

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, August 18, 2016

PARTICIPANTS:

PPAC Members:

ESTHER M. KEPPLINGER, CHAIR

MARYLEE JENKINS, ESQUIRE, VICE CHAIR

JENNIFER A. CAMACHO

MARK E. GOODSON, PE

DAN H. LANG, ESQUIRE

JULIE MAR-SPINOLA, ESQUIRE

WAYNE P. SOBON

PETER G. THURLOW, ESQUIRE

P. MICHAEL WALKER, ESQUIRE

USPTO:

MICHELLE LEE, Under Secretary and Director
of USPTO

ROBERT BAHR, Deputy Commissioner for Patent
Examination

ANDREW FAILE, Deputy Commissioner for Patent
Operations

JACK HARVEY, Assistant Deputy Commissioner
for
Patent Operations

DREW HIRSCHFELD, Commissioner for Patents

MOLLYBETH KOCIALSKI, Director, Rocky
Mountain
Regional Office

PARTICIPANTS (CONT'D)

JERRY LORENZO, Director Technology Center

VALENCIA MARTIN-WALLACE, Deputy Commissioner
for Patent Quality

CHARLES PEARSON, Director, International
Patent Legal Administration

SHIRA PERLMUTTER, Chief Policy Officer and
Director for International Affairs

DEBBIE REYNOLDS, Deputy Director Office of
Patent Training

DAVID RUSCHKE, Chief Judge PTAB

ANTHONY SCARDINO, Chief Financial Officer

RICK SEIDEL, Deputy Commissioner for
Patents Administration

DEBBIE STEPHENS, Associate Commissioner for
Patent Information Management

PETER FOWLER, former US Regional IP Attaché
for Southeast Asia

CONRAD WONG, Former U.S. Regional IP Attaché
for China-Guangzhou

UNION MEMBER:

CATHY FAINT, VICE PRESIDENT OF NTU245

PAMELA R. SCHWARTZ

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P R O C E E D I N G S

(9:05 a.m.)

MS. KEPPLINGER: Good morning, everyone. Thank you for coming to this meeting of the Patent Public Advisory Committee. I appreciate all the attendance from everyone and want to welcome you to the USPTO.

I'm Esther Kepplinger, Chair of the PPAC. And I thought maybe first we could go around the table and introduce everyone and then, we'll have opening remarks by the Under Secretary Michelle Lee.

So maybe we could start down at that end? Cathy? Or who's down there?

MS. FAINT: I'm Catherine Faint, member of PPAC and Vice President of NTEU 245.

MS. SCHWARTZ: I'm Pam Schwartz. I'm a member of the PPAC and I'm the president of the Patent Office Professional Association.

MS. CAMACHO: Jennifer Camacho, PPAC.

MR. GOODSON: Mark Goodson, PPAC.

MS. MAR-SPINOLA: Julie Mar-Spinola,

PPAC.

MR. LANG: Dan Lang, PPAC.

MR. THURLOW: Peter Thurlow, PPAC.

MS. JENKINS: Hi, Marylee Jenkins,
PPAC.

MR. HIRSCHFELD: Drew Hirschfeld,
Commissioner for Patents.

MS. LEE: Michelle Lee, director of
the PTO.

MR. FAILE: Andy Faile, USPTO.

MR. SOBON: Wayne Sobon, member of
PPAC.

MR. WALKER: Mike Walker, PPAC.

MS. MARTIN-WALLACE: Valencia
Martin-Wallace, Patents, USPTO.

MR. BAHR: Bob Bahr, USPTO.

MR. SEIDEL: Rick Seidel, USPTO.

MR. PEARSON: And I'm Charlie
Pearson, USPTO. Thank you.

MS. KEPPLINGER: Thank you so much,
everyone. And welcome public and anyone who's
joining us via the Internet. And as we go
forward, if anyone has any questions or wants
to speak, please let us know and we do take

questions from the public if you send them in.

So it's my pleasure this morning to introduce Director Michelle Lee for opening remarks. Thank you very much.

MS. LEE: Great. Thank you very much, Esther, and good morning, everyone. It's always a real pleasure to be here at the PPAC meetings.

It has been a busy past few months at the PTO since our last meeting. And there's so much to cover today but first, of course, I want to thank the members of PPAC for their dedication, for their contribution and generous provision of their time to help the Agency run better. Really thank you very much for your input.

Each quarter we come together to discuss vital issues like patent pendency, information technology, fee setting, PTAB, patent quality, legislative reform, and international harmonization efforts just to name a few. And together we've made great strides in all these areas and you, as well as the broader community, have been invaluable

stewards of our patent system.

I want to thank you for your service, your leadership and your devotion to the Agency and really helping us with our operations and the integrity of our operations. I know that the agenda for today is very robust. So I will try to give just a quick few updates. I want to start by briefly commenting on two reports by the Government Accountability Office released last month; one focusing on patent quality and the other on prior art.

As you know, our office is continually seeking to improve patent quality. And through the efforts of the enhanced patent quality initiative which we have been keeping you regularly up to date on, we have launched one of the most ambitious efforts in terms of improving patent quality in recent memory. So we appreciate the effort of the GAO and we are carefully studying all of the report's recommendations.

And, in fact, many of their recommendations are on initiatives that we had

already begun and are working on and we're already implementing and we will continue to implement on going forward. These initiatives are beginning to provide concrete results through each of the almost dozen initiatives that we have planned. And coming from the private sector, I know that a company that produces a quality product, has been focused on quality for years if not decades, and the USPTO with your help and your input is committed to no less. And we will work to enhance patent quality now and really for decades to come.

So it's an initiative that I'm very proud of and I very much welcome all of your input as we go forward on what I believe to be a very ambitious but proper focus for the Agency. One of those plans came to fruition last month with the launch of our post-prosecution pilot, what we call P3.

A program that combines the best features of two of our existing program, the Pre-appeal Brief Conference Pilot Program, quite a mouthful, and the After Final

Consideration Pilot Program 2.0 or AFCP 2.0. Through this new P3 program an applicant with a utility patent application can submit a proposed after final amendment for consideration by a panel of experienced patent examiners. The applicant can also have the opportunity to make a presentation to the panel either in person or via phone. And the panel will provide a brief written summary for the -- of the status of the pending claims as well as the reasoning for maintaining any rejection.

The Federal register notice about P3 requests comments and feedback from our stakeholders on ways to improve after final practice, to reduce the number of issues in applications appealed to the Patent Trial and Appeal Board, and also the reduce the number of requests for continued examination. The USPTO plans to evaluate this feedback as well as the results of the P3 program to determine what we can do to improve our after final practice.

Separately over the next two months

many of our other quality initiatives from the enhanced patent quality initiative will report out some results. And we look forward to sharing them with all of you and the rest of our stakeholders. We are committed to improving patent quality, building on past good efforts and looking forward to collaborating with you on this important work.

I also want to give a shout out to the great work that the PTAB is doing and a special thanks to Chief Judge David Ruschke. The PTAB is currently at 267 judges on the Board, 202 of which are in Alexandria and 65 in the four regional offices and they are doing outstanding work. And I might add they're also working very hard.

I've had the opportunity to visit many of them especially a couple of them in our regional office most recently and they are very talented and we are very lucky to have them onboard. While internally we strive to improve our processes and procedures, externally the patent system is being called upon as never before to meet some of the most

pressing challenges of our times.

You may recall that President Obama, in his final State of the Union address, challenged our nation to cure cancer once and for all. During the White House Cancer Moonshot Summit Vice President Biden and the USPTO announced new actions aimed at answering the President's call to action.

The first is the Patents for Patients Initiative which establishes a fast track review for cancer treatment related patents. Launched last month this free accelerated initiative will cut in half the time it takes to review patent applications in cancer therapy aiming to have final decisions made in 12 months or less. This fast track will be open to any applicant including early stage biotech companies, universities, and large pharmaceutical companies. And it's another of the USPTO's contribution to the Cancer Moonshot.

In addition to that, we have the horizon scanning tool which will leverage patent data sets to reveal new insights into

investments around cancer therapy research and treatments. When we release this data through the USPTO developer hub in September 2016, users will be able to build rich visualization of intellectual property data. Often an early indicator of meaningful R&D and combine them with other economic and funding data.

Ultimately, the horizon scanning tool will illuminate trend lines for new treatments and empower the federal government as well as medical, research, and data communities to make precise funding and policy decisions based upon the commercialization lifecycle of the most promising treatments thereby maximizing US competitiveness in cancer investments.

Cancer is a disease that touches all of our lives. Ending cancer as we know it now requires the formation of new alliances and the USPTO is proud to be a part of this team. As the Cancer Moonshot Initiative looks to build public/private partnerships with industry, governments, health systems, nonprofits, philanthropy, research institutes,

patients, and academia I encourage you to help spread the word. Those interested in helping can start today by visiting www.whitehouse.gov/cancermoonshot.

As I reflect both on the past and the future, I can't help but feel optimistic. I believe we can collectively make a real difference here through the work of this Agency including on the many initiatives which we have underway as well as generally through the power of technological innovation and our patent system.

Everyone, as some of you have heard me say, has a stake in the system not just the inventors, entrepreneurs, and patent attorneys but really everyone. As a former member of PPAC and then, the regional director of one of our regional offices in the Silicon Valley and now as the Under Secretary of Commerce for Intellectual Property, I have seen every angle now and how important this Board and its work is. Not just to the proper functioning of the USPTO but to the larger intellectual property system as a whole.

So really, thank you for all that you do and for helping to make such a positive impact on a system that is so very important to our country. Thank you.

MS. KEPPLINGER: Thank you, Director Lee, for that update on the exciting new programs that the PTO has put in place. And I think I speak for all of the members of the PPAC, we thoroughly appreciate the opportunity to serve and enjoy the work. We are grateful for that opportunity.

So we have now, I think we're going to have a quality initiative update on some of the programs that you just spoke about. We're very thrilled to hear about those and I think Valencia Martin-Wallace will start us off.

MS. MARTIN-WALLACE: Thank you, Esther. So first I would just like to say very quickly before the presenters that I'm still just as excited today as when Director Lee first promoted me to this position and we started this initiative. The energy that is received and the support from our stakeholders external from the examiners to supervisors is

just getting greater. You know, we're not waning at all. It's just getting stronger. People are even more interested. So it's just pushing us farther than we even thought we could be at this point.

So I want to just quickly go over a couple of the initiatives that have some updates but are not ready to roll out our final results. One is our design patent publication initiative. October 4th, we will have the improvement in image quality. That's going out for our patent. So in our next meeting we'll be able to roll out some more information about that but October 4th is the date on that.

Our clarity of the record pilot which is a huge pilot for us at this point is ending at the end of this week on August 20th. So we will have details for you a little bit later on that as well, as well as our master review form which is the clarity and correctness data capture. It's been rolled out to operations and we have given training to all reviewers on that system.

So great progress we've made in those but today I wanted to pick out three that I think we've had really great results on. We've gotten a lot of input from our external stakeholders and from you on how to move forward. We've gotten a lot of really good feedback about our concepts. So giving you some updates.

The first one is going to be our post, I'm sorry, yes, post-prosecution pilot and as with the other two as well, it's always best to hear it from the executives who are living this day-by-day who can really give you all the information that you need. So the first will be the Director in Technology Center 1600, Jerry Lorengo will speak on post-prosecution pilot.

MR. LORENZO: Thanks, Valencia. And I just want to say that Director Lee did a pretty great job giving an overview of the P3 pilot. So I'll go through my slides relatively quickly and reserve some time for questions if you have any, okay?

Just before I get started I just

want to kind of give a shout out to the people who worked really hard on this, myself, Dan Sullivan, Tariq Hafiz, and Angie Sykes were directors that helped on this, and then, our POPA colleague, specifically Kathy Duda, Gerry Ewoldt and Joe Woitach, and then, all the SPEs and the TCs who actually made this possible. So it's a lot of work and I just appreciate their flexibility and hard work in getting this done.

All right. So here we are. What we're doing here with P3, we call it lovingly here at the USPTO, it's one of the EPQI, enhanced patent quality initiatives. It's under pillar three in excellence and customer service. And really what we're doing here is trying to test the impact on kind of enhancing after final practice at the USPTO.

One thing we learned over the past many years with pre-appeal and AFCP 2.0 is they have different aspects that serve benefits for different applicants. Examiners find them effective in some cases, maybe not some in the others. So we took a look to

figure out what is the best of both and how could we kind of meld these together to come up with something better.

What we have here in P3, we have the consideration of five pages of arguments after final. That's from pre-appeal. And then, the consideration of non-broadening claim amendments after final, that's from AFCP 2.0. And then, we added a little something different. We've got a lot of feedback that the applicants kind of look at the pre-appeal as a black box. They don't know what happens or how things happen.

So we've built a process where they can present arguments to a panel of three examiners. It will be the examiner of record, the SPE, and a third primary examiner. We kept it relatively broad for flexibility because legal and technical issues vary in every case.

So the applicants can come in, make a 20-minute presentation and then, afterward, the panel will work together and the examiner will issue an explanation; not just three

boxes saying proceed to the Board, allowed or reopened but could be the final rejection upheld, application's reopened, or allowed but with plenty of context and information on why that's happening.

So we started this on July 11th. A Federal register note is published there that'll run for six months. So that would make it January 12th will be the end date. We're going to take 1,600 applications in across the technology centers and 200 per technology center. You can always watch and find out how many are going in the technology center you might practice in by going to our external website which has a counter on how many have been accepted into the program.

As with any FR notice you can give comments to the FR notice itself and the external website also has a point in which you can give us feedback. And of course, we have telephones and you can always give us a call, too, and let us know what you think.

So pilot participation. So these are the things that are going to be required

for pilot entry. So you're going to make a request and it has to be by EFS-Web and we suggest using this form here the PTOSB 444. It has to be filed within two months of the mailing of the final rejection.

There is a statement there that you're willing to come and make a presentation. And as Michelle said, you can actually make it in person, via WebEx, we can telephone interviews. We're very flexible on that. Further, a response containing no more than five pages of arguments, and also optionally non-broadening claim amendments.

As with many of our pilots there is no fee to participate. The thing that you can't have done is participate in a pre-appeal or the AFCP 2.0. The P3, AFCP 2.0, and pre-appeal are going to exist in the same ecosystem. So we're trying to see what people choose and how they choose it. So they're living the same but you can't have done one and then, come into the P3 or do the P3 and then, do one of the others.

Likewise once you -- a P3 request

has been accepted, there's no more 116
amendments after final. And again, like I
said, it's impermissible to request a
pre- appeal or AFCP 2.0.

So if they are considered timely and
compliant, then we have a point of contact in
each of the technology centers. They review
the request and they immediately forward it to
the examiner of record and their SPE and the
SPE and the examiner of record will work
together to establish the panel and contact
the applicant to set up the time that's best
for them.

We're trying to keep these
relatively quick from the request to the panel
being held to a decision being issued. So
your flexibility is really important. So kind
of keep that in mind.

So if you do submit one and it isn't
proper, say it's outside the two months, it
has more than five pages, the claims, perhaps,
are far more broadening than they're supposed
to be because we don't want any broadening
claim amendments, then we're going to treat it

as a 116, a regular after final amendment. Nonetheless, the examiner will still get the information on why it was held noncompliant and that'll appear in the advisory action that the examiner will issue. So you'll still understand why but you will not get the decision form in that case.

So the process, we're going to contact you to schedule the conference. And the applicant will make the oral presentation to the panel. It's -- we're giving you 20 minutes specifically for you to make that presentation. Then you'll be informed of the panel's decision in writing following a complete consideration or P3 request.

So there's three outcomes here. There's the final rejection upheld, an allowable application, or reopening prosecution. If the final rejection is upheld and if you filed any proposed amendments, you'll also get an understanding of what is the status of those amendments filed after final and the reasons why the final rejection is upheld. It'll basically kind of give you

what in the arguments was presented and why, at the end, the actual final was upheld.

If it's reopened, the same issue. The prosecution will be reopened. It'll go back to the examiner's amended docket and they'll work on the next action. And if it's an allowable application an allowance will be issued and the form that describes what happened in the P3 will be attached to it. So you'll see the information no matter what on those three cases.

So here's what we're really looking for. We're going to really be considering internal/external survey results. We have surveys for examiners and surveys for the applicants who participate. So if you participate, look for that survey to come to you and we're also going to post it on our external website so you can also go in and give us your feedback. You can always give us your feedback via the FR notice as well as the external website and we're also going to get surveys from our examiners as well. They're going to tell us how they thought it went and

what worked well, what didn't work well, what can we do going forward.

And really the end point is to decide whether or not to continue the program or optionally with modifications. Like I said, we have three options right now after final, AFCP 2.0, pre-appeal, and the P3. We want to see what works best and kind of make some decisions going forward after that. So that is the presentation. And like I said, here's our website. That's our external site where you can see the counter of how many cases are coming in TCs.

That's where the program details and forms. You can see the examiner training, the FAQs, and please send us an email if you have any questions whatsoever. Thanks.

MS. MARTIN-WALLACE: Any questions for Jerry?

MR. THURLOW: Jerry, thank you very much for the explanation. I haven't used the program yet. We've been studying it. We've been recommending that people consider it. Most people still know about the AFCP 2.0 and

the pre- appeal brief. Can you just refresh my memory, I forget, from looking at the Federal register notice, the claim amendments requirement for P3, do we need it? Do we need to --

MR. LORENZO: No, it is not required for you to file claim amendments.

MR. THURLOW: Okay.

MR. LORENZO: It's your option. But if you do they just have to be non-broadening.

MR. THURLOW: Okay.

MR. LORENZO: And the FR notice kind of gives you an idea of what would be the most affective sort of claim amendments. It really points out that, you know, the more focused your amendments are to a real point of issue or the crux of the prosecution of the case, the more effective they're going to be.

MR. THURLOW: Okay.

MR. LORENZO: But it's totally at your option.

MR. THURLOW: And I know it's still early in the game but since the start of July 11th, can you give us some sense of how many

you received and so on?

MR. LORENZO: I wrote that on my piece of paper. Okay.

MR. THURLOW: And apparently he has it up on the screen so --

MR. LORENZO: We're updating this about every two days but right now we have just under 270 filed so far. We've had 13 that we did not allow into the program just for that didn't make the requirements but the rest are and we've held 23 conferences so far. It's really hard to tell what will be the overall outcome, like you said, it's only, let me see, a month and five days out, actually, seven days now. So it's really hard to roll up the data.

I could say right now everyone is being done within 37 days but of course, we're only 37 days out so. So once we get more information we can give you that and we're also sharing all of our information on the -- part of the MOU with POPA is to give them information so we can work on what's working, what's not working, and we're meeting

every week with POPA to kind of go over these to make sure it's working really well and address issues quickly.

MR. THURLOW: Thank you.

MS. JENKINS: Yeah, I was very -- hi. I was very excited about this idea because I'm always appreciating the office taking the initiative and finding creative ways to help us with the patent system. And I think one thing that applicants and stakeowners (sic) and whoever's involved in this system always struggles with is well, how much is this costing and what am I getting out of it? So it's very hard to explain, particularly to newer people who are trying to even consider doing a patent, why you have to do all of this.

So I really want to commend the office for taking the initiative to think about other ways. And I know I think this -- Esther has been a constant drumbeat on this and I do appreciate, too, I think you listening to us as well on this topic. The only thing I do want to share is, and strongly

encourage, is really, and I hear you saying this but I just want to say it out loud, is to evaluate how the program's doing.

And see what tweaks you can make to it because my first response to it was oh, darn I could use this but I'm past the deadline for being able to do it because of just how an application fell in the process. So now I have to wait a whole cycle again and, you know, pay more fees. So I know nothing's ever perfect but, you know, just do think about how we tweak it and just make it better because it is a continuing expense for clients. So but thank you.

