priorities. So we've got hope that there might be some activity there.

Second issue we've been focusing on is trade secrets, enforcement legislation, bills in bulk, the House and the Senate. The Senate Judiciary Committee just a couple weeks ago reported out an amended bill that would attempt to establish a federal private civil cause of action for misappropriation of trade secrets. Generally trying to make sense of a patchwork of state laws. And generally consistent with proposals, the administration has said in the past would be helpful to improve enforcement of trade secrets. We'll see if that moves forward.

I think the committees, both in the House and the Senate, certainly are having a discussion about what can we get done. They've prioritized patent litigation reform. General support around trade secrets legislation. I'd like to see that move forward, but unclear if it will at least within this window before attention turns the presidential elections.

I mention that there are other issues certainly that the committees have time to hold hearings on and discuss. One is a bill that has been reintroduced to a few Congresses now related to auto parts. Just this week in the IP subcommittee of the House, Chairman Issa held a hearing on his bill which would limit patent protection to two and half years for exterior car parts used for the purpose of restoring the car to its original manufacture. This type of proposal, this kind of sui generis right has been discussed certainly in the auto parts area. Been discussed in whether this would be an appropriate right for fashion as well. Hearing was held this week by the House Subcommittee. The chairman indicated there might be additional hearings, but

unclear whether this would move forward or not. As I said, raised a number of times in previous Congresses and has failed to move forward. There's about 22 co-sponsors on this bill, however. So I think it certainly would get some more attention. I think it's unlikely that you'll see legislation actually move forward but more discussion to come.

Three other, you know, primary areas just in terms of my offices focus. Copyright policy and the conversation about modernizing the copyright office. The copyright office it -- which has seen some operational challenges over the last year, certainly with their IT systems. So there's a very big discussion, I think, about trying to make that agency work better. Included in those proposals has been, you know, should you make the copyright office an independent agency? An additional proposal is would you move the copyright office into the USPTO? We haven't seen much further discussion on the structural discussions around the copyright office, but I think over the next few years that will continue to be a focus as folks

look to the legislativeness area. The USPTO with our partners at the National -- NTAA over at the Department of Commerce released a -- just last week a white paper on policy issues in the copyright area. This was a follow-up to the green paper that we released a few years ago. I think Shira was down here earlier today. I'm not sure if she talked considerably about it. Generally, a good response we've gotten in the press. We'll be up on the Hill briefing on that next week.

I expect that we'll continue, in addition to the budget context as Tony and I go up to the Hill and deliver the 2017 budget, we'll get questions from our appropriators on PTO operations. I'm fairly certain there will be follow-up on issues around our telework program. We had a very good report from NAPA last year which I know all of you have read. That, I think, validated a lot of the core principles of our telework program. So I have a good story certainly to bring up to the Hill, but I'm sure there will be questions and reasonable that they ask. Certainly -- and I know John Owens was here.

Challenges that we've had, the power outage last year, I'm sure we'll be asked to explain what happened there and how we responded. We were very aggressive with the Hill staff in alerting them very quickly that we had some issues just before Christmas and then again before the new year that we had had a disruption, that we had addressed it aggressively, and made ourselves available for questions. So I think we've gotten a very big response to the Hill from that.

A last issue in that bucket, I'll flag for the advisory committee, is starting a conversation about TEAPP on the Hill. The authority that we have, the exemption from the travel regulations that we have in TEAPP which is the basis of it; at least a good portion of our telework program, expires at the end of 2017. So discussing whether we go to the Hill, certainly ask for an extension or something else. Certainly educating, finding an opportunity to educate members of Congress on our telework program overall is going to be extremely important. The authority that the agency got in that -- in the TEAPP in 2010 was sponsored and

pushed forward by a number of members of Congress; most of whom are no longer there. So I think we have a little bit of a learning curve there and that will be certainly a challenge as we try to talk about what's working at the PTO.

MS. KEPPLINGER: And certainly that -- the -- this sunset of this was discussed at the Human Capital Subcommittee yesterday.

MR. COLARULLI: Perfect.

MS. KEPPLINGER: And we certainly do support the program and we'll be sure to endorse it.

MR. COLARULLI: Thank you, Esther. I think that's helpful. I think it -- this is an all hands effort to explain what's working, what's working well at the PTO, and for us to explain what we've done with that additional flexibility.

MS. KEPPLINGER: And I think one of the, you know, one of the important things, of course, the -- with TEAPP, it's people all over the country, but I think the statistics that you show in terms of the amount of work that's done even on snow days, on various other days when

other agencies may be much less productive really underscore the value of the program.

MR. COLARULLI: Absolutely, and the last thing I'll note. I'm sure as we get into the rest of this year we will talk more about it, is that even since the agency had that flexibility, a number of things have changed including the four regional offices that we've set up. So some additional time to consider how the program should be designed is certainly appropriate and that's the message that we would deliver to the Hill.

So that's about transition just until the last category which is my team has been doing a lot of work with the regional office. We now have, as you heard this morning, Michelle saying we have four great leaders in all of the locations and all offices open. We're getting pretty close now to 100 days since we opened up the last office. So we're trying to introduce those new leaders to the Congressional staff both here and the district. Another opportunity for us to build some champions around the things that we're doing. And certainly to advertise some of the

services that USPTO already provides to independent inventors and the innovation community.

With that I'll end. I did include one more slide. I've already referenced this. This is the calendar considerations. For interest, I just took a snapshot of February. Lot of primaries so members of Congress are certainly focused on that. Certainly the national convention's coming up. Two hundred and seventy-seven days approximately until the presidential election. Of that, there's only about 71 days where our Congress is in session trying to get work done for us and on many, many other issues. So just to give you a sense of the challenge. That's what we're looking at.

Happy to answer any questions.

MR. GOODSON: Dana, what would be helpful next time. Obviously the thing with travel affects this office, how it operates, four worksites. But in terms of the Congressional bills, I mean, the agency, does it really have a dog in the hunt as to a venue whether, you know, Leonard Davis' court in Eastern District of Texas

gets all the litigation or goes elsewhere. You all really don't care, do you? And what I'm really saying, can you break down the bills to show what would have an impact on the agency and what doesn't?

MR. COLARULLI: Mark, it's a good question. I think the overall answer is part of our role -- and this is in the undersecretary's role versus the director. There's a bifurcated title for a good reason. One is operational, one is policy-related. Michelle serves in the function that she advises the President through the Secretary of Commerce on all issues of policy. As the President asked us to look at this, we're certainly opining on, you know, what are the things that are happening in the IP system and what would be positive changes? So when we talk about venue, it's certainly one of the proposals that's being discussed out there. As you look at the percentage of cases being filed certainly in the Eastern District of Texas and further the number of cases that are heard in front of just one judge, there's a real question about whether that's good for the system. So I think that's why

we talk about venue.

MR. GOODSON: Fair enough.

MR. COLARULLI: Other questions?

MS. KEPPLINGER: Anybody else. Okay,
thank you Dana.

MR. COLARULLI: Thank you.

MS. KEPPLINGER: And thank you
everyone for your attendance, your good
questions, and participation. And particular I
want to thank the public who've joined us both
here on the campus and also online. I was happy
to get some questions from the public this time
and I encourage you to participate in that way
again. And if there's anything that we at the
PPAC can do to help you to the extent that we can,
we would be happy to entertain that. So thank you
all for coming and safe travels.

(Whereupon, the PROCEEDINGS were
adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

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

My Commission Expires: July 31, 2015

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