MR. LORENZO: You know, those are great comments and I think that's the whole point of why we do these things. I often tell my examiners, you know, if it weren't for applicants there would be very little point us being here. But the truth is also that we have to -- we kind of pay two masters. We pay the, you know, rushing for the innovation as the innovation agency and also we have to guard the public domain. So that's a balance

we have to make and the more collegial and kind of effective collaboration we have with our external stakeholders and communicating all the time externally and internally I think we can make these programs more efficient and effective. So I think that's really the vibe we're taking here.

MS. KEPPLINGER: As Marylee suggested, I'm particularly gratified to see this program come into effect because I have been pushing for it. It doesn't have everything that I would like but it's a first step. I appreciate that and I really am grateful that you've done it. I think that it will be a helpful change this pilot. Hopefully we'll see that kind of outcome.

I'm sure you'll get some of the criticisms from the outside about some changes but hopefully this will be successful and you can move along and see if there are other modifications that can be made in the future. Thank you.

MR. FAILE: So I just wanted to echo Marylee and Esther's comment. I think this is

a really good example of our continuing partnership with PPAC. We have been talking, at least Wayne, and Esther, and I for some time now about a couple of the concepts that we're trying here particularly the applicant participation part and also the better information at the result of a conference. We've been talking about this for trying to build in something for some time.

So finally we have this, we're testing it. It's a first kind of entryway into this echoing Esther's comments. We'll continue to iterate. So I think it's a great example of the input you guys have given us. Sometimes it takes a little while to have these things actually manifest themselves in a program but we've got something out there now and we're really looking forward to the feedback from everyone in the community on the program as we continue to move forward. So thanks very much for that.

MS. MARTIN-WALLACE: Okay. So we can move on to the next topic which is our post-grant outcomes and we've received a lot

of really great feedback about that concept. And now it's in motion. A pilot is in motion and we have some really good, I believe, data so far even though we're only probably about halfway through. And Jack Harvey spoke to you initially about the pilot and he's back today to give you an update.

MR. HARVEY: All right, thank you, Valencia. And so yeah, so I was here at the last public event where we still working out some of the details and what we were going to do. We had an outline of what we thought we were going to do and so today we've made a lot of progress and I'm going to share the slides. Let's see.

I'm going to share the slides in a moment as to some of the progress but I just want to talk on some of the highlights that we've had so far. So to refresh your memory, this project is about bringing attention to what happens after an examiner finishes their examination, whether it's an allowance -- so this might be better phrased as the post-examination outcomes if you will. So

because it's more than just after a patent is granted. It's after an examiner has written their examiner's answer or any proceedings beyond when the examiner touches the case.

So since we last spoke, we started with three objectives and one is a start where we were going to look at the AIA proceedings at the PTAB. And that's where we started. Said this is a good place to start the AIA proceedings are going along. They're getting a lot of activity in that area and we realized early on that the patents that are being challenged at the PTAB are directly related to cases that are being examined today.

So we thought that was a great place to start. Another part of the objective is to train examiners based on what we find from a look at these cases. And then, last is to expand the education of other court cases for examiners to learn from what happens at ex parte prosecution as well as other court proceedings.

So getting back to the first objective where we're looking at the AIA

proceedings, we started the pilot and we've identified, and I have a slide, about 6, 700 applications where an examiner's working on that case and it has a corresponding parent case at the PTAB. And we're collecting information. Examiners have been examining the applications. They're going to the public portal to look at those proceedings.

They're looking at a number of the documents. They're not just looking at the prior art. And I have some -- a slide that kind of shows you exactly what the examiners are doing. They're reading through the documents and you probably already know but there are a number of documents in each one of these. Some of them are hundreds of papers but examiners are going through it.

So just Monday, oh, and so as I just said, examiners are having to go through the public portal. They have to go to, I think it's PRPS. It was called that. Then it's been changed by the PTAB. They made a change to their software system and it was somewhat cumbersome and a lot of work on the examiners

to get through to get to those documents.

So our IT friends here at the office, we gave them a task and a challenge to make that more streamlined and more efficient. And I expected and my team expected some results by the fall but just this Monday our IT developers produced a new feature to the docket and application viewer. That's the tool that the examiners use to look at their dockets and read their applications and read the prior art. They made a change to that tool just Monday and they added a tab. So today every examiner in USPTO that has a corresponding case that's at AIA trials now has just a simple tab and it's highlighted if they have a case and it's grayed out if they don't have a case.

And so when they click on that it brings them right to the proceeding file. If they click on the proceeding file, all documents in the proceedings are listed. And they can just click through. So it's very streamlined. It just happened.

I didn't have time to put the

demonstration up for you but it's slick.
To -- the bottom line it's slick. So I thank
Rick's shop for doing that in way ahead of
time. So now we have to change our
instructions to examiners.

We have them going around the world
to get across the street but now we can just
have them go to their desktop. So we just
have to now tell examiners how to look for
these documents.

MS. JENKINS: Can I ask a question?

MR. HARVEY: Yes.

MS. JENKINS: Sorry to interrupt.
We were all just saying that sounds like a
very good tab. I think I'd like to have that
tab too but what, and I always am very
thoughtful for the examining corps and them
getting credit. So they have that tab.

MR. HARVEY: Yup.

MS. JENKINS: What is the credit for
them getting to look at that tab? Obviously,
they should look at the tab but I guess I'm
just great they have a tab now. What
incentive do they have to go and look at it?

Do you know?

MR. HARVEY: Well, okay, so that's actually a part of the objective is to what is the value and then, bring it to their attention. And then, refine what's in that tab so that the examiners aren't being inefficient because there are a lot of documents in there.

So the point of the survey was to have the examiners experiment, give them some time to look at it, and then, give us their feedback. And so that's what we're going through right now.

So you're right. We are working with the union with respect to incentivizing examiners to do that. The obvious incentive is that there is prior art that a third party has spent a lot of resources to bring that to the attention to the PTAB in looking at patented claims. So that's -- the real incentive is that there may be prior art that the examiner did not have before so it might be new.

So the incentive also is that the

examiner now has a description how a third party is reading that piece of that prior art on claims that may be very similar to what they're examining. So it's geared towards improving their efficiency. And ultimately, you know, coming out with a decision that's a better, more quality patentability decision. So in a high level that's the incentive.

What the examiner -- that's what the examiner gets in return. They get a piece of art that might be better than what they have and it's described for them. With respect to the time it takes, that's still to be determined with the union but we're still in that pilot stage too because it is a lot of documents. I went through a couple yesterday and it's not -- the examiners are not familiar with what's in those documents. This is very new to them. It's new to me.

And if you haven't been involved in that it would seem foreign because they're labeled differently. They have a different format but the examiners do know prior art and they do know when a third party says this is a

102 or this is 103 on this claim. You know, they can key right in on that. And so it's our job, my team's job is to educate the examiners so they can get to that point faster.

Is there another question?

MS. KEPPLINGER: If I could, yeah. It's more in the line of a comment. And following up with what Marylee is saying, you know, the question is for me it's one of consistency of actions within this agency of IPR being instituted by the PTAB and then, what the examiner does.

So I note that a lot of this has to do with rejections and that's fine and I think that's a valuable -- this is a good program. I'm just not sure it goes quite far enough because it -- from the viewpoint of the public additionally, we don't want to see additional patents being granted in the face of an IPR being instituted at the PTAB. So that's where I think there needs to be some additional look just because consistency between the two parts of the same agency are an important aspect.

MR. WALKER: Jack, I'm sorry.

MR. HARVEY: Can I please respond --

MR. WALKER: Yeah, please. I was going to say please respond to Esther first.

MR. HARVEY: Okay. Good comment.

And so what we haven't done but we talked about it and the decision hasn't been made to perhaps suspend prosecution in these pending cases until the PTAB does their, you know, makes their decision. We haven't done that. And perhaps, you know, that's something that I need to discuss with Drew and Andy with respect to that.

So point well taken. It's early on in what we're seeing so far but perhaps that's one way of going. Whether that's something that an applicant would want or not want, I think that's something we need to talk about.

MS. KEPPLINGER: Well, I suspect that applicant might not want it but because an applicant is trying, obviously, trying to get additional patents. And obviously, that's going to be your decision. I am just looking at how the optics can look from the outside

when you have, you know, different outcomes in different parts of the office.

MR. HARVEY: Yeah. I think it goes without saying we too want to be consistent. That if a claim of similar scope is held unpatentable at the Board then we don't want the examiner to allow a similar scope of the claim certainly.

MR. SOBON: I just want to maybe adjust or propose additions to that comment which is on the opposite side a lot of this is actually very legitimate patentee desires to seek appropriate claim scope that is -- that may be outside the specifics of a given IPR case moving forward. And that's not -- and that shouldn't be seen as sort of gaming the system from the public because, you know, a day delay is substantive due process denied to patent owners who are seeking legitimate claim scope.

And so I think the boundaries of any kinds of stays or staging of things so that they'll happen a year later is actually can be harmful to legitimate invention. And so I

think that boundary has to be very, very carefully policed by the Agency for both the -- for balancing the system from legitimate issues for both the public and patent, potential patent holders.

MS. KEPPLINGER: I agree with that completely. I mean, I think that, you know, it is -- you want the correct action from the Agency on all of the applications. And there are very often claims that are different than the ones that are in IPR or whatever reason they're in front of the Board. I'm just saying that I think that maybe some oversight needs to be put in place to ensure that, in fact, the scope of the claims is different and the issues are different than what's at the -- in front of the PTAB. So you want to be fair to both sides, absolutely.

MR. SOBON: And greater reliable consistency across all those decisions so that can be happening because after all, one of our key issues that we've been discussing is the availability or not of appropriate amendment during IPR processes. And so if you can't

really seek full amendments during that process it's totally legitimate to be seeking perhaps narrower claim scope in a parallel case that'll be outside the scope of the contested case.

And so I think we're all in agreement but I think it's something that the public needs to understand as well as have the office have -- seek that appropriate, transparent consistency.

MS. MAR-SPINOLA: If I may, I would like to add I think learning about this program, I think it's a great program and I see benefits to both sides of this patent process. The one thing that I think gives me a little bit of pause is that while I think I'm in favor of sharing the prior art that was submitted in the PTAB proceedings, the other petition information, expert testimony, declarations, arguments by the petitioner I think may be prejudicial. And so I would hesitate on submitting that type of information to an examiner without the patent applicant having a chance to vet that

information first.

MR. HARVEY: Okay. Well, on that these proceedings are all of public -- they are all in the public, right? So the proceedings, all the papers that you're mentioning are publicly available. From -- as a former examiner, the examiners I think take a lot of considerations of expert testimony just in their own examination and arguments from applicants. And I understand what you're saying and I've heard the comment before as well and I think it's legitimate.

But patent examiners are, I think we train them well to give these types of documents the appropriate weight to make the right decision. Many of these proceedings have both sides, both the third party, as well as the patent owners, as well as the PTAB's opinions in them. And so the examiners have access to all of that.

We did it this way to open up the entire file. Well, first it was all we could do because it was already available via public access. But we were trusting that the

examiners could decipher what was valuable and what was perhaps just arguments that weren't. But that's a good point. I'm not sure of the answer but --

MS. MAR-SPINOLA: Right. Well, my concern is that in the application process it is more or less ex parte, right?

MR. HARVEY: Uh-huh.

MS. MAR-SPINOLA: It's just the applicant and the examiner.

MR. HARVEY: Sure.

MS. MAR-SPINOLA: So when you have prior art I feel fully that that's very game. In terms of third-party argument, I'm concerned about it becoming a quasi inter partes proceeding.

MR. HARVEY: Uh-huh, yeah.

MS. MAR-SPINOLA: And that does give me pause and I'm not sure that the examiner -- the force there that they even have the time to look at that. But for the patent office to supply it directly to them still gives me pause.

MR. HARVEY: Okay. Yeah. So we do

have other -- another -- we do have third-party initi -- we do have a third party aspect in the examination process. So any third party can submit documents within a window of time. That was new with the America Invents Act.

And the other comment is of course applicants have an opportunity to interact with the examiner in the examination of the application as well. So based on what the applicant may see in the proceedings, they can engage with the examiner how they so choose as well in their own defense, I guess, so to speak. But thank you for that.

MR. WALKER: I had a question, Jack. So for the examiners, you talked about this PTAB tab.

MR. HARVEY: Yes.

MR. WALKER: And highlighted if it's an active PTAB case. Do the examiners get a notification when there's a significant development in the PTAB case? Say for example, a decision, just to the point here, you know, if there's expert testimony and

there's a rebuttal later, I mean, do they understand when something happens so or actively go in on their own to see if something has developed?

MR. HARVEY: Right. So today, no. They don't -- it's very passive. It exists or it doesn't exist. But I think that's an interesting concept and it would give them a kind of a head's up that hey this just happened in a case that's related to yours. I think that's an interesting concept.

MR. WALKER: Yeah, I just think that from the examiner's point of view, you know, at what point in time do they go in and look and then, if the PTAB makes a final decision --

MR. HARVEY: Right.

MR. WALKER: -- and they're examining a case and doing allowance and here they don't actually have the final PTAB decision in front of them that could be in conflict with --

MR. HARVEY: Absolutely.

MR. WALKER: -- their decision on

the examination.

MR. HARVEY: Yeah. And that comes to the consistency comment earlier.

MR. WALKER: Yeah. Yeah.

MR. HARVEY: I agree. Right. So right so my team's job now is to actually, you know, further educate examiners as to the existence of this tab which just has, you know, it's three days old. And get them to start understanding what is it. It's a process that we're going through as we're speaking right now so it's a very good point.

The alert system that you're speaking of, that's -- I'm intrigued by that. So we could even take that a step further. Even in ex parte decisions or any other decision in the court system, have a linkage back via a tab or some way of indicating to the examiner that something has happened in a case that's related to yours. Right. So yeah, perhaps that's another step in this project.

MR. THURLOW: So just one real quick final comment I guess.

MR. HARVEY: Yup.

MR. THURLOW: The importance of all this is obvious to us especially when I read the GAO report I thought this was one of the better parts and the value of this information's something we've been pushing for. So I do think it's a really good program.

MR. HARVEY: Thank you.

MR. THURLOW: And I like the answer that you provided to GAO that we already have a program in place. So to the extent the Patent Office can be out ahead of the pack is really a good thing so good stuff.

MR. HARVEY: Thank you. Okay. So I'll go through the slides real quick just to give you an update as to where we are in the project or in the pilot and that's just a recap of what the pilot is. So you can see we have identified almost 700 cases. This is about -- data is about a week old.

And every technology center is represented. And we asked the examiners, you know, or the examiners, we collected this all

via survey. So did the examiner refer to any reference, whether they use it in a rejection, they cited it on their own -- in their own application. And it's about 50 percent that they're using the art and there's reasons why they are not refer to the art some of which is the claim scope is different. You know, the art is not pertinent to my application.

And in situations where the examiner did not use any references cited in the trial, we asked them why and the reasons are pretty clear. You know, the claims are substantially different in scope. They didn't agree with the analysis. And I'll get to that in a little bit with respect to the analysis. And then, of course, the examiners are very good at what they do. So they found art that they felt was better.

So in those situations of we have 80, approximately 80 surveys. In the situations where the examiner actually used a reference in a rejection, this is how it played out. There were a good number of 102s. Clearly 103s we expected but this is kind of

an indicator that the examiners are using art that's in the trials in rejections of claims.

There is a -- I don't have this as a slide but we do have a good section I think 30 to 40 instances where the examiner did a brand new grounds rejection. They didn't supplement what they had but they actually sent out a new grounds rejections with the art that was in the AIA trials.

So here's the slide that I thought was interesting. We wanted to know what the examiner's looking at. In all the documents what did you look at and what did you find most important and as you can see, the petitioner's analysis and that's the petition where they describe this is the prior art. This is how the prior art reads on the claims in the patent and this is why, you know, their persuasive arguments.

Likewise the PTAB analysis was also of interest, somewhat declarations by the experts as well. So I'm excited to see that examiners are taking the extra step to read through the petitioner's analysis because they

are quite long and time consuming.

So we also asked the examiner, hey, you know, give us any feedback. And so I thought some of these were interesting so I'm sharing that with you and some of them are obvious such as, you know, all the documents that are in the AIA trial, I have them on my IDS. But the one right in the middle I thought really was of great, I felt important for the first time in years. I wish you guys would reinstitute the annual legal lectures that were a great sampling of court cases.

And of course, that's our objective three. That's exactly what we're doing. Bottom right, I think this is an excellent tool for allowing examiners to see what is involved in litigation of a patent. I learned a lot. So these are the kind of things that we're going to go through and use in a focus session. So in a couple of weeks we're going to bring in some of the examiners that answered these questions and we're going to ask them face-to-face some more detailed questions to get down to exactly the process

that they took to make this even a more efficient process.

And from all that, we're going to do our targeted training and then, last, objective three we did have some progress on that. So we are focusing right now on the ex parte decisions from the PTAB. We're getting all the technology centers involved in coordinating and organizing all of the decisions that they're getting back and putting them into an organized -- organizing them so that we can put them into training materials for examiners specifically on ex parte prosecution applications.

And that's just a summary of what I said. So these are the next steps. And here as Jerry had, there's how you can give us feedback and our web page on some of this information. Is there any other comments?

MS. JENKINS: Jack, I just noticed some of the -- one other survey comment of not which obviously is a concern. The number of documents submitted for analysis by the examiners should be restricted as a reasonable

number --

MR. HARVEY: Yep.

MS. JENKINS: -- in the present case the IDS includes over 1,000 pages for analysis. On top of that the examiner should consider the documents submitted by this pilot, no time left for instant invention.

MR. HARVEY: Yep.

MS. JENKINS: You know, when we do a document dump on an IPR, you know, I think it's very difficult for examiners to have the sufficient time --

MR. HARVEY: Yep, absolutely.

MS. JENKINS: -- to be able to review all of this. So --

MR. HARVEY: That leads right from your comment earlier.

MS. JENKINS: Yep.

MR. HARVEY: Exactly. And that's examiners are -- they work hard. They have a lot of work and so that's -- but it's good to know and we're collecting the information so that we can somehow address it.

MR. LANG: I think this is a great

and worthwhile initiative. Good job.

MR. HARVEY: Thank you, Dave.

Thanks. I welcome any comments after this as well. Feel free to email me.

MS. MARTIN-WALLACE: Okay. And our last topic under quality is STEPP which is the Stakeholder Training on Examination Practice and Procedures. We had our first training course a few weeks back and the Deputy Director of the Office of Patent Training, Debbie Reynolds, is here to update you.

MS. REYNOLDS: Thank you, Valencia. Good morning, everyone. So the slide says I'm Gary Jones. Gary couldn't be here with us today. So as Valencia said we ran our first STEPP in mid-July and we got quite a bit of feedback from that which I'll share with you today.

Hopefully each of you picked up a copy of the flyer and also the agenda that we used during the first one. If you didn't, it's on the table over there. But I will get started going through the slides.

So the purpose of the program is of

course, to focus on the mission of the PTO which is to deliver IP information and education and including to our external customers. And it also fits under the third pillar of EPQI which is customer excellence. And so we want to improve customer experience by increasing your knowledge in what the examiners do.

And then, also it helps to increase transparency in exactly, what we do. How do we examine?

The program was a three-day training program. And it focused on the life of an application all the way from docketing to possible allowance. The training materials were derived from materials that we use to train our examiners. Of course we couldn't keep the people here for four months so we did compact the program quite a bit.

And then, the training was managed by one of our former trainers but who is now our Patent Training Advisor, Ned Landrum and overseen by Patrick Nolan in the Office of Patent Training. And they were assisted by a

number of supervisors across patents. So that was one of the comments that we received from the evals that they really appreciated having access to so many of our managers.

So on day one, they had the courses that you see up there as well as in the agenda but I want to point out that under reading and understanding an application, that was really several hours where they had hands-on work with an example application. So as we do in our training program for new examiners, first we help them go through an example application that they all go through and then, they go through one that's more specific for their art either chemical, electrical, or mechanical.

In this program they all went through one together. And so they really worked with that example application. And we got a lot of feedback that they really loved getting to do that and that was a highlight of the program.

So then on day two, the real hit was the planning a search time. So they really worked on "how do examiners search?" How do

they figure out what to search? And then, in mapping art to claims they actually performed searches with programs that are very similar to what the examiners use but it's what the public has access to. And then, they worked on how to apply that prior art to claims that were in their example application.

And then, on day three, they actually went through all of the steps for writing an office action. So there was a presentation which detailed all of the steps and putting everything together and coming out with an office action. And so, again, the participants really loved that and we got high marks.

So in your packet you have all of our course ratings. I won't go through all of them but I'll highlight a few. Knowledge and skills increased. That was almost completely fives in the evaluations and recommending the course to others was almost completely fives. And then, another one that's -- did I lose the mic? Sorry.

Another one that was a really good

result was planning to apply the knowledge and skills learned in the course and again, almost all fives. We did get a few marks that weren't so good. One two in understanding the learning objectives, so that one wasn't great but we're not sure why that person didn't understand.

So you have all of the evals that we wanted to share that with you. But I'm going to flip back to some of the comments and point out just a few. So the one in the middle really, you know, the program was beyond my expectation. The approachability of the staff, and I hope that the future programs continue and they commented that it made the USPTO seem more transparent. So that was, you know, really a great comment and we were happy to see that because that was one of our goals.

The bottom one on that slide mentions that they couldn't thank us enough. It was tremendous for their clients, their practice, their career. Again, just really overwhelming comments back. This person on the next slide talks about the course being

invaluable. That it was truly amazing. The instructors were well prepared.

So we were just really pleased in getting so many great comments. We did ask them the best part of the course so that we could figure out, you know, what we should work on to improve it for the next time. And as I mentioned they really liked the hands-on part and they also really liked learning more about compact prosecution. And of course, we asked them what recommendations. We really wanted to know how we improve it. What do they want to us to change for the future?

And they wanted, you know, less lecture. I think they really felt like they knew the legal part, the law. They didn't really need as much overview. They really wanted to focus on that hand's-on. They really wanted to learn examiner think, if you will.

So what are our next steps? So our next steps, we would like to deliver a step program in each of our regional offices. Hopefully, in each of the four quarters and

then, also have one or two here in Alexandria next year. And then, so we're working on the schedule for that.

We're planning to have the first one for next year in November and hopefully some news will come out on that very soon and then, we're also working on the rest of the schedule for the year. We're going to -- we've been asked to increase the size of the workshop. We kept the first one to 36 participants although we had many more people who wanted to come. But we do need to be able to maintain the hand's-on atmosphere and make sure that we're able to answer everyone's questions because that was also something that they really liked was getting all their questions answered.

So we will increase it some but still keep it small enough so that they get that boutique feel, let's say. So that's our plan. So you should see more on that coming out soon. Our website is in the flyer. So you'll be able to get more information and we'll have the schedule posted there soon.

And I think Gary has his email there and then, I'll be happy to share my card with anyone. Questions?

MS. CAMACHO: Ours isn't working, oh there we go. I think our -- this is a great program and I'm delighted to hear about it. And I do understand that the hand's-on and the interaction is -- has been extremely well received. What I'm wondering is whether you've given any thought to making this somewhat accessible to a much broader audience, an online or webinar type series that folks who can't devote three days to travel here and be here in person might be able to still benefit from all of the materials and the program that you've put together. And perhaps have it in more of a bit-size modules here, an hour here and being able to do it either weekly or on their own or in small groups.

MS. REYNOLDS: Well, some of the things that we are planning to do or at least try is to run some smaller webinars outside of this program so that other people in a much

broader audience could participate in those. It might be some of the corps-wide training that we're doing, for example, the public would be invited to participate by webinar so that they could know what we're doing at the USPTO.

We're also planning to release the materials on the website so that people would be able to see those.

MR. HIRSCHFELD: If I could add to that for a minute? And excuse me, in addition to the great work that Debbie's talking about that her and her team and many others have worked on on this course, we hear routinely from examiners based on feedback on the training we do in-house that they all like the hand's-on approach. And we've actually changed the whole entire way we train to make it more hand's-on for folks and I'm happy to get into that in a minute.

But to your point about getting information and hand's-on ability to work more available to public, all of the hand's-on materials that we use internal for examiners,

we make available on our website as well. So if it's outside the purview of the class and the training, the workshop that Debbie's speaking about, all of our materials such as 101, 112 training materials we've done recently, we're doing -- we're training examiners in the hand's-on format with worksheets, et cetera, and we're making all of that information available to the public as well.

While I'm on the note of training, and Debbie -- and this is, you know, kudos to Debbie and Gary as well on the training. And I know I'm digressing a little bit and I apologize for that but what we have done to make sure that we get examiners that hand's-on ability is we've really changed our training to either -- to get away from the large lecture hall style training that we've done in the past or the art unit specific training. So we've tried to get less trainers so that they're subject matter experts and they're really ready to do repetitive sessions. And then, what we've done is we've run and upwards

of 500 sessions for some of the training so that you can do it in very small groups for the examiners.

And it's a huge undertaking by the trainers to be able to roll this out. I mean, think about that, 500 sessions over say three weeks' time to roll out training on, you know, whatever we want to train on is an awful lot to do but the feedback we get is it's great. So very similar to feedback that Debbie's getting --

MS. REYNOLDS: Right.

MR. HIRSCHFELD: -- from the public in this regard so.

MR. THURLOW: So to be selfish, three days is tough, as Jen mentioned but --

MS. REYNOLDS: Yeah.

MR. THURLOW: -- if we can reserve one spot, at least one spot for a PPAC member, I think it's really great. I never had the benefit of working for the office, studying materials but I think it's a really good program. The three day part is tough but just means more work at night.

So to the extent possible, I'd like to hear more about the program.

MS. REYNOLDS: Okay, great.

MR. THURLOW: See your schedule and stuff.

MS. REYNOLDS: Uh-huh, great.

MR. WALKER: On that line, I saw that CLE credit was being attempted to be obtained.

MS. REYNOLDS: Yes.

MR. WALKER: And what a great incentive to get attendance but to get CLE credit. So any -- does it look likely you'll be able to get CLE credit for the course?

MS. REYNOLDS: Yes.

MS. MARTIN-WALLACE: Yes. We are working on that. And hopefully not only the credit for the topics that are already here but we are working on the coveted ethics credits as well.

MR. WALKER: That will spark attendance. I'll make three days available for that.

MR. GOODSON: Excellent work. Three

percent of the patent applications coming into the office are pro se. Did you have any pro se or was this mostly members of the bar or was it agents or a combination of all three?

MS. REYNOLDS: It was limited to people who were registered to -- before the office, yeah.

MS. MARTIN-WALLACE: To add on to that, not only did we have the 36 but I believe there was a waiting list of about 100 practitioners who were waiting to take this course. So I think we're going to keep this one going on.

MS. REYNOLDS: Yes.

MS. JENKINS: Just a couple of quick points. I agree. I will sign up. Peter and I will take the course together, right? Couldn't commend the office more on this. You've heard me say not only is it so important to train the examiners and you also provide all that information on the website so the public can see it easily and access it which I commend for the entire house, so both on the patent and trademark side which I know

is not done. So that's another separate issue.

But the training is so important and it's also us, our training and to help and, you know, whatever little it takes. The only thing I would say is I would strongly think about a different way of messaging this. We get so many different emails and there is so much, and we've talked about this, too, in meetings, for PPAC. There's so much going on activity at the office which we, again, commend. We love this.

But I think for something like this, because we get so much, you need to message it differently. It needs to look different. It needs to strike a chord and so I need, you know, I need you to think about that because it's amazing when you talk to colleagues and we get to see behind the curtain. And you talk to colleagues and you're like, you don't know about this? You don't know about that? And a lot of times it's just how you get the message out.

So I think this is invaluable.

Thank you.

MS. KEPPLINGER: Oh, let me just say one thing. Go ahead.

MR. SOBON: I was just going to add to Marylee's point, you know, that we're coming up to various IP conference seasons. I don't know if you already have this in mind but there's the IPO meeting in New York in September, AIPLA's annual meeting is in October here, and I'm sure those organizations you have relationships with them already. To have, you know, your PTO table at their exhibit or things and put these kinds of materials out so people can see them and have other things in there -- mark in their materials so people know the list of available trainings for external people that the office provides. That's a really great way to keep it front of mind and I'll do what I can to remind people about that, too, so.

MS. KEPPLINGER: One suggestion that I have with respect to this training and I think it's a great opportunity for you to get the message across about it as Valencia might

have said, the examiner think. I think there's one area that I repeatedly see with practitioners and that is that they don't understand how an examiner can legitimately look at a claim more broadly.

So some examples in there about a, you know, reasonable broad interpretation of a claim for the practitioner's side. And then, conversely to the extent that you give training to examiners, examples of unreasonably broad interpretations of claims because there is fault on both sides, of course, but I am -- I continue to be surprised by how, you know, you can get into a mindset of well, my claim means this. And they don't even completely understand how the examiner's seeing it differently. So some examples of that might be really helpful.

MS. REYNOLDS: Yeah, good point.

MS. MARTIN-WALLACE: Thanks, Debbie.

Okay, so that's the conclusion for quality. Thank you.

MS. KEPPLINGER: Thank you very much. We are a little bit ahead of time. I

don't know if we have any other questions or things about patent quality while we still have the quality team here or we can take our break at this point.

MR. THURLOW: The only thing I just wanted to say for the record because I had a long trip back on a vacation on a flight and I studied that GAO report. It's not something you can just read. And what I have emphasized at the bar association meetings and the meetings I've had is the appendix three.

And I think as I mentioned to Jack, I believe, the report goes into great detail on a lot of issues but I thought was very helpful is that the office had the information available because the patent and quality program has been in effect for a certain period of time now to answer those. I think seven points.

And I think again, as I mentioned to Jack, to the extent we can help you kind of get ahead of the game and see these issues, it makes it much easier to say we've had these programs in place. So you know, the GAO

report I've heard different things on it but from on my perspective, it's all how you view it. I thought the appendix three and the quick response by the office was effective on that.

MS. KEPPLINGER: The public -- someone from the public.

MS. WANG: Good morning. Thank you so much for this quality presentation. I am Chen Wang with AIPLA and I had a question in particular on the post-grant pilot. I'm just wondering what the level of transparency is with respect to the examiner's consideration of the prior art that are cited before the PTAB. Thank you.

MR. HARVEY: The -- may I ask clarification meaning you said the level of transparency to the applicants?

MS. WANG: To the public or the applicant. I'm just looking, for example, on your pie chart on the response where the examiner -- there is a slice of examiner response that indicated that he or she disagreed with the petitioner's analysis of the prior art and/or claims.

So the question is would the applicant, you know, be aware of that consideration by the examiner?

MR. HARVEY: Oh, okay. So I think I understand. So just as an examiner considers any document as they're doing their examination, if they feel it is relevant, they make it of record. And if they went and they searched through different documents they put in their search history where they searched. But in this -- in your particular example, we would not expect an examiner to make a comment with respect to the PTAB proceedings, their opinion as to what is happening.

So it's more of a one-way -- from the PTAB proceedings to the examiner it's a one-way -- it's one-way only. It's for the examiner to consider what is going on just as they consider any other information out in the public. And then, they examine the application as they always have considering the prior art that's before them, writing an office action.

But we don't anticipate nor do right

now we don't encourage examiners to refer to the PTAB proceedings at all in their examination. I hope that answers your question. Okay.

MS. MAR-SPINOLA: Would that mean that if they did look at the petition papers that are supplied by the patent officer, that whether they considered it relevant or not they would not list that along with the prior art references or other information that they've considered?

MR. HARVEY: That's correct. Right. It's not, I want to say it's not a recognized document as a declaration or a piece of art. It's information that they perhaps use to supplement their own understanding of the prior art that's being submitted to them.

So it is a -- it's information, just as a third-party submission it's information that the examiner can use to understand the invention but when the examiner does their office action, that is the examiner's position. It's not any other position. So they use in the understanding of the

invention. They use it in the understanding of the prior art to whatever degree they need to and sometimes they don't. They don't need any other information.

But when they do their office action, it is their opinion with respect to the prior art and the claims at issue.

MS. MAR-SPINOLA: I see. So to what extent would the applicant know or be informed that the examiner had any access to the petition papers?

MR. HARVEY: Hmm.

MS. KEPPLINGER: Yeah, following up on that, these are excellent points.

MR. HARVEY: Very good point.

MS. KEPPLINGER: And the record should reflect, I mean, our suggestion is --

MR. HARVEY: Okay.

MS. KEPPLINGER: -- that if you're not already encouraging the examiners to do so, they should note in the file history that they have, in fact, looked at the documents from the PTAB on a particular date.

MS. MAR-SPINOLA: And I agree that

they don't have to comment on it.

MR. HARVEY: Right.

MS. MAR-SPINOLA: Right? But I think in the spirit of full transparency, an applicant should know what is being considered and if you treat that information similar to prior art --

MR. HARVEY: Uh-huh.

MS. MAR-SPINOLA: Then it should be treated that way all the way around.

MR. HARVEY: Okay. Okay. Yeah, I think we teach examiners to follow the manual patent examiner procedure, right? So to whatever degree the MPEP dictates the examiner should be recording their search and recording where they look, I think that's a fair point.

MR. WALKER: I guess I'm old school. I guess I don't understand why all this art won't be submitted in an IDS under Rule 56 to begin with. But I guess the sensitive point here is that if an examiner has looked at it and it hasn't been noted, then an applicant wouldn't know whether or not they should have submitted it under their duty of disclosure in

an IDS. I guess that's the point.

And if it hasn't been noted, then it's still incumbent on the applicant presumably to submit in an IDS.

MS. MAR-SPINOLA: That is part of it. I think the other part of it is that if let's say in the case where the examiner does consider that information in making a determination. I'm assuming that there would be some indication of the basis for rejection or whatever, right?

But if and if they considered the information but didn't think it was applicable, that by itself is informative to the applicant as well. The basic thing that I think is just being equal in the information. And an applicant, you know, I keep thinking that the patent office is here to serve the stakeholders and to protect innovations not to do the opposite. And I want to make sure that the patent office certainly does whatever it can and I join my fellow PPAC members in applauding the efforts that are being done.

I just want to make sure that patent

quality accelerates and continues to increase but at the same time that there's a balance in the information that's being used and being considered and whether it's rejected or not by the examiner.

MS. JENKINS: And Julie, you trained me for big data. So that she hasn't said big data yet but and that's one thing that I'm sitting here thinking about, too, is that we now have all of this data and how are we best using it? How are the examiners and the PTO using it? How are we using it?

So your issue, and I see Charlie just right down from you, not only is this a PTAB issue, IPR, it's also a Global Dossier issue because we're going to have the same problem there. What information is the examiner looking at and considering that we, as stakeholders, need to know about? So --

MR. SOBON: And on to that, I mean, it's been a continuing discussion and I don't know where the office fully stands and it's an IT as well and a process issue. But we've had discussions in a very similar vein across the

broader issue of the -- especially in complex cases where you have a number of family members and now, potential IPR and contested cases going forward with a lot of different art. Under McKesson the sort of increasing burden and requirement under Rule 56 for the applicant to just recite and continually recite the same art in bulk on every single case. That's much more easily handled by data and your internal IT system now with Global Dossier.

Getting to the point where an applicant can satisfy their Rule 56 obligations by simply noting to each case all the relevant companion cases and having the office that the examiner is deemed to have access to those cases. That's going to be the ideal case because it is really, it's a waste of paper and/or time and/or money and energy and also, in argument of overload and varying information by having applicants, in some cases, back truckloads of documents from litigations and other companion cases to the office to satisfy the Rule 56 obligations.

So the nirvana is that we get to a point where all this is handled by your Global Dossier integrated workstation for the examiner so that and to Julie's point, and it's clear on the record. The examiner did acknowledge, yes, I have access to all of those pieces of prior art and I've considered them.

MR. HIRSCHFELD: So Wayne, we are working on that exact issue actually. So our endgame, excuse me, our endgame so to speak is that what an examiner would get in front of them would be and maybe I'm just speaking at a minimum because I think there's many other avenues but they would automatically get readily available to them say in an IDS format or a tab on their desktop. They would get all the references, the related reference that could be cited in similar related PTAB applications.

They would go to related cases from the Global Dossier and potentially, many more. And we would get this right in front of the examiner in the most easily and efficient way

that we can and then, of course, that it would be recognized in the file which they're working out details to how you would do that. Recognize in the file that the examiner did, in fact, consider all those references and that would, of course, make the duty disclosure issues that you raise, it would at least meet that burden under -- for those particular references that they cite.

And what we're planning on here and I'm not sure of the status of the Federal register notice but we will be having a Federal register notice in the near term that mentions this. And we'll set up a public discussion to consider some of the additional issues that we might want to consider as we move forward in this.

MR. SOBON: That's fantastic.

MS. KEPPLINGER: Okay. Thank you. Thank you for that lively discussion about all of this. That would be the nirvana that practitioners are looking for, for sure.

Okay. We will take a break now until 10:50. So we'll have a 20-minute break.

Thank you so much.

(Recess)

MS. KEPPLINGER: Okay, if we could take our seats. I think it's time for us to begin again. And we have with us today Bob Bahr, the Deputy Commissioner for Patent Examination Policy, who's going to update us on those subject matter eligibility guidelines, I think. So thank you.

MR. BAHR: Hi. Thank you, Esther. Let's see. Yes, I'm going to give you a subject matter eligibility update both judicial developments and with respect to examiner memoranda and training that's been going on.

The first we have a couple of Supreme Court, really I'm going to say non-events, in two -- they -- within the last three months. The Supreme Court denied cert in two cases, Versata and Sequenom. Now I've stated the issue up here. The issue is not as I've stated it. It's the issue -- it's the question presented by the petitioner.

But of course in each in late June

now the Supreme Court denied cert. Currently, there's no subject matter eligibility case where the Supreme Court has granted cert. So there's no, I want to say, decision on the horizon. There are several petitions pending before the Supreme Court but they haven't rendered the decision on whether or not to grant cert in those cases.

Moving on to Federal Circuit development, well, the last time we were here I had issued a memorandum. We had -- concerning examiner training and we had discussed that and that's apparently a signal for the courts to start issuing precedential decisions in this area. The first one that came out a few weeks after the memo was *Enfish*. And there they had a lot of discussion about what could be I'm going to say eligible under what we call step 2A but under the *Mayo/Alice* framework it's step 1.

The whether or not you're directed to a judicial exception, the Court here indicated that, you know, many improvements in computer architecture, the hardware ones are

undoubtedly not abstract and analogized that certainly software can therefore be -- make similar non-abstract improvements. And here, you know, the Court relied on the focus of the claims where they were, you know, an improvement, you know, in the computer technology not just situations where a computer is being used as a tool.

So we followed that up promptly with a memorandum clarifying our guidelines to point these things out that you could consider the improvements in computer-related technology to be not directed to an abstract idea under step 2A. You don't have to go to the step B analysis into these situations. And certainly here in the Enfish, the invention here was it offered benefits over conventional databases and we also mentioned data from the Court that improvements don't have to be defined by reference to physical components. They instead can be defined by logical structures or processes rather than particular physical features.

Next that came out was the Rapid

Litigation and yes, I hate that title, the Rapid Litigation Management case. Here the Court determined that it was eligible under step 2A that it was not directed to a judicial exception.

(Off mic comments)

MR. BAHR: Yeah, that's -- okay.

Well, but that was not the invention. Here the adventurers did discover a sort of natural phenomena if you will but that's not what they sought to patent. They sought to patent a practical application of this and so the claim was directed to a process of using this attribute in various process steps of fractionating, recovering, and preserving, going through multiple freeze/thaw cycles.

And here the Federal Circuit made a few points that eligibility doesn't turn on the ease of execution or obviousness of the application. And also with respect to preemption, at the end the Court noted that this didn't preempt all uses of this natural phenomena. That while, you know, preemption is not the test, it certainly, you know, the

fact that it doesn't preempt helps confirm that it does pass muster under the Alice/Mayo framework.

So shortly after that we came out with a memo. This memo actually discussed two cases. The first was Sequenom which, as I indicated, the Supreme Court denied cert in that. We wanted to issue a memo on that because stating it bluntly, while there was a lot of comments on Sequenom in the blogosphere and a lot of commentary about the cert petition, I wanted to make clear -- we wanted to make clear to examiners that the fact that there was a lot made of this case in the blogosphere doesn't make this case any more than any other case in the patent eligibility framework, and not to give overemphasis of this case just because of its notoriety in the press.

And so we wanted to just indicate that the denial of cert in Sequenom doesn't elevate its status over any other Federal Circuit decision. And of course, while we were in the process of drafting Sequenom memo,

Rapid Litigation came out so we included that also in the memo to discuss that with examiners.

MR. THURLOW: I think the only thing I'll say to that is in the Bar Association and a lot of discussions we've had there was great hope that the Supreme Court would have granted cert in Sequenom and a great disappointment when they didn't. I think in the 2-1 panel decision from the Federal Circuit in that case, Judge Lano, on the nice judges basically said it's too bad we have to reject this, you know, find this application unpatentable or this invention because there's a real invention there.

So there was a lot of disappointment. That's probably why there is so much discussion about this one particular case.

MR. BAHR: Right. I mean, I appreciate that there was, I'm going to say, much hope that the Supreme Court would clarify its view on patent eligibility. My concern was that examiners reading all this in the

press would take the denial of cert as some sort of Supreme Court stamp of approval on, you know, this being ineligible and react to that like this was a Supreme Court case and was with much broader application than it has. That was my concern. Well, that was our concern and that's why we issued the memo.

Next is a case of another case that came out that was found patent eligible. This was a -- directed to the -- I'm going to call it the abstract idea of filtering content. This the Court did say that this was an abstract idea under step, what we call step 2A but that it appeared at least from what the -- enough to survive a 12B6 motion that it seemed to have significantly more in the claims.

The Court here emphasized that you can find an inventive concept in the non-conventional, non-generic arrangement of known, conventional pieces. This was a point that we emphasized in our memo in early May that you can't just look at the additional elements individually and say that they're all

routine. You have to look at them individually and as an ordered combination to see whether or not they are something more than, you know, conventional or routine.

And so we were happy to see this statement in the case because it somewhat confirmed what we said in the memo. And the Court also notes that this claim does more than just recite an abstract idea with the requirement to perform it on the Internet or to use it with generic computer components. That there seems to be -- there was enough alleged here that you could find that it was non-conventional and non-generic here.

Now we didn't issue a memo on this case separate from the ear -- the May one because it seemed to be I'm going to say in line with the guidance or to more accurately state it, our guidance seemed consistent with this memo. Though I have on occasion gotten comments that maybe I should do or maybe we should do something on this case because examiners don't seem to be all that aware of it. So if you have any thoughts on this, I'd

be open to them.

This is basically a summary of the judicial developments. In the precedential decisions you can see there were three of those cases, Enfish, Bascom, and Rapid Litigation Management found the claims to be patent eligible where TLI Communications and Electric Power Group found ineligibility.

Also there were a number of non-precedential and Rule 36 judgments. Those were all, I'm going to say, ineligible cases. So that's why we haven't seen much on those.

And for questions or comments you might have? Yeah?

MR. SOBON: Hello, sir.

MR. BAHR: Hi.

MR. SOBON: I'll give a few thoughts or comments and just lay them out and then, you can either take them back or respond as you like. But, you know, obviously this area is still one that's deeply of concern. I think all the major intellectual property organizations are focusing on this and evaluating and have teams looking at how to

address it in a variety of ways, these issues.

I think it's commendable what you have been working, doing and with the revised guidance. I would be one to say the more you can actually revise your guidance and include things like the Bascom case and include those as further tonics to the fact that the cases that were decided, especially by the Supreme Court, were very focused on the facts of those cases. And like any legal opinion, you can vastly take the general things they state out of context and then, it becomes again, an acid that eats through things.

And in particular, I've been talking to various people and have received a number of anecdotes that seem credible of the examiner corps not yet fully maybe following the spirit of your memoranda. That in practice examiners are continuing to, in a sense, and if I can sort of shorthand it, short circuit the analysis, the two-step analysis and basically define the problem away by just saying the things that you've claimed in your claim steps, whatever those might be,

these are the most important parts of your claim. And those things taken together are the abstract idea. You are patenting an abstract idea. You, therefore, lose.

You know, some of the evidence in the 3,600 and the ecommerce is that fully 40 percent of examiners issue 101 rejections 80 percent of the time or more. And so that's of concern.

Another thing that's been brought to my attention, you probably saw it, and Bob Sachs' Bilski blog and Alice Storm comments are, you know, he continues to be tireless in focusing on these issues is that, you know, Director Lee was focusing on the Patents for Patient Program as part of the overall administrations, Cancer Moonshot. That's all great except that he notes there is at least 50 or more applications for cancer treatments that have been completely abandoned by applicants because of final 101 rejections for cancer treatments when there is not actually final 102 or 103 rejections.

So this is a -- this is actually

affecting even the potential for protectable medical treatments directly related to a current program of the administration. And I would just say two more points that really, I think, have crystallized things for me.

There was a non-precedential case for the Federal Circuit recently, IN RE: Brown, on haircutting. And while that sounds trivial and yes, you know, and it was a method for cutting hair to achieve very reproducible results apparently. And it was rejected both by the office and by the Federal Circuit. The Federal Circuit affirmed your rejections under 101.

But a lot of the comments were that it was basically a claiming a collection of very well-known techniques in hair. And I think partly it's maybe the subject matter and I think this is true in ecommerce too. Tends to lead to a certain outcome but it really crystallized for me a problem that maybe I hadn't thought about this way. But the combination of the goal of compact prosecution and 101 is leading to some very bad outcomes

because I think the better -- if that was truly the case that cutting -- that the method of cutting hair was actually just a collection of existing techniques and the rest of it was just surplusage (sic) then that should have been rejected under 102 or 103.

And 101 is a bludgeon that then every examiner then uses that case if they -- if it's precedential or just even knows about it to reject every other method that might come before them that might be actually really novel. And while it's hair it could easily be an aluminum body for an iPhone and having a system for achieving a reproducible within tight tolerance outcome of cutting that aluminum body. There's no difference.

And so that's of concern. Similarly, IN RE: Smith was a method of a card game. And I think this -- the solicitor for the patent office admitted in oral argument if there were new cards or there were new material or things being used for that method of card play then that might be protectable.

And I think having those kinds of examples made public and made part of your instruction to examiners can help balance this system which I think in certain areas has really gone out of whack.

And again, card playing sounds trivial but games is a huge, huge industry for America and we have to -- we should remind ourselves that the Monopoly was patented in the Depression by this very office. So these things are and what happens is those things spread out and get analogized to things, other things that are you know extraordinarily important for various industries. So I think this still remains a very, very, it's obviously a very, very concerning issue. It's an acid that continues to just sort of leech out and harming a number of areas of innovation and the applicant community that's especially affected by this remains distraught even in the face of, I think, again, your commendable work on your memoranda and trying to find that right balance in some of these recent cases. In practice is is -- there's a

lot of anguish. So --

MR. BAHR: Well, thanks. That's a lot to digest. I'm not talking back to any of this. First of all, I do agree with you that there's more work to be done.

Second, certainly I did read the blog about the Moonshot and those and that is why I certainly hope we tread carefully in that area. And I try to take pains, you know, in our guidance to do that.

As to the haircutting and card playing, I -- my only comment there would be at the time of -- I'm not sure whether we issued our guidance before those cases came out.

I think IN RE: Brown is non-precedential and IN RE: Smith is precedential, the card playing one. And I think that came out -- that might have come out right around the time of the guidance or not. I'm not sure.

But certainly I think that it was the Court that said that if the cards were different that it might be a different result.

But that here we were just talking about how the game was played with conventional cards. But that's -- but certainly I would appreciate that you can't analogize that to wipe out everything.

Like I don't know about the Monopoly game. Obviously, if you claimed, you know, different types of pieces, you know, you would have a different game. It's not a conventional game anymore. And I don't think there were games like that before Monopoly. I mean, I don't know. I'm not in 1935.

MR. SOBON: I mean, I guess one of my -- I didn't maybe fully wrap my point up but I, you know, there's no -- part of this is I actually have, I think, an artifact of numbering. And I made a joke, sort of not facetiously, that the solution to 101 is just to rename it 113.5 and then, it would be seen as the first thing that everybody has to do.

And I'm getting to the point that I don't -- I think you could actually give guidance to examiners that they don't have to do 101 at all if they can actually effectively

reject a patent under 102 and 103. 101, on my mind, should be reserved only for the cases where it is novel and not obvious but it really does seem it is attacking an abstract idea.

The issue with 101 is it's such a blunderbuss that when they do that it just knocks out swathes of potential other similar inventions rather than that specific one. If it's truly just conventional cards or conventional software or conventional things and nothing new has happened, then kill it under 102 and 103 and leave 101 to the last. It finally clicked in me that compact prosecution plus 101 is really potentially problematic and it may be where things have gone off the rails. So I want to just leave that thought.

MR. BAHR: Yeah, I'm not sure that the public would be very happy if we had an examination process where we did 102, 103 and then, after those were resolved we then issued an office action under 101. I mean, I agree with you that if you're looking at a situation

and you apply 101, 102, and 103 if they're appropriate, that many times your 102, 103 will take care of your 101.

MR. SOBON: Right.

MR. BAHR: But I would not really want examiners to hold off on 101 till the end and, in fact, I think in Mayo the government argued that this really isn't a 101 issue. It's a 102, 103 issue and that got rejected pretty hard by the Supreme Court.

And in Comiskey, I think we went up on a 103 issue and the Federal Circuit remanded to us because they felt that we should have considered 101 first. So you know, to some degree I agree with you that it does make sense to use whatever statute gets you to the best result if you're -- if the problem can be taken care of for lack of novelty, you know, that's really what you need to do. But at the end of the day, we're the Patent Office and so we have to make sure that the, you know, the claims pass muster under 102, 103 and 101 or 113.5.

So it makes sense to us to make sure

we do them all upfront to try and resolve the issues completely.

MR. SOBON: Well, you --

MR. BAHR: But I would agree we certainly shouldn't be doing 101 only.

MR. SOBON: Well, but you have discretion, right? Under 102 you don't have to use every single of potential thousands of references that actually exist against a thing as long as one reference actually is enough, right?

So you know, the office has wide discretion and examiners, especially if the 101 is really, which I think in many cases, is covertly just absorbing 102 and 103 arguments into the bulk of its thing and not saying something truly new other than 102 and 103. Then I would argue that it's actually just a covert way of, you know, very less precise and less contestable way of doing that and shouldn't it be avoided?

One -- I -- this is me personally. I would argue that 101 properly seen should be something that is truly distinct and

distinguishable from what would basically be in any words 102 and 103 or 112 arguments. So again, this is a big problem and we're -- it's going to be requiring to tease it out and a lot of it, you know, is also getting, making sure that examiner corps is as consistent as possible so.

MS. KEPPLINGER: Along the lines of not having 101 later, I don't know to what extent. I know in the past, the Patent Office, when there was a law changed, the Patent Office sent people to the Board of Appeals to identify cases that might have potential rejections. And, you know, the recent criticism about cases and the business method area that, you know, were affirmed or were reversed at the Board but then come back to the TC only to receive a new rejection, that might be something you might want to look at.

To go and see whether there are cases so that the applicant doesn't wait the whole long time to get a decision and then, only to face a new rejection back in the TC.

Just, you know, I don't know if you've done that or whether you could do it but it's something to consider.

MR. BAHR: I mean, now we're over two years out from Alice. I mean, you know, hindsight is great. At the time, you are hoping when you send a case to the Board that you're going to prevail and so you don't want to bring the case back, make a new rejection, send the case back up and get an answer eight months after, you know, when you could have gotten it.

Certainly, in a situation where I'm going to say we guessed wrong and the Board reversed the rejections, that you know, calculus didn't work out so well. But you're right. These are sort of judgment calls you have to make. Sometimes it works out for you and sometimes it doesn't.

MR. THURLOW: So just with respect to your presentation, I found it very helpful. And I actually was thinking when Jack put up the one slide that had the comments about the post grant program that we're working on,

there was a comment in there about the examiners receiving these kind of updates.

I know you're sending memorandums and stuff. But I think the examiners you used to have these programs where you would update the corps on the legal cases and so on. Do they get this kind of update from you or --

MR. BAHR: Well, we are currently working on the sort of they call it the year-in-review of cases.

MR. THURLOW: Okay.

MR. BAHR: And we are in the process of doing one.

MR. THURLOW: Yeah, because it's very helpful.

MR. BAHR: Not developing.

MR. THURLOW: Right, right. And then, the other question --

MR. BAHR: The cases.

MR. THURLOW: -- again --

MR. BAHR: But I'm -- I'm sorry, Pete, for cutting you off but I neglected to mention that on the May memo we did workshop training for examiners on it both on how to

properly frame an office action and how to properly consider an applicant's response. Both in terms of responses that we should find persuasive and responses that, you know, you shouldn't find persuasive.

MR. THURLOW: Okay, thank you for that. The other question is maybe for Dana. I'm not sure if Dana's on the agenda today but he's not so I'll get him another time.

But the question, you know, we've been on PPAC for a few years now. 101's been a continuing issue. I think Wayne articulated the points very well, a lot of those discussions going on in the blog and so on.

It seemed like there's more discussions about changing thing legislatively because we're not going to get any support from the courts on this, especially the Supreme Court. So my question is really do you see things percolating? I think Dana said in May section 101 is not an issue that obviously Congress has their hands full with lots of different things.

But do you sense -- get a sense that

this is percolating where I hear at the Bar Association that a lot more people are working on legislative solutions because of the problems on this issue? And going back to Wayne's point with just the whole, a lot of the patents on this, you know, the Moonshot and so on, or with the subject matter wanted to be protected by patents is troublesome. So do you get a sense just from your --

MR. BAHR: I mean, I would only know what you know from --

MR. THURLOW: Yeah, yeah.

MR. BAHR: -- you know, seeing what's going on in the bar groups. I don't have any special insight into anything.

MR. THURLOW: Yeah, I think my little insight is we're hearing more that it's hopefully more people will be working on it from the legislative side.

MR. BAHR: What I have heard and this is certainly only from what I have heard from people on the outside is that they were hoping for Sequenom to be granted and for that to fix everything.

MR. THURLOW: Yeah.

MR. BAHR: Once that did not happen, then you know, people are looking to law.

MR. THURLOW: Yeah, we've also --

MR. BAHR: Seek a legislative solution.

MR. THURLOW: Yeah. And we've also heard about 101 just being eliminated altogether, right?

MR. BAHR: I have heard that suggestion from a former boss.

MR. THURLOW: Exactly. All right, thank you.

MS. KEPPLINGER: Okay. Thank you for that update and the guidelines that you've put out in the biotech area. I want to commend you. They were very helpful.

MR. BAHR: Oh, thank you.

MS. KEPPLINGER: And we appreciate that you tried to give examples where things could be patentable as well and that's really --

MR. BAHR: Well, we try to do that.

MS. KEPPLINGER: -- really

laudatory. Thank you very much. Okay. So next on our agenda we have Andy Faile, Deputy Commissioner for Patent Operations. Andy? And I think Jack Harvey, too.

MR. FAILE: So thank you, Esther. So Jack is going to walk through kind of our latest slide deck on statistics in the patent ops areas. Jack?

MR. HARVEY: All right, thank you, Andy. Okay, so I've not given these slides. So as I'm going if you have any questions I'll pause and try to address them as we go forward. And I think you've seen other updates on this but so let's continue on.

So we're going to start now with inventory so as you can see inventory is on a downward trend which is what we expected and what we have been planning for. So for the last year or so you can see it's just a nice downward trend attributed quite a bit to past years of hiring and planning and modeling and budgeting as well as accurately predicting filing rates, et cetera.

There was an uptick and I'll get to

that in a moment on the RCE filings post-Alice. And despite that the overall unexamined patent application inventory has gone down or is trending down. I think we would have seen a slightly lower end number had the number of RCEs not increased.

All right. Next up is our RCE inventory. So you can see where we have been in the last few years. As of recent the inventory is somewhat flat. We did have a 14 percent increase in RCE filings this year. But even so our firepower was such that the inventory remains somewhat flat and about where we expected and where we wanted to be. It's currently at about 35,000 RCE applications.

MS. KEPPLINGER: Do we know on average how quickly the RCEs are being picked up?

MR. HARVEY: Yes. I took note of that, Esther, somewhere. It was somewhere in --

MR. FAILE: I have it, Jack.

MR. HARVEY: -- under three months?

MR. FAILE: Yeah, 2.8 months.

MR. HARVEY: Yeah, under three months, right from filing to yeah. So even though we had a 14 percent increase, examiners were working on them rather quickly, you know, instead of the newer cases.

MS. KEPPLINGER: And how does the tail look? That would be the other interesting thing because, of course, you don't look at the pendency until it gets picked up so the ones that sit there for longer than 2.8 months. Although that average, of course, picks up all of them being picked -- being examined at any one time so 2.8 is good if we can -- as long as we keep --

MR. HARVEY: Right.

MS. KEPPLINGER: -- all of them moving. That's good.

MR. HARVEY: Sure.

MR. THURLOW: Just a quick comment because I had a case where we got -- have the final and I'm aware of all they have the final programs. But because the -- but to the extent you see an uptick, there may be an

opportunity to file an RCE and get a quicker response than using the ESC 2.0 or the pre-appeal brief and that's why we decided do the RCE.

MR. HARVEY: Okay.

MR. THURLOW: So we kind of review all this data and see what the best approach is and I wanted to do something after final but just the RCE was a much better, quicker approach.

MR. HARVEY: It's more expedient?
Okay.

MR. FAILE: So just to jump in on Esther's question really, really quickly about the tail. I don't have the information on the tail, length of tail and age of tail at the moment. It has flattened out considerably. On the very last line, it's very hard to see here. You'll see a purple line there and it says ABC DM change. Just a quick note on what that is and how that does affect the tail.

So that was a change we put into the workflow system and ABC is just basically three levels of inventory. To kind of cut to

the chase, if an examiner has so many RCEs in their docket, we actually restrict them from working on newer cases and put that firepower towards RCEs until they bring those RCEs down to a certain threshold. Then we start mixing in new cases.

So that last purple line coded ABC docket management changes actually has allowed us to focus firepower a little bit more specifically on RCE heavy dockets to try to bring those under control. That's a good contributor to that trend line you see going down.

MR. HARVEY: We also have a team of directors that monitor the tail and to incentivize working on the oldest cases. We've been doing that for a few years now and so I think we're in very good shape now.

MR. SOBON: Can I make comment? I just have to really commend the office and, you know, I recall coming onto the PPAC six years ago when this was -- the mountain was just in midstream going up and I also I'm reminded of a roundtable that was held, that

I'm not sure if you were at, Andy, out in Silicon Valley that we actually had some of the most compelling testimony by a woman who had -- has -- had a small, high-tech startup company who was -- who basically got very emotional about the fact that because of the number of RCEs that were being filed on applications that she was pursuing on her inventions, she was losing venture capital funding and was having to lay off her employees because of delays. And so this was really having, you know, in the words of the management of the Patent Office, you know, this is real jobs at stake.

And so this achievement is -- it seems just, you know, maybe to some people arcane or just sort of technocratic but in the end, in the real world, you know, the -- getting these delays down and reducing this RCE kind of, you know, never land that was happening is so huge I have to really commend Andy and all of you for the work you did with these various actions. It's really -- it really does achieve something

very, very real in the real world so thank you very much for that.

MS. JENKINS: And you may anticipate my question so you'll see where I'm going in a second. So how much of people filing is track one under this impacts the pendency?

MR. HARVEY: Oh, okay. We do have a slide on track one data but so track one applications are on a docket that is accelerated but it's in the order of less than 10,000 cases a year. So there is impact. I'm not sure we've ever gauged to what degree how many months that equates to. I don't know if we have any of that. But it is --

MS. JENKINS: New question.

MS. KEPPLINGER: No, I think that's why they limited the number of cases in the track one --

MR. HARVEY: That's correct.

MS. KEPPLINGER: -- so that it wouldn't adversely affect everyone else's cases so that you know, you couldn't just completely pay for all your application, the rich people to move to the front of the line

and the poorer people just sit there forever.

MS. JENKINS: Yeah, I was under the impression, and good point, I agree. But I was under the impression with track one that when I was looking at the data that most of that was all initial application filings. And I didn't realize till quite recently that that wasn't the case. And so that's why I asked the question. So -- yeah, okay. Something to think about. Yeah, thank you.

MR. HARVEY: All right, so first action pendency continues in a downward slope. Again, what we have been planning for and balancing our hiring and our workload and trying to anticipate what comes in the door. So we are currently at 16.1 months to first action with an overall pendency of 25.7.

We are predicting even going further down depending on a number of factors. And this is a six-year snapshot.

MS. MAR-SPINOLA: Jack, excuse me, can you share a couple of those factors?

MR. HARVEY: Oh. Some of the factors? All right. So when we look at

pendency it's as you're running a business, you try to predict and anticipate what's going to come in the door. And we do that by modeling. We also take into account the -- what does a new patent examiner and promotions of patent examiners, what do they add to the basically the firepower. So we do a firepower analysis and we compare that to what's in inventory and then, what's anticipated coming in the door.

And the model and we've tested the model over and over. You know, this is what we think and then, we go back and we refine the model. And so those are the factors that drive down the overall pendency as well as the pendency to first office action. Likewise, we incentivize through our docket management system examiners to work on certain cases and give them credit where we feel that we need them to work on. For example, RCEs there was a change a few years with the crediting of RCEs to incentivize the examiners to work on them.

So those are just a few. The other

and I'm going to get to the -- actually I think it's my next slide is the attrition rate.

MS. MAR-SPINOLA: One other follow-up question on that.

MR. HARVEY: Yep.

MS. MAR-SPINOLA: So on this chart the first action pendency, does that include or exclude track one?

MR. HARVEY: I believe this includes track one. I think it includes track one.

MS. MAR-SPINOLA: So it --

MR. FAILE: It's such a small number.

MS. KEPPLINGER: It's not going to include an RCE.

MR. HARVEY: Right.

MS. KEPPLINGER: So if the RC -- if the -- so just remember that the pendency numbers in a first case that the pendency of that case is tracked. So the first action in that pendency, the total pendency to abandonment or allowance is tracked.

If that case becomes an RCE, the

pendency calculation for purposes of the normal, the traditional pendency stops at the filing -- the abandonment of that case, the filing of the RCE and that RCE, anything that happens in that RCE or subsequently is not captured in the traditional pendency numbers.

They have an additional value that's on the --

MR. FAILE: The dashboard.

MS. KEPPLINGER: -- the dashboard, thank you. That captures traditional pendency plus RCEs. So it's not whether it's track one or not. It's whether it's an RCE or not.

MS. MAR-SPINOLA: All right. Thank you.

MR. FAILE: So, Julie, just to add one other kind of data point to this slide, just so everyone knows, so there -- this obviously shows the first action and total pendency trajectories. We do have goals for fiscal year.

Our goal for first action pendency for this year would be 14.8 months where it's 16.1. It does not look like we're going to

hit that goal this year because of our
in -- the increase in filing ratings was more
than we anticipated. We will probably not end
up in the 4.8 range for this year. Our total
pendency target is 25.4 months for this year.

We are antici -- we will be meeting
that or at least we are on target to meet that
now. So we'll probably be fine on the total
pendency as far as our calculus on that. We
will probably not meet the first action
pendency goal for this fiscal year.

MS. MAR-SPINOLA: From a stakeholder
standpoint I think the total pendency is
probably more important anyway. So to the
extent that you meet that goal, it's a good
thing.

MR. HARVEY: Okay. So another
factor, as I mentioned, is the firepower. And
so here's a chart that shows historical
attrition rates. And so right at the end, you
can see that our attrition rates are very low
now.

For our overall attrition rate is
5.6 and for the less -- and if we take the

folks that have been either retired, those that -- how do I say this? Attrition rate less the transfers and retirees is even less at 4.32. So this is, to me, and I think it's significant in that unemployment rates are very low now and yet, folks are not looking for, you know, leaving the office to and we've had that in years past where they look for greener pastures when the economy picks up.

So this is very good news and this can be attributed to a number of things and, you know, being one of the better places to work in the Federal government, I think our telework program is also very attractive to folks and has lent to the lower attrition rates.

We also -- we're not hiring as many new employees. New employees to attrite (sic) at a little higher rate than folks that have been here a few years and we're not bringing in as many new hires in this fiscal year. So these are all attributed to the low attrition rates.

MR. WALKER: Jerry, can I ask a

question on that?

MR. HARVEY: Yep.

MR. WALKER: I'm going to ask my usual question on the attrition rate I always ask Andy, so in terms of my human capital committeeship (sic) or committee leadership. So just to make sure I understand. I think, Andy, what you told me before is that the difference, the relatively increased difference between the blue line and the red line is, or Jerry can answer it, is based upon the fact that the baby boomer generation is retiring. And that for that reason that blue line is -- the spacing is relatively higher, is that right?

MR. FAILE: Yeah. Can -- factoring in that that's the part of the workforce that's going to be retiring, that's retiring and transferees. But the retiring, what we're going to start seeing, we're excited about the attrition rate coming down a little bit. You know, we're under five percent now.

A cautionary note to this entire slide is as the wave of baby boomers

throughout the entire Federal government become retirement eligible and actually do retire, we're going to start seeing that spike up a bit. As of now, our hiring for this year was under attrite levels and as Jack points out, our attrites are more -- we're more volatile in our early years, attrition-wise.

We have less of those so when you crunch through those numbers, that's why we're seeing a little -- part of the reason we're seeing the attrite level come down. What we're really going to be focusing on in the next few years is as our more senior examiners start to become retirement eligible at a larger rate than they have in the past and start retiring and leaving, the concern would be trying to make sure we make up for that.

You're going to hire a lot more new examiners for senior examiner and then, you don't have that knowledge base right at the beginning as well.

MR. WALKER: Yeah, that was one of the questions I was going to ask because the Wall Street Journal had an above the fold

article, a big article saying, you know, why is the US economy not progressing? And the issue was productivity.

And what they said, and everybody talks about productivity. But one of the reasons they said productivity has not increased is because companies don't have strong knowledge transfer processes so you have very experienced people that know a lot are retiring. And then, there's the one or two-week transfer with their replacement and so productivity drops off when that happens. And the net productivity for across the country is really low.

And so I guess the question is with all that as background, in terms of knowledge transfer processes in anticipation of these retirements, so what kind of plans are you thinking about in terms of knowledge transfer?

MR. FAILE: Sure. So we've just recently started looking at a program, it's Federal government wide, the phase retirement program. And this is kind of aimed at exactly what Mike is talking about. As we have a wave

of our more senior employees moving out of the workforce and retiring, is there a way to try to capture that institutional knowledge that's obviously valuable to each agency, the Patent Office being one of those, to keep that in-house and transfer it down to the newer employees.

So the phase retirement program that we're looking at and the Federal government in general is looking at has provisions that instead of just retiring, you actually phase into retirement and you spend a portion of your time mentoring new employees and giving back to the particular agency you're in and that institutional knowledge that may not be captured elsewhere.

So that's one of the pieces of the puzzle that not only the USPTO is going to be using but any agency in the government will be using to try to capture that institutional knowledge, pass on some of -- through mentoring pass on some of those skills from our more senior workforce to our newer workforce.

MS. KEPPLINGER: One other thing that the patent -- that the government put in place and the Patent Office has used, I think, very effectively over the last I don't remember how many years is the it used to be with your annuity that if you left, got your retirement annuity and then, came back to work at the, you know, in the government you were penalized significantly on the pay.

And what the government allowed for is a limited number of people and for a certain period of time that they could come back as, in this program, as retired annuitants, work half-time but get all of that money. And the PTO has done that a lot with bringing back people. So they retire, they come back half-time. They've done things like training with appeal brief conferences, a number of things where they are visible to a large number of the examiners to help share the knowledge as well. So I think that's been a good program, too.

MR. FAILE: And that's the rehired annuitant program. Esther's right. That's

been very successful in us in the people that we've brought back.

MR. WALKER: Yeah, obviously, in terms of productivity that's the name of the game and that knowledge transfer aspect is very good. Okay. One other question about the red line. So in terms of employees say with fewer than six years' experience, like, what percentage of that attrite rate would that be? Any sense for what that would be?

MR. HARVEY: I don't have that.

MR. FAILE: So generally I don't know the specific answer to that, Mike, but let me talk a little bit in general. In general, once we keep someone past the three and a half to four year mark, the attrite rate drops very, very low. We usually keep those employees for a good long time.

In the first three and a half or four years working backwards, you kind of see a little bit of a drop off. It can -- it has been as high as double digits close to 20 percent. It's a little bit flatter than that these days and each year it goes down a little

bit. And then, once you hit that magic number of three and a half to four years, you're basically flat-lined as far as keeping employees.

So in looking at that, we try to do the proper coaching, mentoring, caring, and feeding of those newer employees to get them involved. Get them involved in a job to try to keep those numbers down and keep them here longer. If we can keep them past that magic part, we -- magic number, we've got a good chance to keep them for the long haul.

MR. WALKER: Okay. Well, regulations, I mean, this is a great job, great trend line. I know the GAO report wasn't particularly complimentary in that respect. I think they looked at the low point and measured from there but obviously you're doing the right things and it's great to hear you doing the work around the retiree and the baby boomer generation. So very good work there.

MS. JENKINS: I will point out that next door there is a mentoring program going

on right now, okay? If you're just wondering. So it's in operation. I know in previous meetings when we've looked at this the concern also was there was a decline in application filings. It went back up again. Everything's good in the world.

But where are we with that? I mean, has the office taken a different position on hiring and that chart based on application data? We didn't -- you didn't mention that so.

MR. HARVEY: Yeah, well, I -- exactly. And I think we've gotten a fairly robust model that we've been using and testing for years now. And it's just in the last three to four years is gotten to a I don't want to say the sweet spot but it's really held true as we implement, you know, certain strategies and then, we see the results. That it's actually very, very accurate from what we're doing.

The thing with hiring, you know, as you say, you know, if filings go up we do have a very, very strong recruitment team here at

the Patent Office. You know, hundreds of managers and examiners that are trained and go out at, I don't want to say a moment's notice, but in very short period of time do a very robust recruitment activities. So we have that going for us as well. But --

MS. JENKINS: Are we considering hiring now?

MR. FAILE: Ah, yes. So let me -- so Jack gave a good explanation kind of our modeling and how we're -- how we address the incoming workload whether it fluctuates up or down. So just a couple of notes on that.

So we're seeing this year about an overall five, a little bit over five percent increase. Now that includes both a component of our new cases, our serialized filings, and our RCE filings. And that split is roughly 70 to 30.

Percent of that number is, of that 5 percent number, is our new case filings and 30 percent is our RCEs.

For new cases we're up. We've been for the last few years up about 1.7 percent or

so over the previous year. So they're climbing but they're climbing, you know, pretty slowly. What we see in that 30 percent number is a 14 and a half or so percent increase in the RCEs.

Some of that is in the business methods area but RCEs are -- the filings are up across the board to some degree. So when we're looking at hirings, we're looking at a workload of basically incoming, roughly a little under 2 percent increase from year to year and then, this kind of moving up and down 30 percent component of RCEs which now we think is at a high. We think this is coming down that 14.5 percent.

At the end of the year we'll be in the five percent aggregate range overall. That number's likely to come down a little bit.

So in looking at our hires, a big input to our firepower, obviously is the hires that we bring onboard and the overtime in which those particular hires do or all examiners do. And right for this year we've

actually hired under the attrite level. If you look at four and a half or five percent of our 8,300 examiners, you're somewhere in the neighborhood of 400 examiners. We're hiring less than that this year. We're at the 275 level. And we've modeled our hires to be slightly under the attrite level for the out years in order to make sure that our incoming -- some of our incoming cases and our backload starts to move down in as much of a linear fashion as we can so we don't have giant dips.

So if we were to hire another several hundred examiners this year, at some point, we're going to have a giant dip in that inventory. So we're trying to smooth out that landing as we progress through the years. So in our modeling that Jack talked about, we use input such as the filings that come in, the amount of time we're spending training, the investment in quality initiatives, the overtime examiners do, et cetera. Crunch through those numbers and that kind of indicates what hiring we need at what

particular timeframe to try to make sure that inventory is as smoothly going down as possible.

MS. KEPPLINGER: And I think Marylee is reflecting the guidance that we've given about being cautious on all of these things to ensure a safe landing and I'm sure you are doing that.

MS. JENKINS: Not having to fire people, yeah.

MR. FAILE: Right.

MR. HARVEY: So moving on to actual filings, this is a -- I think it's a five, six-year spread of the filings in the both RCEs and the serialized filings. Again, a slight, as Andy has mentioned, there is a slight increase in the RCE filings over last year. Not necessarily easy to see from this slide but just a steady, if we were to normalize this, it looks to be very steady growth from over the last few years.

Designs. So designs has, I think you're all aware designs has seen a dramatic increase in filings for various reasons. And

so our design area has hired every year for the last, I believe, the last three years. It's not here but I believe we've increased the staffing and doubled the staffing over the last three years to meet the needs. And so this just shows the design filings per year since 2010.

Of course with filings and inventory will increase until you get the proper number of employees in place to bring down the inventory. So right at the tail end you can see how it is starting to level off. So the number of examiners that we've brought onboard, their experience level is increasing. They're producing more applications and more office actions. So you can see it's starting to level off.

So the plan as it was implemented is working and we're also, a comment you were making, we're also very cognizant about, you know, over hiring or under hiring. It's a very good balance.

Just to show the design first action pendency and total pendency. So first action

pendency has increased. It's now at 13.2 but you can see it's at a downward trend. So first action pendency is now starting to come down to where we were more comfortable. Likewise total pendency is quite flat at 20 months right now.

All right, now I want to talk about just a couple of programs that have impacted quite a few things. We already talked about track one so here are the current numbers on track one. So right now in -- right now we're looking at about 8,300 cases so far filed this fiscal year. If we were to plot it out, I think we are going to come a little bit above what we did last year.

There is a cap of 10,000 as Esther mentioned earlier. There is a cap of 10,000 track one filings. I think we're looking somewhere in the 94 to 9,500 range if everything plays out the way we've had it so far. It's a very popular product and so and it's also been well managed I think through the -- hold on for just a second. I did jump.

Okay so this kind of shows where we

are on the averages with respect to the petition filing. The petition filing -- the filing of the application to the petition granting being only 1.4 months, the average time from petition to grant to the first office action being just two months, and the petition grant to final within six month -- five months, and then, allowance time from petition is 5.2.

So it's -- our goal was 12 months and we're achieving that very well. We're way under the goal here so very popular. Why does it keep jumping?

So this slide is just to show that with track one what we're seeing is a fairly even number of allowances and final rejections. And less, I think, to the -- and I don't have stats on how many cases have abandoned today but I think they -- we tend to have more allowances than final rejections as opposed to abandonments when you file a track one.

Likewise a lower number of notice of appeals relative to serial filing cases.

First --

MS. MAR-SPINOLA: Jack?

MR. HARVEY: I'm sorry.

MS. MAR-SPINOLA: I'm sorry, too,

to --

MR. HARVEY: Okay.

MS. MAR-SPINOLA: -- just jump in like that but would you state what the goal was for track one pendency one more?

MR. HARVEY: Oh, it was 12 months. Right? So filing date to I think it's either filing date or petition date to final disposition under 12 months. So we're tracking around five to six months on average.

First action interview program. Now this is a program that started in May of 2011 and this gives an opportunity for an applicant to have an interview prior to first office actions. So I think the highlight here is even though there has not been an enormous amount of participation, you can see that the first action allowance rate is substantially higher than what we are finding in serial file cases at nearly 30 percent.

So we're averaging somewhere 900 pre-interview communications a year and this is pretty much the -- all the -- and it does and when we first started this pilot it was in limited technologies but now it's across the whole technology or across the whole USPTO.

MS. MAR-SPINOLA: I have another question with respect to that.

MR. HARVEY: Okay.

MS. MAR-SPINOLA: And maybe --

MR. HARVEY: I'll try to answer it.

MS. MAR-SPINOLA: -- it's -- thanks. And it might be best answered for later when we have a discussion about the satellite offices. But I wanted to know, this first action interview program, to what extent are we using the satellite offices for these types of things either for video conferencing or some other mode of communication?

MR. HARVEY: Well, examiners in our remote offices are for the most part operating just as any other examiner on campus. There's no -- with these programs we don't delineate between the office campuses and the on campus

and here in Alexandria. There's no distinction. So we're utilizing them in the remote offices as well.

MR. FAILE: So, Julie, we can get those. I don't have the stats in front of me about the interview usage at the regional offices but I can check with the regional directors and put that together.

MS. MAR-SPINOLA: I think that would be great. I'd like to I think later in the discussion I'm likely to comment about a desire, I think, to have broader use of the regional offices for interviews whether it's in person if it happens that the examiner is there. But if not, to use the technology facilities at these regional offices so that one, we're getting full value out of those offices, and, two, is to be able to really give more stakeholders direct experience with the Patent Office I think would be a great value to the public.

MR. HARVEY: And last, this is the next two slides are just on our patent prosecution highway program. This is just to

show that indeed we're continuing to receive filings from our foreign counterparts.

Next slide, this is just the last 12 months. So we're seeing about 600 petition requests per year. The one note, I spoke to someone that's in this program and they said that it -- the number of petitions might be trailing off slightly only because our pendency to first action is getting lower. So but I think it's still getting quite a bit of attention.

MS. KEPPLINGER: Jack, how quickly are these petitions being handled? You do have data on the track one petitions.

MR. HARVEY: Yep.

MS. KEPPLINGER: But it's been my experience you have a backlog in petitions and perhaps --

MR. HARVEY: I'm looking at Charlie. Had the one that we're dealing with.

MR. PEARSON: Yeah, hi.

MS. KEPPLINGER: Yeah.

MR. BAHR: Esther, it's -- that information's on our website. It's on a

dash -- it's roughly right now it's like 100 -- roughly 140 days. But I want to point out that that number is dropping rapidly. Currently we have an inventory of about 950 of these petitions and you can see that that's really barely over a month of inventory. So the numbers should come down fairly quickly.

MS. KEPPLINGER: Okay, great, thank you.

MR. FAILE: Esther, it's 148 days end of third quarter.

MR. THURLOW: Hey, Jack?

MR. HARVEY: Yes?

MR. THURLOW: Just a very quick question. So I sent out the slide this morning before I came to the meeting and I sent it to colleagues I work with, folks at the Bar Association. So they are participating via webcast in this.

MR. HARVEY: Oh, good. Okay.

MR. THURLOW: So and they're sending me comments and just a question. I'm not aware of this at this point but it's -- I'll read the question. I saw the Federal register

notice today and the changes to the accelerated examination program and also several comments about the possibility, the likelihood the office was either preparing to drop the program all together or issue another Federal register notice. I haven't seen anything. Am I missing something or --

MR. BAHR: We are planning to publish a request for comments.

MR. THURLOW: Okay.

MR. BAHR: On whether or not we should continue it because we only get a couple of hundred of these a year. And it doesn't look like it's a very popular program. And so we're sort of just asking the public whether or not we should retain it. We haven't done that yet. We will.

MR. THURLOW: Okay. Just what programs specifically is this?

MR. BAHR: This is the accelerated.

MR. THURLOW: Accelerated.

MR. BAHR: This is the one that was adopted in 2006 where you had to prepare the accelerated examination support document.

MR. THURLOW: Oh, so okay.

MR. BAHR: It's not an often used program. Once the track one came in this became --

MR. THURLOW: Right. Right. So there is, as you know --

MR. BAHR: -- far less favored.

MR. THURLOW: As you know the reason we don't do it is because --

MR. BAHR: Oh yeah.

MR. THURLOW: -- you have to do a search and you have to characterize prior art and so on.

MR. BAHR: Right. Yes. So we understand that and we're just asking whether or not there's a value in retaining the program in light of its relatively low usage.

MR. THURLOW: No.

MR. BAHR: Okay, I'll take one no.

MR. HARVEY: Okay, thank you.

MS. KEPPLINGER: I think we're at the end of the slides so if you want to -- I don't think we actually have anything on the agenda with respect to the regional offices.

So if you want to emphasize your question?

I think you -- someone tried to do an interview from one of the regional offices, use the facilities there, and were told they could not. Which I -- we thought that was the whole -- that was one of the reasons that the regional offices are there so I don't --

MS. MAR-SPINOLA: Right.

MR. THURLOW: Can we ask Molly?
Can't we ask Molly or --

MS. MAR-SPINOLA: Yeah, I think Molly is on the schedule maybe?

MS. KEPPLINGER: Oh, okay.

MS. MAR-SPINOLA: But thank you though because it was a --

MS. KEPPLINGER: Oh, yes
(inaudible).

MS. MAR-SPINOLA: I think it is an important issue and it was me who raised it. Thanks.

MS. KEPPLINGER: Yeah, okay. All right, thank you. Anything further from anyone?

MR. GOODSON: Oh, I've got several

comments. Brother Walker opened the door as Peter did earlier. The GAO report when you start reading that report, if you've ever played with a bullwhip you know that little thing at the end is called a cracker. And it has zero control. It sees what's coming but it has zero control of what's going to happen.

And that's -- I read the GAO report and I was kind of like that. What's candidly driving this and I will not ask you to comment. I am from Texas and I do live in the eastern district. That is certainly what is driving that report and that is a venue issue and it's something that y'all have zero control over and I just have to say, you know, why mess with you guys? I mean, Marshall, Texas is all right. It's not that great. It's really not. And so my question is why mess with y'all when, you know, the people requesting this kind of information, you know, up on the Hill need to be addressing venue issues and that's something y'all cannot control.

And secondly, I had a question by

way of history. I see we're getting into cancer research and I'm not knocking that at all. It seems to me at one time the Agency had a program for green energy that gave you accelerated examination times. What happened to that? Was it a success or failure or just a boondoggle? I have no idea. Thank you.

MS. KEPPLINGER: Okay, thank you. Thank you, Jack and Andy. Oh.

MS. MAR-SPINOLA: I had direct experience with the green energy pilot program when I was with the Thin Film solar startup and it was a very effective program. We were able to in a new disruptive technology area, it was very valuable in terms of being able to secure patents very quickly. And it allowed VCs to be able to see where their money was going and that it was a good investment.

So to the extent that there can be a similar program for cancer, the cancer program, I think that would be great.

MR. THURLOW: Andy re --

MR. GOODSON: I'm sorry. It was an effective program why is it no longer in

existence?

MR. HARVEY: A green tech. So Jackie's -- well, one of our ADCs isn't here today. She could have addressed it head on.

MR. GOODSON: Okay.

MR. HARVEY: But we can get an answer to you.

MR. FAILE: Yeah. I'll get back to you on that, Mark. I don't know why it ran its trajectory and it is no longer a program. I'm not sure the reason for not continuing it.

MR. GOODSON: Okay.

MR. FAILE: So let me look into that and I'll get back to you.

MR. GOODSON: Okay, thank you.

MR. HARVEY: Yeah.

MR. BAHR: Sorry. I think it was ended when track one came into being. I think that was the decision. It could be I'm not sure.

MS. JENKINS: According to the USPTO website.

MR. BAHR: Yeah, is it? Okay.

MS. JENKINS: Going forward

applicants may instead use the prioritized examination track one program or the accelerated examination program. Both the track one and accelerated examination programs not only provide advancement of an examination but set a target of reaching final disposition within 12 months from the time advancement is initiated.

MR. FAILE: Ever resourceful Marylee.

MS. JENKINS: I try. I try. There is a reason why I have a computer, right?

MS. KEPPLINGER: But I guess our advice is to consider whether you bring it back especially if you get rid of accelerated. Okay, thank you, everyone.

Next on our agenda we have Shira Perlmutter, the Chief Policy Officer and Director of International Affairs and Charlie Pearson, Director of International Patent Legal Administration. Thank you both.

MR. PEARSON: Yeah, I'm supposed to lead off here. I've got a lot of slides. I'll try and be quick here so we can get to

lunch.

But just a few things on the Global Dossier, of course, this is our system for accessing application files in various offices around the world. There's been a few enhancements that have occurred recently. And these are enhancements to the public access portion of Global Dossier only. It allows for direct access to office actions from patent family members through a quick-view feature. And we also have added the ability to filter document types when viewing an application dossier. And the third item is improved availability of office alerts. For example, if an office is closed or maintenance is going, etcetera.

It's pretty difficult to see on the screen there. But this is for direct access to office actions. There's a -- you can just click on the area there on the screen -- the screen shot to provide that feature.

And once again, for filtering, where the arrow goes there, you can click on that and you'll be able to filter the documents

according to various types such as (inaudible) arguments or amendments or citations in the application.

And here's a screenshot of the office availability alert. For example, you know, if you may not be able to access to a foreign dossier if the office is closed or the system is down for maintenance, so this should make it easier for applicants using the Global Dossier feature.

Now, the USPTO will become an accessing office to WIPO- CASE, hopefully by December 2016. And this will give the Global Dossier the access to application files from the WIPO-CASE members such as Australia, Canada, and the UK.

And there's a list of offices available on the WIPO website, and it's going to be updated. We expect that other offices will become members of this WIPO-CASE and thus accessible through the Global Dossier.

And we're also working with the other IP5 offices to increase the scope of data coverages as well as the hours of

availability.

Now, by the end of December, we expect to have completed the Proof of Concept for the act of -- what's called the active component to the Global Dossier, and this is the system by, you know, eventually, it -- the hope is that it will result in being able to press a little button and you'd file applications worldwide. We'll -- hopefully we'll make that goal someday. Right now, we've looked at this Proof of Concept to see if we could transfer information between the various offices.

Now, the USPTO has developed these backend document sharing services -- have been developed here at the USPTO. And we expect to share them, both the documentation and the code, provide that to the other IP offices for feedback. And then we'll get that feedback from the offices, the other IP 5 offices.

And we've also done a preliminary legal analysis and are in the process of identifying the various IT challenges involved. So, of course, our next step is to

be based on the input gathered from the other IP offices as well as the users.

Now, usage statistics. I find this amazing. We're averaging over 30,000 accesses per day to the Global Dossier. And we're also getting, you know, over 10,000 accesses per day from examiners here at the USPTO. So I mean this shows that the system -- there's a demand for it out there, and it seems to be invaluable.

MS. SCHWARTZ: Can I ask a quick question --

MR. PEARSON: Sure.

MS. SCHWARTZ: -- Charlie?

That -- it would -- it looks like that would appear to mean that every -- if there are 10,000 accesses per day from the examining corps, and there aren't 10,000 examiners, it would mean that every examiner was accessing it -- on average, every examiner was accessing it every day. And many examiners don't do more than a case a day. So almost they'd be accessing it more than they do cases. If an access means that every time you pick up an

application to act on, you checked Global Dossier. What exactly does an access mean? For one, if I'm -- I am an examiner. If I were examining an application and I decided to check Global Dossier, how many accesses would I have per application? Because otherwise, I agree with you, that number seems amazing.

MR. PEARSON: Okay, yeah, I do have my support team back here, Don Levin may have an answer to that question.

MR. LEVIN: Okay. Thank you, Pam. The access is not only to see the related family cases, but each time an examiner clicks on a table of contents, that's an access. Picking out selected documents like looking at the claims or looking at an office action, that's an access.

So we don't know exactly how many on average an examiner might do, but it's certainly way more than one. It's probably more in the range of, you know, 10 or so. Or it could be even more than that depending on how big the family is.

MS. SCHWARTZ: I'm very interested

in knowing how many examiners are accessing the system. In other words, how many examiners as opposed to how many accesses. Because if there could be 10, 20, 30, or 40 accesses per inquiry, that's not a very useful number. So could we -- could we get better information about that information about that? Information about how many examiners are using it, how frequently, and whether they're using it through the Public system or the internal system, please?

MR. LEVIN: Yes, that's also one of our goals. And one of the challenges that we have is that every station for an examiner, they don't capture that IP address. We don't know exactly what the -- we don't log that information. But that has been a request that we've made to our OCIO. And we hope to have that in the future, thank you.

MS. SCHWARTZ: Thank you. We look forward to getting that information. It will be very helpful to have.

MR. THURLOW: Just a quick comment on that -- on legal and in my world, we do a

lot of freedom and operative opinions for clients. And we do them around the world. And quite often we'll access foreign counsel search results and see if there's anything corresponding. So, in my opinion, I would do it -- if I was an examiner, I'd do the same thing just to make sure of the appropriate art in front of me. I'm not missing anything. There's always a fear that you miss something. So if others are doing a similar search and I could use it, I would -- I would be using that thing big time.

MR. PEARSON: Okay. Thank you.

Okay, now moving on to the next topic I'm going to cover today will be access to relevant prior art. It's a project that we've been started here. I started looking at it. It was mentioned a bit this morning. It seemed to be quite a bit of interest in it.

Okay, and what we're proposing to study is how the USPTO can increase examination efficiency and also quality by leveraging electronic resources to retrieve information such as prior art search support

from applicants -- other applications. These could be foreign applications, related applications here in the PTO, or it could be PTAB AIA trial results.

And we want to explore whether or not automatically importing relevant prior art into the US application file. At the earliest point, an examination would reduce the burden of duty of disclosure on applicants. I think that something we always hear about from users, their rule 56 obligations. And it's something I would like to take a look in -- at.

And we are -- as part of this project, we also want to consider if patent issuance can be streamlined by eliminating unnecessary information from the front page of the grant of patents.

And, of course, we can look at this from a number of perspectives. As far as examiners are concerned, how are -- will examiners know that relevant information is available and how will they access it. It has to be efficient. How does the relevant

information get to the examiner in a manner and time that will increase search and examination efficiency and quality?

And we also look at what supplemental information might be available to the assist the examiner in determining the relevance of prior art. This could be the -- like indications on a search report of an XDocument or information such as that.

Now as far as applicants are concerned, you know, how do the applicants efficiently obtain the information necessary to meet their duty of disclosure? We have heard that applicants go through a very inefficient and cumbersome process to monitor prosecutions and related counterpart applications in order to meet their requirements to the USPTO. And also, how do applicants efficiently submit the relevant prior art and related information to the examiner in a time and manner so that it complies with the regulations.

Right now, we're looking at a project with several phases.

Phase 1 would have three parallel tracks to it. The first one we would be -- involve IT data source gathering. This is basically where do we grab art from? You know, could it be the Global Dossier, common citation document, WIPO CASE, or other applications within the USPTO? And, you know, what format do we get it and how are we going to manipulate it.

The second item is to do case studies on applications. This would be where we would look back at applications where the prosecution has been concluded and take a look and say hey what could have been different -- done differently if this art had been present in the application in an earlier - - at an earlier time.

And, of course, we want to gather data from internal and external stakeholders. We want to reach out to users. Basically, ask the question, do you think this is a good idea. What do you want and need from it, and how do we make the process more efficient?

Now, in phase 2, we'd review all the

information. And phase 2.5 here, develop a business solution. How are we going to manipulate the data and present it to examiners?

And, of course, phase 3 is always a big problem in government programs. The IT implementation.

Now, currently, we've taken some steps. We have had -- engaged in external user focus sessions at the regional offices, and these have been meetings with the public. They occurred in June. We are preparing a federal register notice that will ask for comments from the public on this proposal. We hope to have a roundtable at the end of September of this year where users can come in and give their opinions on it. And we also hope to have examiner- focus sessions planned to hopefully work with the union closely on that.

Okay, I will just very briefly -- our shop is also involved in international meetings. I've got a couple of them summarized here. We work in conjunction

with OPIA, our colleagues upstairs with the Hague working group. This occurred in June of this year. And at this meeting, a proposal was approved, which would allow changes to the name or address of the creator by filing a single request with WIPO. And also approved a proposal to allow WIPO to charge a basic fee before examination. Apparently they're getting stuck where there's a lot of applications being filed, and I'm having a lot of work in the application and require a fee, and the fee is never paid, so they're getting stuck with the bill for that. And these proposals on these to change the Hague relations will go to the Hague Assembly this fall.

Also, there was an analysis -- approved to do an analysis on the concept of reinstatement for rights for Hague design applications. In addition, it would discuss the use of the WIPO digital access service to exchange priority documents and design applications.

And, of course, the US became a

member of the Hague system in May of 2015. To date, we've received 1300 some registrations from WIPO where we've been designated, and we'll put them in for examination here. So you saw the statistics earlier. If we're receiving roughly 37,000 design applications a year, you know, it's a just a very small number are coming through the Hague system. But I expect that that will increase as people become more familiar with it. And we did receive just 245 applications filed directly with us as an office of indirect filing.

And, of course, PCT working group met in May of this year. We approved a proposal to extend the deadline for requesting supplementary international search. It's a program in the PCT that has been used very little. We're looking for a way to pump a little energy into it and maybe get a little more usage from applicants.

And we also approved a proposal to allow receiving offices to forward classification and earlier search results to the international searching authority. This

is, for example, where there'd been an earlier US national application filed, and their search results available from that, we would send it to the PCT authority so they can consider it when they do the international search.

And, of course, discussions continued on a proposal to reduce fees for university and publicly funded research institutions. Continuing discussions on color drawings. Still discussing the updated sequence listing standard. And also, there's a proposal dealing with the incorporation by reference of missing parts that is moving on.

As far as PCT filings. In 2015, the US had 57,000 international applications filed. This is about 27 percent of the total filings worldwide. We're still the number one country of filing for PCT applications in the world.

There are now a 150 PCT member states. When I started working in this area, I think there were 28. So we've made a great deal of progress there. We now have Kuwait

and Djibouti can be designated or selected.

And, of course, the IP5 working group 3 meeting occur in October of this year. And it's going to be in Munich. We have days set aside for discussing PCT issues as well as quality work sharing. Plan to have another phase of a PCT collaborative search and examination pilot. This would be with the IP5 countries. And there will also be the Patent Harmonization Experts Panel that will meet to discuss issues such as (inaudible), citation of prior art, and sufficiency of disclosure, so.

We went on a quick whirlwind there. That's the international scene that I deal with. I know there was some discussion on the prior art project earlier today. Hopefully, we can move forward with it and we'll get a lot of comments at the upcoming roundtable. So thank you.

MS. JENKINS: Charlie, sorry, we were all trying to figure out where Djibouti was. I have looked it up. It's in Africa. At least I think that's how you spell it.

Thank you. It's always a pleasure to hear what's going on in the international arena and to hear how well represented we are by this office with respect to all of these activities. We encourage, or at least personally, I encourage you to do more. I think it is so important for the US Patent and Office, Trademark Office, to be on the forefront in this area, to provide great services, wonderful IT, and vast storages of data to the stakeholder community. So, go forth, so to speak, so.

MR. THURLOW: I just echo a point Wayne made earlier today. The fall seasons bring out many meetings, with the IPO meeting and the AIPLA meeting as well and probably plenty of others.

I know some representatives from your group came up to New York a few months ago, I actually attended the evening event, to talk about Global Dossier. I still don't hear a lot usage in it. The feedback I receive is good, but it's just like many things, it's just -- people have to use it to really get

the value out of it. So we need to continue to talk about it. But I do think the program's helpful.

MS. KEPPLINGER: All right. Thank you. Thank you, Charlie. We'll move on to Shira. Thank you.

MS. PERLMUTTER: Thanks. And I know that we're running late and do have a lunch to get to, so I will try to be brief.

I thought I'd focus on two particular areas of interest that we are currently following in OPIA. I'll start with a preliminary assessment of the impact of Brexit on the IP landscape and then talk about some trends in China.

On Brexit, just to recap where things stand, there's been a vote by the UK to leave the EU. Under the terms of the Lisbon Treaty Article 50, the UK has to formally notify the EU of its intent to leave. That hasn't happened yet, but once it happens it starts a two-year clock for negotiating the terms of the exit. And during that time, the UK remains a member of the EU and existing IP

rights, EU IP rights that are in effect in the UK, will clearly remain valid. So that much we know. Nothing's happening yet today.

As to the current UK patent system, the impact of Brexit will be limited. That's because, of course, the UK patent system is governed by the European Patent Convention, which is not an EU treaty. So it's not EU law, it's the EPC that governs.

So as long as the UK remains a signatory to the EPC, which we expect it will, patent applicants can still apply for patents in all the member states of the convention, including the UK through the EPO. So that at least is reassuring.

But there will be some issues with respect to the future of the Unitary Patent System. We're still trying to figure out what this is likely to mean. Of course, the agreement that establishes the system provides for a single application, a single fee, and a single unitary patent court with jurisdiction across the EU. But unlike the EPC, the unitary patent system will only apply in EU

member states. So that's why it's more complicated. Once the UK's no longer in the EU, the unitary patent won't be enforced in the UK, and the UPC's jurisdiction won't extend to the UK.

The other complication is that the UK's exit could delay the launch of the system in its entirety because the agreement provides for a critical role for the UK, and that could mean that the launch can't take place until the timing and conditions for the UK's exit are negotiated. That, of course, would be bad news. Just to give one example, the system only becomes effective when it's ratified by 13 countries, but those have to include the three EU member states that have granted the highest number of patents and, that includes the UK. That means the UK would have to vote to ratify before the system can go into effect. So what will it mean that they're no longer going to be an EU member entitled to vote and ratify?

One possibility is that it will be disruptive and cause a lot of delay. Italy

might become the third member because it is the next highest grantor of patents. But it is possible, and my understanding is that this is being discussed actively in Europe, that there might be a way to get quick ratification by the UK, to bring the system into effect, and then subsequently renegotiate what the UK's relationship will be after Brexit.

Obviously, from the prospective of US right holders and from our office's prospective, that would be by far preferable and we hope that may happen. So stay tuned on that.

The other complication, the other part of the UK's central role in the unitary patent system, is that the court of first instance was supposed to be based in three places; Paris, Munich, and London. So now what happens? Again, it's not clear. It's possible the agreement could be amended to change the seat of the third court, and that seems the most likely. How long that will take, also is not clear. There could be, in theory, an agreement to have the court still

based in London although that seems like a long shot. But it is hard to see how the system can be launched before that's sorted out.

There's also potential for greater impact on industrial design protection. Right now, of course, owners of industrial designs can get national protection in the UK through the UK IPO and, also, EU -- wide protection as a registered community design. Like trademarks, these are administered through the EU IP Office, which used to be OHIM. I think this is the first meeting where I've been able to refer to them as the EU IP Office.

Once the UK leaves the EU, subsequent community designs wouldn't have effect in the UK. But the tougher question is, what about preexisting community designs? On that, we think the answer is unclear. They may not be valid in the UK. It's possible that a community design provides a national right in addition to an EU-wide right, but we're not sure that's the case. And even if it is, it's unclear whether it can be renewed

with effect in the UK.

So we think it's likely companies will need to seek protection in both the EU and the UK separately, although it's possible that transitional provisions will be negotiated to help existing right holders. I imagine that's also under heated discussion. But either way, it's going to mean an adjustment in filing strategies.

So that's the Brexit overview. Of course, on all IP issues including what happens at WIPO, the United States is going to be affected by not having the UK as part of the EU in negotiations. That includes TTIP negotiations. Because of all the countries in Europe, the UK tends to have perspectives that are closest to ours on IP issues. And so we're losing them as an ally in bilateral US EU conversations.

I don't know if there's questions or comments on that?

MR. WALKER: Well, if David Cameron had only highlighted the impact on the patent system, the vote for Brexit probably would

have been different, Shira.

MS. PERLMUTTER: Yes, good point because, increasingly, everyone understands how important patents are.

MR. WALKER: Absolutely. And well, we know --

MS. PERLMUTTER: Including President Obama and --

MR. WALKER: -- and if only everyone knew as much as we did.

So my question was, do I remember that the court of first instance in London was going to be focused on biotechnology or did they change that?

MS. PERLMUTTER: Yes.

MR. WALKER: Yeah, because I think that's one of the other impacts is for the biotechnology industry. You know, the court of first instance is moved to Rome or somewhere from London, just in terms of the user community, that that could be one of the other big impacts, in addition to the use in general. And I think people are looking forward to the UK courts being the court of

first instance for that area of technology.

MS. PERLMUTTER: Yeah, good point and that might go into some of the thinking in the negotiations. So we're living in very interesting times. Having just been in Brussels fairly soon after the vote, I think everyone is still in shock and trying to figure out what to do next. And, of course, in the UK, they've established all these new offices; a separate trade office, and another one dealing with Brexit negotiations. You know, John Alty from the UK IPO is now working in the trade office. Baroness Neville-Smith who's the Minister for IP is also working on Brexit-related issues, so there's a lot of moving parts.

So turning to China. I did want to note that Mark Cohen is here, who heads up our China team, which is, as I think you heard last time, a very large and extensive team. Very active all across the US government on everything IP related. We understand that you're interested in hearing about filing trends. They're actually quite interesting,

so I'll review some high-level numbers and then give you a little bit of information about some of the areas where we're very engaged on legislation in China.

In 2015, last year, SIPO received 2.8 million patent applications, which is four and a half times the number that we received. So really, staggering statistics. To put it in perspective, SIPO receives more applications than the other seven largest patent filing offices in the world combined. So quite extraordinary.

Now, these filings have been fueled in part by a range of subsidies that China provides both at national, provincial, and municipal levels. So, it's a little bit hard to compare like to like in this area. It's also complicated by the fact that the numbers include utility model patents and design patents that aren't subject to substantive examination and may be of questionable quality. But still, look at the numbers. In 2015, I think we have this up here, yes, 1.1 million of the filings were for utility model

patents. That's about 40 percent. And 570,000 or percent were design applications. So that -- when you subtract that, that means about 1.1 million traditional invention-type patents compared to our 578,000. So I think that gives you a clearer picture of how you compare the numbers.

In its 2014 to 2020 national IP strategy, China announced a goal of more than tripling the number of patent filings per 10,000 people between 2013 and 2020. We are also seeing an increase in filings here by Chinese applicants, and those too have tripled since 2009. And very interestingly, when you compare the applications from China to applications from other countries, the pendency rates seem to be lower, and the allowance rates seem to be higher. What we take from that is that there's a growing familiarity with our system among Chinese applicants and their applications are of a relatively high quality. All very interesting. And, again, a lot changing fairly quickly when you look at the number of

years involved.

MR. THURLOW: Just a quick question. For the subsidy, do we know what the subsidy is? Is it 100 percent? Is it 50 percent of application fees or --

MR. COHEN: Subsidies can be greater than the application fees.

MR. THURLOW: Greater than the application fees. Even better.

MR. COHEN: We've heard talk of phasing out subsidies, but -- and they vary by type and locality and they vary by a type of patent as well. So SIPO has said that they've been discouraging subsidies for utility models and designs, which are the most subject to abuse. Since there's no substantive examination, you know, file it on your neighbor's art.

And then there are other forms of subsidies that, if you want to call it that, in terms of getting promoted, getting a local residency in Shanghai, getting a free pass out of prison by reason of getting a patent.

But in terms of the quantitative

numerical subsidy, you know, there are several prisons that will get you out because you had a social benefit by filing a patent, which is great, you file a utility model of design, they're not

(inaudible) anyway, so you shorten your prison term. But the level of --

MR. THURLOW: Are you kidding Mark, or are you serious?

MR. COHEN: No, I'm for real. This is --

MR. THURLOW: I've never heard that. You learn something new every day.

MR. COHEN: But thank you for asking. Because sometimes it seems like I'm dealing with science fiction. But, no, this is for real.

For the quantitative subsidies, they can be equal to or even higher than the cost of the application fees. Generally, no subsidy for maintenance and generally no subsidy for grant is associated with the application.

MS. MAR-SPINOLA: Do we have a comparable number or a similar number of how many U.S. companies or U.S. applicants are filing in China?

MS. PERLMUTTER: Yeah, we do -- Mark, do you want to come up and speak?

MR. COHEN: Yeah, sure. So the question is how many US -- so we -- there are numbers. I mean I think the US filings have generally trailed Japan in China. And in terms of the top 10 foreign filers, they've generally been Japanese and Korean with, you know, and IBM or another large US company at the front.

Application fees dropped a little -- applications dropped a little bit in the financial crisis around '09, '10 -- 2010. They're back up again, but proportionately, we're becoming a smaller part of the landscape, both in terms of patent applications. Although we generally have a higher grant rate than Chinese applicants in China, which is not surprising. Generally, foreign applicants are generally filing higher

quality patents when they file overseas in any market. And we're also a very small and declining part of the litigation environment. So foreign IP owners, patents, trademarks, copyright, trade secrets, what have you, are 1.3 percent of the litigation -- civil litigation in China. And patents are probably a relatively small share. So we don't litigate that much either.

MS. MAR-SPINOLA: I was thinking more of competitive -- the competitiveness of -- when you have a lot of Chinese companies applying and getting protection here, and we don't have a comparable amount of filings in China, I wonder about whether or not we're doing a good job of protecting the innovations in other countries including China.

So I guess my point is how and to what extent can the patent office encourage filings in other countries, especially since we're taking a very international look at everything at this point?

MR. COHEN: I think our filings are still in excess to China or in excess of

Chinese applicants to the US. The Chinese have been ramping up quickly, and the applications also have a greater correspondence to their exports. So it used to be that you had a lot of applications from research institutions that really were probably not going to exploit the patent in the end. We do very actively, both underscore, encourage US companies to use the Chinese patent system and including using the utility model and design systems. And utility models can be very useful if it's an apparatus-type claim where you have a short term period of time or you're a small enterprise because the fees are relatively inexpensive there's no substantive examination, so all your other costs are reduced. Yet as a cohort of Chinese utility model applications were less than one percent of the total foreign community.

We're also concerned about examination practices in China that for areas that are core to Chinese industrial policy, there seems to be a lower grant rate for

foreign applicants compared to domestic applicants. And there's been some research done on this, and it's something we're following closely.

MS. MAR-SPINOLA: I do think that the US would benefit from understanding more about the utility model applications in China because my experience, my understanding is that the locals use that more than the normal application process, as being much more effective in their ability to enforce.

MR. COHEN: No substantive examination, harder to invalidate, and a high litigation value. So we do encourage US companies to use it.

MR. SOBON: I would just make a -- you mentioned your thoughts on this. We earlier had the usual spirited discussion around one-on-one issues. And I had referenced that there's a current listing of -- well, the number of applications in the US Patent Office, especially regarding cancer treatments, they got completely abandoned here, which is interesting in light of the

patents for patients US Patent Office program, but yet, were successfully patented in a number of other jurisdictions including Japan and in particular, China. And, you know, we've anecdotally said this among ourselves, but I never personally thought I would see the day that patenting for biotech invention and software invention would be better in Europe and now China than the United States. And I'm just wondering your reaction and or are there high-level policy discussions happening about this differential that also adds to this -- the other notes you were making about the rise of China as a patent and IP rights settlement marketplace?

MR. COHEN: I've seen a study, I think Professor Burgis at Berkley did on software patents, comparing the US and Chin. And it is concerning, not only because it -- I think we're going to be experiencing in the near term Chinese as a demander on the US and also about the consequences to R&D investment and other trade consequences associated with it.

When you add to that in certain fields, like biotech and the software sector where China is investing heavily and where there's some instances of great successes like with Alibaba by doing 10 cent and business methods and software applications, you could see that this is going to become more important to China and could actually be a driver for inbound investment into China. There's a broad range of trade-related consequences to the disparities in IP policies and patent policies between our two countries.

At the same time, we also see a very interesting trend where Chinese are investing overseas in high tech and patent intensive companies. In some cases, in companies where they don't currently grant the rights in China. Syngenta may be the perfect example in terms of PVP protection, plant variety protection. But I think there are other examples as well.

So the trade flow, trade consequences, the increasing collaborative R&D and collaborative patenting, joint patenting,

are also very interesting trends. And I think we're going to see a very different world 5 to 10 years from now in terms of collaboration as a major concern, in terms of Chinese outbound investment and ownership of IP-intensive industries, and reallocation of investment as a result of disparity in IP policies.

MR. THURLOW: Just on that point, I will give you an observation from our standpoint. We are getting more questions from clients, especially, of course, our global clients, where to file first. Especially, with considerations on Section 101. It's more Europe first than China, but people -- those are the two main areas looking for it. In my opinion, my understanding is that Michelle has to speak, I don't know, in front of the House or Senate Judiciary Committee in September. In my opinion, this would be a concern for the patent system and where all the R&D takes place and so on. And I think this should be a topic that should be discussed when anyone sees these numbers. I'm a little bit leery of the utility model

system. But even if you take them out of the picture, the numbers are still significantly different. And from a purely competitive landscape, it raises concerns from being a citizen. And I think it should be raised to Congressional oversight review. My opinion.

MR. LANG: I've got a question back on Brexit and the effect on the unitary patent court. Part of the process up until now has been the discussion of the rules for litigating in the unitary patent court. And a lot of US companies and some in Europe have been concerned about that there be a balanced approach to injunctions in that there be care taken to not have injunctions grant in infringement cases before the validity of a patent has been decided.

With the exit of Britain, you know, what one could possibly foresee that there may be a shift in the balance of power and rulemaking to Germany, you know, which, you know, has a system, that is although very well respected, you know, has some features that many of us are wary about in a larger European

court. Do we see the rules being revisited?

MS. PERLMUTTER: At this point we don't know what's likely to be revisited. I think there will be some desire not to open things up and to try to move as quickly as possible toward getting the system into force. But anything is possible. It's something we will definitely keep our eyes open to.

MS. JENKINS: And just a caveat, when I asked that they present this subject, I did say that, obviously, this is all for discussion. So, you know, kind of a crystal ball situation. So a lot to figure out in the near future, so.

MR. THURLOW: So real quick, I'm not sure if you're done with your presentation, but TPP, based on the political environment, just seems to be dead, and is, you know, any update on that?

MS. PERLMUTTER: We're still very much hoping it's not dead. The plan is still to see whether it can go through in this Congress. And we have Congressional leadership who are interested even if there

are issues to be resolved. We have a president who's very much energized and believes strongly that this is a very important thing for the US to do, in part because of the China relationship. So, again, there's clearly a connection here.

We want this agreement, which we think especially in IP sets a gold standard for IP protection. And I know that one of the most controversial issues of the TPP is, of course, an IP issue. But there are many provisions in there that are very valuable for the United States. China's working on their own regional agreement, which in many respects is TRIPS minus, and we are very concerned about whether that would become a template. So the administration is still actively pushing. We're also still engaging at the PTO. We're doing a lot of work on looking at implementation in the other parties to the agreement. We're working with them directly, of course, with the US Trade Representative's office. So it's not over as far as we're concerned. Of course, after the election,

we'll see what happens. We do have both candidates having voiced at least some level of opposition to moving forward.

Let me ask, we were going to say a few things about what we're doing with China on legislation. But I know we're running quite late. So we could skip that and come back to it at the next meeting if you'd prefer or spend a few minutes on it now. Okay.

So just, to give some very high-level points here, we're quite involved in looking at legislation. In China there's a lot happening there right now. We've given comments on proposed amendments to the patent law, the service invention remuneration regulations, and the anti--unfair competition law, all of which have IP-related provisions.

To highlight a few things: on the penalties for patent infringement, we welcomed one potential change, which would have been to give judges the discretion to double or triple damages awards for intentional infringement. We've also welcomed the deletion of a provision in some early drafts that would have

authorized an administrative enforcement agency to determine the amount of damages awards. In general, we've expressed concerns about the expansion of administrative enforcement, which is becoming increasingly favored in China, and this is something Mark has spent a lot of time studying, because we do believe that civil litigation should be the primary vehicle for settling private property disputes, including patent disputes.

We're also following, and discussing with China, developments on accepting post-filing supplementation of data. Of course, for anyone involved in the pharmaceutical industry here you know the issue, you know how important it is. On a more positive note, we've been pleased that China is undertaking a number of efforts to improve its civil judicial system. That includes increasing damages, providing at least limited discovery opportunities; experimenting with amicus briefs; researching the expanded use of precedent, which would be a big breakthrough; making provisional

measures more widely available, which has been a longstanding problem for right holders; and improving the expertise of their newly -- established IP courts.

These are all moving in a positive direction. Mark and his team have been very engaged with China's IP courts, and that includes working with the FCBA and the Federal Circuit on various program and initiatives and, also, a new initiative that Presidents Obama and Xi have established to support the commercial rule of law. We're making sure that IP is an important part of that initiative. Mark can give you more information.

And then, last but not least, we're working with SIPO on trying to harmonize the grace period, which in China would include a grace period of a broader scope and a 12-month duration.

We'd be delighted to have more input in ways to improve the IP environment. Just to add that as always, our attachés in China, and you know we have three of them there, are

ready to help. I understand that you will be hearing from Conrad Wong who came back a year ago from being our attaché in Guangzhou and, also, Peter Fowler who's just back from Thailand, at your lunch today.

Happy to take questions, and Mark can provide more detail.

MR. THURLOW: And Mark, I remember last year, you did a program in Florida where you had some judges and other folks come in from China that did presentations and so on. Do you envision more of those programs in the Fall and next year?

MR. COHEN: Yes, so, there've been a number of programs with judges. Actually, we did a program with the New York and New Jersey Bar, which you were involved in Peter. We're doing something with the Boston Bar, we hope, this Fall. Very similar to what we did with the New York and New Jersey Bar Associations. I kind of forget another tour d'horizon; every field, local experts, and government officials alike.

With the judiciary, a lot of our

activity has been within China including this recent engagement on commercial rule of law, which largely grew out of the IP experience because we've been engaging the judges in China for some time. And we have proposed to the White House that other agencies should also have engagement with the Chinese judiciary. And a large part of our discussions two weeks ago were with the IP judges and IP courts on general legal issues like Hague Convention, evidence gathering, discovery, precedent, a lot of things where China's experimenting in the IP context where there are much fewer cases and trying to broaden them out.

We're going to be hosting the chief judge of the IP court, Chi Su, from Beijing here at the PTO in early September. He'll also be meeting with the federal circuit and then going on to Boston and the UK. He's on a mission to look at how they can have a Chinese approach to precedent as we've been very active in involving him. And then also a few weeks ago, Mary Denison, the Commission of

Trademarks, myself and others met with the IP court to talk about precedent and other related issues.

So a lot of the activity, largely because of the anticorruption drive, which restricts judicial travel from China, a lot of the activity has been within China. We did one judicial program. We brought out about a dozen or so Chinese officials including one official from the legal political committee of the Communist Party, which is really the superior organ to the Supreme Court, as part of a two- week program on judicial reform. And we're going to be following that up by sending three or four Article III judges to China this Spring to talk further about judicial reform and rule of law issues.

MS. KEPPLINGER: Okay. Thank you very much. We appreciate it, Mark and Shira.

Okay, we are quite a bit behind. Let's be back here -- I think what we can -- we can catch up some time by eating our lunch while we have the speakers. I think that'll get us back onto schedule. So why

don't we get back here as quickly as we can. But we'll aim at starting at about 1:20, starting the lunchtime presentation. So if you go get lunch and come back, that'd be great.

(Recess)

MS. KEPPLINGER: In an interest in getting back on schedule a little bit. So I'm pleased that we have today two people to talk about the Attaché Program. And we have Conrad Wong and Peter Fowler. Conrad was -- as we heard, recently come back from China, or maybe a year ago. And Peter, of course, a longtime friend who used to be here with me at the PTO, back from Southeast Asia. So, guys, thank you very much for coming, and we look forward to hearing your remarks.

MR. WONG: Hi, good afternoon everyone. I'm Conrad Wong. Thank you so much for the introduction. I'm very pleased to be able to speak with you today with regard to our IP Attaché Program.

I just did indeed return from a temporary duty assignment at our consulate in

Guangzhou. It is one of three offices that we have in China. We have them in Beijing and also in Shanghai. And we also have -- terrific. I'm going to go through a couple of different items here. Let me just grab that. Thanks, Peter.

Here you can see, you know, what an IP attaché does. Peter and I have different responsibilities in the sense that I covered China only, whereas Peter has regional responsibilities. So, Peter, of course, will talk about all his various countries. I sort of focus on one.

But actually, you know what, I'm going to stand up. I think it makes it a little easier. We are assigned to an embassy or consulate. I was in a consulate, Peter's at an embassy in Bangkok, and we represent the PTO and the mission at large on intellectual property matters.

I want to stress on thing in particular right out of the gate. While we are, of course, articulating US Government IP policy and everything else, we stress very

much outreach to rights holders. If there are people that come to our respective countries, Peter in Bangkok, but he's -- again, has covered so many different countries, myself in China, maybe not necessarily Southern China but up in Beijing or Shanghai, we encourage rights holders to come talk to us. Make an appointment with us. We'll get you inside the consulate or the embassy. We'll set up an appointment. Not only just with PTO representatives, but also with the economic officers, also officers from the Foreign Commercial Service, which is a branch of the Commerce Department. If there are enforcement issues, as there are in China, we may be able to arrange folks from Immigration and Customs and Border Protection or if there's an FBI officer, someone from American law enforcement also to be there to speak with you.

But as you can see, just very quickly, we promote and explain US Government policy. We do articulate that. We are forward deployed, if you will. We report in real time what's going on in those countries.

Peter and I are both 12 hours ahead. So right now it's 1:30 in the afternoon here, Thursday. It's 1:30 in the morning, Friday morning, in China and in Thailand. And in fact Thailand may be at 2:30 in the morning now.

So we are, of course, also working with the host governments. To speak for myself and China, the host government can be at -- for us, the Chinese at the central, provincial, and local government levels. And that's very important for us because, of course, the central government is talking about Beijing.

But the provincial government, such as where I was in Southern China, Guangdong Province, that is one of the main economic engines for the entire country. So it's very important that we engage at the provincial level.

But we also have very large cities in Mainland China, of course, Shanghai, Chenggeng, places that you've probably have heard. These cities, because of their size and also because of the industries that are

headquartered there, they have a great deal of clout of well, individually.

So it's important that we also are engaging with the local governments. Not only the local IP offices, but their law enforcement, their customs offices, everything else. So it sort of runs for us, in China, that particular gamut so that we have everything covered for the US Government and also for rights holders.

And, of course, we work with the host government officials in educating them in our positions and also bringing back their concerns or their questions about our policies.

Just very briefly, this is a map of where our attachés are. This is where I was in Guangzhou. Peter is right there in Bangkok. Shanghai is here, Beijing. We have an officer designate right now for embassy New Delhi. We have a person right now in Kuwait. And then here we have a person in Brussels and then two in Geneva. So the one in Geneva is with the succeded or not succeded but

working with USTR. The other person represents us at the WTO and other UN organizations. We have an officer in Moscow. And Moscow also encompasses the entire Russian Federation and the Commonwealth of Independent States. So he has quite a bit of large territory. Peter also, and you can see this is pretty much all of Southeast Asia. We have an officer in Mexico City, another in Lima Peru, and then one in Rio de Janeiro. Again, the person in Mexico City handles Mexico City and Central America. The person in Lima is pretty much the top half, if you will of South America. And then Rio de Janeiro is the bottom half of South America.

Just, again, a day in the life. We are, of course, communicating day to day with PTO headquarters. Finding out what's going on with regards to our policy makers. Whether or not we might have bilateral negotiations coming up. Whether it's for -- in the case of China strategic and economic dialogue with the Joint Commissioner of Commerce and Trade.

If there are trips coming on, if we

have principals from the Patent and Trademark Office that are going to be coming out to engage with officers and officials in the Chinese government, we'll be speaking with them.

And then also, when we have folks like yourselves. If there's a group, say from AIPLA or from IMTA or other groups that are traveling to China; congressional staff delegations, congressional delegations, we'll be working with them. So let's see -- I think that's a quick overview. I'm going to give this over to Peter, so that he can tell you a little bit more about what he does.

MR. FOWLER: Thank you very much, Conrad, and thank you very much for the opportunity to meet with all of you today. As Esther said, I literally just got back August 1st, back to PTO after five years in Bangkok covering Southeast Asia. Most of that is focused on ASEAN, the 10 member states that make up the ASEAN economic community, which is a single market now. It wasn't when we went out. But it's been transforming itself. And

the interesting thing about Southeast Asia is that I've been covering Southeast Asia from the PTO's prospective for the last 20 -- almost 21 years that I've been here at the PTO. IP is exploding. It has just taken off. It is a hot topic everywhere in the region. And there's a range of countries, of course, with anything from very sophisticated IP systems like Singapore, for example, to those that have joined the transpacific partnership and therefore obligated themselves to meeting very high standards of intellectual property protection and enforcement). And that's Singapore and Malaysia. Brunei and Vietnam.

And there's what I would call the wannabees who are very interested now in TPP, Thailand, Philippines, and Indonesia. And so, you know, intellectual property is something that is a very vibrant and very alive issue. And so being the regional attaché has been an exceptional opportunity to not only interface with national governments and national IP offices and enforcement agencies that are

involved in intellectual property, but also we act, all the attachés, a primary function is to be a resource for other US government agency personnel in our regions, so that when an economic officer, a commercial officer or a political officer a public affairs officer or an ambassador has a question about intellectual property, we are the expert or we can get an answer from our vast number of colleagues back at PTO to answer questions.

From my prospective, it has actually been very -- turned out to be very fortuitous and also a good placement of the attachés within the Department of Commerce's foreign commercial service. From a practical standpoint, it had to be that way because USPTO did not have a statutory authority to place overseas attachés on our own authority. There's only three foreign services that are recognized by law. The State Department's foreign service, of course, which is the largest. The Department of Commerce's foreign commercial service, and the Department of Agriculture's foreign agricultural inspection

service, which is smaller.

Those are the only three games in town, and it's actually really good that we found ourselves with a sister agency within the Department of Commerce because the partnership has actually turned out to be very good. We have a totally different mission than the foreign commercial service. They are primarily focused on export promotion in the US and investment in the US. But it gives us a great opportunity to interface with a lot of American businesses that are very interested in doing business in the region. In many cases these are SME's or smaller companies that are for the first time considering maybe entering into a manufacturing agreement, a distribution agreement, a joint venture, some kind of legal arrangement involving their intellectual property in one of our countries. And so they need kind of a primer, if you will, or insights into the legal environment, the legal frameworks. What are they going to face if they have problems? How do they get protection in the first place? So we, as part

of regular job, provide a lot of information to American companies that are looking to do business in our region.

You know, the big multinationals; Microsoft, IBM, Disney, they don't need our help. They've got teams of attorneys. Many of them actually in the region. Many, many, the vast majority of US multinationals now are headquartered in Singapore for the Asia Pacific region. But it's really SME's and smaller companies that need, I think, our assistance and our insight and sometimes our help in -- when they're entering into the markets.

You know, we were asked to talk about a day in the life, and I always sort of jokingly say or flippantly say, there is no two days that are alike as an attaché. There really isn't. And in particular, my region made up of 12 countries, ranging from Singapore to Burma to Cambodia, Vietnam, Philippines, Indonesia, to Papua New Guinea. It provides a lot of different opportunities, shall we say, to tackle intellectual property

issues at various different levels and sophistication levels. And for the most part, enforcement agencies in those areas, whether it's public prosecutors, customs, police, the judiciary are really attempting to build up their capacity. So a lot of what I have done is to act as a coordinator of USPTO's partnership in terms of doing training, capacity building, and technical assistance in the region. We actually have a formal MOU arrangement with the ASEAN secretariat, that dates back more than 13 years now. We were the first government agency to ever have a formal MOU with the ASEAN secretariat. And I'm very proud of that since I helped negotiate it. But it actually has provided a framework and a vehicle for us to be able to do a lot of capacity building and training over the last 13 years. And so what -- people ask me about the benefit of training and capacity building of foreign officials, and I've compared it at times to rain on stones. You don't see a result right away, but if enough water keeps running on stones, you see

an impression that's indelible eventually.

And I think what I have seen, working the region for 20-some years, is that there are now vast numbers of officials, whether it's in Vietnam or in the Philippines or Indonesia who have been in our programs, who have come to the Global IP Academy; who have been on study visits, study tours. We've done programs there, whatever. And literally, if you add up the numbers, it's tens of thousands of officials and individuals now in the region who have been exposed to our perspectives and our views about intellectual property. It does make an impact eventually.

I like to tell the story about who -- he is now the minister of science and technology in Vietnam and probably the chief advocate and champion of intellectual property protection in Vietnam. But he started out as a IP lawyer in the office of legal affairs in the national office of intellectual property 20 years ago. I knew him 18, 19 years ago. He was on a study tour that I organized years ago. And slowly but surely he moved up

to -- he was deputy director general, then he was director general, then he was vice minister of the department, and then now -- or the minister and now he's the minister himself. He gets it. Completely understands intellectual property. And that's what you see throughout the region, is that there's a whole generation of people who have participated and have been involved in USPTO, among others, training and programs, that are now at that sort of level. The new chairman, if you will, of the judiciary committee in Burma in the new parliament, was on one of our study visits a couple years ago and has a firsthand impression of what the US IP system is like having been here for several weeks studying it.

So as in most places, building up personal relationships is important, and I think that's what the attachés are able to do by being on the ground and in the region and traveling around and being a public spokesperson for not just the USPTO but for the US government and for intellectual

property. We're kind of half a resource and half a missionary, but we don't have to preach too much anymore because people get it. they understand the value of it, and it's just a matter now of making it work and putting it into place and implementing it.

So there's really no two days alike. And for the most part, it's actually fun, particularly the public awareness and public education stuff. I really enjoy doing that.

In my region, it's not too patent heavy to be honest. Patents are of interest in Singapore and to a much lesser extent in Malaysia and other countries. But trademarks and trade secrets are becoming more of an issue and copyright, of course, much more so.

So you have to be a little bit of a flexible jack of all trades in willing sometimes as an attaché to say when you're asked a question in public to actually honestly say, you know, that's a great question, I don't know the answer but I've got 12,000 back at PTO I can get you a good answer.

MR. WONG: Any questions?

MR. FOWLER: Yeah, we'll be happy to take questions.

MR. GOODSON: Yeah, and if you don't answer, you have 12,000 people (laughter) --

MR. FOWLER: That I can call on. That's right.

MR. GOODSON: Where are the various governments in terms of, you know, infringement? And what relief is available? Is it judicial relief? Is it monetary? You know, cease and desist?

MR. FOWLER: All of those thanks to the WTO TRIPS agreement. There are at least a common, harmonized is to some extent, at least in my region, there's a framework in place. How well it works, is another issue sometimes. But what's available in terms of either civil infringement, actions, border enforcement measures, criminal in some countries like Vietnam, administrative enforcement. All those things are available. Some countries are much better and prioritize it in terms of an enforcement issue. You know, Singapore

doesn't really tolerate widespread fakes and counterfeits and copyright piracy. Malaysia is getting much better at that. Other countries, not so much. You know, it's still a challenge.

And I think part of it is an attitude challenge. Not only with consumers changing their attitudes about the value of intellectual property and the risks associated with buying counterfeits and fakes, but also governments and the having courts treat intellectual property infringement as a real economic crime. And that it does have an impact. And it isn't a victimless crime. It actually has an impact.

You know, if you're Vietnam and you really, really want, as a policy, to grow your IT and software sector, to contribute, and there's a lot of great software developers and startup companies. But if they have to compete with people who as soon as a product is available and on the market, they're ripping it off and pirating it, you know, governments are starting to understand the

role of intellectual property in economic growth and competitiveness. And I'd say in the region, putting aside again Singapore, which is a little bit special, one of the countries that's made I think the most progress in that sort of attitude adjustment at sort of national level is actually Vietnam and Philippines to some extent. They're understanding the value of intellectual property to their own economic and trade growth.

MR. GOODSON: Some of my work is in countries, Latin America, and I don't know if you're familiar with the term mordita --

MR. FOWLER: Mm-hmm.

MR. GOODSON: -- the bite --

MR. FOWLER: Right.

MR. GOODSON: Without naming countries, are there countries where enforcement is going to depend upon how well you curry favor the government officials?

MR. FOWLER: Well, I'll say from Southeast Asia's standpoint, I'm sure Conrad has more than enough to talk about in China.

The answer is yes. And the biggest challenge I see, and I'm not the only one that's ever recognized it, is endemic corruption that undercuts rule of law. In places like Indonesia, Cambodia, Burma to some extent but not -- it's changing, you just have this endemic, widespread corruption at all levels, particularly among the police and law enforcement agencies. So in a country like Thailand, which I dearly love the country, but corruption is a way of life. And they all recognize it. You know, Thai officials recognize it's one of the biggest threats to their being able to have a real -- real growth and real enforcement. And it cuts across not just intellectual property, it's everything.

How you change that is really hard -- really hard. And if you can't have a fairly clean rule of law enforcement system and regime, you're just constantly struggling. Will they (inaudible) you? I mean it is -- they have not only very strict laws on the books, they carry it out. You know, if there's government official that's involved in

corruption, they go to prison, and we're not talking a slap on the wrists kind of go to prison for a few months or a suspended sentence. There's a been a few people who have gone, you know, to prison for 10 to 12 years. That sends a very strong message, and they enforce it. I can't say that's true in every country in Southeast Asia because it isn't. It's just, you know. But China, yeah, is probably - -

MR. WONG: Well, with regard to China, as Peter said, the Chinese got it, you know, in terms of intellectual property. And you hear, of course, you know, everyone talks about the counterfeiting issues and everything else in China. But it -- and for folks like yourselves, you know, patent specialists, you know that at this point, you know, they've getting past that. They are trying to -- their economy -- they're trying to evolve their economy away from a manufacturing based one into one that's based on innovation, based more on services and everything else.

So they realize that if they're

going to attract more foreign inbound investment, they have to amp up their game. So they're trying to do that, but simultaneously, they have a lot of major interest groups and different sectors in the economy that they have to placate. A lot of them were state-owned enterprises. And so far, they haven't shown a lot of it but just to reform that part. So they have to keep that. That's a bit of a drag on a lot of their policy making.

But at the same time, they're also quite sophisticated in using intellectual property as a tool of industrial development policy. And if they need to, they will put their thumb, frankly, on the scales in order to give an advantage to themselves. How do I -- what do I mean by that? It could be in terms of licensing. It could be a mandatory risk-allocation provision that foreign patent holders must assume so to indemnify a Chinese licensee. There are different ways that they are using to try to improve their intellectual property protection but also improve their

intellectual property posture.

With regards to the courts and the different administrative systems, a lot of you who are dealing with China probably, deal with the state intellectual property office. That's their patent office. They're actually quite good. They have -- and we have a very good relationship, frankly, with the patent trademark and copyright offices in China. But a very strong one, of course, with SIPO. And SIPO has very professional examiners. The one drawback I find with the Chinese patent system is that they will only substantially examine the invention patents. Whereas the utility model and design patents are a little bit more cursory. So it's more of a -- I will say, a depository system, but it's, you know, the worth of it is a little bit questionable.

In terms of professionalism, I think the courts are actually -- they're now learning to be more transparent, more accountable. We have the specialized IP courts in China; in Beijing, Shanghai, and Guangzhou. These are people that are trained

now in patent trademark and copyright law, so it's not apparatchiks from 20 or 30 years ago who are just sort of stuck in there.

They have now technical assessors, which are their form of expert witnesses, but they're actually trained in their various IP disciplines so there is actually more input on a legal basis when they're trying to figure out and thread through the knotty problems, particularly with a patent claims. As Peter's pointed out, there's the trademark claims. There's copyright issues. Those are a little bit more, if you will, objective. We can sort of see when things are going on there. But, of course, all of you know with patents and claim construction and, you know, prior art and those sorts of things, that has to be dissected a little bit more. And that's where it gets a little bit tougher.

And then just lastly to point out, that China is still a country where it's very metric driven. All the provinces are jockeying in terms of their economic performance and their statistics because

officials are promoted based on how well their province is doing. So they're going to say we have year on year, an increase of how many percentage in terms of patent or trademark registrations. We have done more raids with the public security bureaus and that sort of thing. But there still is quite a bit of local protectionism.

So you've got cities where it's a little bit more insular. It's tougher to get some kinds of enforcement actions. And they're tied more to the local or provincial governments as opposed to the central government. And how do I illustrate that? The customs service in China is paid out of Beijing. They are not beholden to the provincial or local governments. So therefore, they are somewhat insulated from a provincial official that says oh, you shouldn't, you know, raid that particular factory, you shouldn't seize that shipment. The customs people are not going to care because they're answerable to Beijing, not to the local party officials. So here.

MR. FOWLER: If I could add one further thing, it's not so much in terms of -- well, it's a challenge for many of the national IP offices these days, is just their ability to keep up with the demand in terms of just escalating applications and the expertise that is needed for examination process. The really successful ones in ASEAN, in Southeast Asia, are, of course, Singapore, no surprise there. Intellectual property office of Singapore is very well funded, has a strong statutory ability, etcetera. Malaysia has a very good one. The Malaysian intellectual property office is actually -- goes back years. It was a fully fee-funded, autonomous government corporation. Sound familiar? And the Philippines has transformed its office into also a fully fee-funded office. Indonesia is looking at it. Thailand is looking at that.

And I think what they recognize is that that's the only way out for them. They can't just continue to be like a little agency within a ministry, you know. For example,

Thailand. Thailand's had an increasing number of applications, but they're falling behind so far. The average patent application is taking -- are you ready? Fourteen years to issue. And pharmaceutical applications are taking eighteen years' average. Pfizer just got one that literally took them 19 and a half years.

And they say well we don't have enough resources. Well, their application and pendency rates and backload is so bad. I don't know how they're going to dig themselves out. They recognize, I mean, the people at the office of the director general understands the way out. But it's trying to get the government to support that because right now, they collect fees, their fees are very low, they're not really, you know, oriented towards business numbers and cost recovery. For every dollar that they -- every baht, I guess, that they take in, they only get about 35 percent back as a part of the government budget to them. So 65 percent of their income, which is already kind of on the low side because they

don't have authority to set their own fees,
and their fees are the lowest in ASEAN,
comparatively,

percent of their income is going to
the government treasury.

So they just -- they can't do the IT
infrastructure they need. They can't hire,
you know, really proficient, and retain,
examiners. I mean it's all the arguments that
the USPTO made for years about, you know, when
we were being -- had money being taken away.
You know, you've got to operate like a
business. And I think many of the offices in
my region that aren't set up that way are
discovering that they need to really
reorganize themselves. But it's a monstrous
political lift in some countries because the
Thai government, centrally located, is not
particularly interested in seeing that.

MS. JENKINS: Just a quick question.
Thank you both.

MR. FOWLER: Sure.

MS. JENKINS: This is always
interesting to learn more about what the USPTO

and the scope of what the patent office does. How is it selected? I know I always see like a little add, become an attaché in, I want to say, the Ukraine, I think I saw recently, maybe. How is that designated? In other words, how do you determine what new country, the attaché is and maybe I should I just look at Drew, where the new attaché is going to be located and then do you also have to have a foreign language proficiency for the region?

MR. FOWLER: Yeah, they -- the original countries that were selected originally for the postings were the BRIC countries plus Southeast Asia and North Africa and the Middle East. Those made sense. And we had some attachés, and attaché in Geneva for some time previous.

Then the broader thing is, we look at a number of factors. I think, you know, we look at what industry is indicating are crucial areas or regions. You look at where certain countries or regions fall on the annual special 301 review of intellectual property protection and enforcement that's

done by the USTR. You just look at the numbers and what makes sense. And strategically, it's a very complex and time consuming process to actually place them, to create a position and put an attaché out. It takes -- even if you're moving at the speed of light, it could take you 18 months to two years to go from oh we think we'll put someone some place, to it actually happening because a lot of it is the dynamics and the back and forth of the process to get State Department buy in and support for it. It's called the NSDD38 process. It's horrible. And it takes forever.

And just because PTO wants to put someone in Johannesburg, doesn't mean it will happen. And in fact, for the last five years, it hasn't happened for a variety of reasons. Part of it is the foreign commercial service may or may not have any office space to give us. That may not be in their priorities. The embassy, the ambassador at the time may veto it and just say no, that's not of interest. So there's a lot of things that go on even

within the US government before one actually is in a position for USPTO to even advertise a position.

Then when you actually advertise, it requires that the -- say you get a bunch of applicants and they're good or they're bad or they don't have the mix of experience you want. Language is not a requirement. It is certainly, I think, in places like China and the Middle East, an extremely helpful thing to have. But it's technically not a mandatory requirement for the position. I'm lucky in ASEAN, English is actually the official language of ASEAN, so there you go.

But then, from the time you actually make a selection, if the person's coming from outside the USPTO or even outside the US government, they've got to apply for a top- secret security clearance, that's taking OPM about 12 to 15 months to process. So it's one of the reasons why, unfortunately, our position, I think I can say this publicly, in New Delhi has been sitting vacant for more than a year because the person's been

identified and selected but is waiting for a security clearance process to happen. That's been a recurring problem in a lot of filling the positions.

You know, State Department and foreign service always has a pool of people that they're constantly competing for new positions. And they've got a regular routine. We don't have quite the same pool and the same routine because of some other limitations. So it's always kind of a sort of a one off every time when you're hiring somebody. It's a little more of a challenge.

MS. KEPPLINGER: Okay. Thank you very much both of you, Conrad and Peter. Very informative. And --

MR. WONG: And can I just add one last thing? I was just going to say too -- when we do place people overseas, it's basically where our economic and IP interests intersect. And we also do need the cooperation of the host government. Obviously, it won't work if the host government doesn't want us there. So that's

another factor for us to consider. So, yeah, we work -- that's the reason why we work very assiduously to try to have some sort of relationship with these foreign governments around the world.

MS. KEPPLINGER: Okay. Thank you, thank you very much. We appreciate it. We are scheduled to take a break, but I don't know if you -- do you need a break? Okay, we'll just move on. And I think we have Mollybeth Kocialski. Forgive me if I've said that name incorrectly. She's online and will give us a presentation about the -- or an update on the regional offices. Molly?

MS. KOCIALSKI: Hi, can you hear me?

MS. KEPPLINGER: Yes, we can.

MS. KOCIALSKI: Wonderful. Well, thank you all so very much. I know how much information that PPAC has to cover during the course of your quarterly meetings. And on behalf of all of the regional directors, I just wanted to say thank you so much for your interest in us and your time and attention.

We're going to breeze through this.

But I think because the state of the regional offices is fantastic. We have all four regional offices up running. Dallas and San Jose will be fully staffed by about second quarter, fiscal year 2017. Denver is fully staffed right now although all of our examiners are in the process of completing their two years and becoming eligible for telework. So we will shortly be not fully staffed and looking to hire. And then Detroit is in the process of re-staffing their office after having some of their examiners go on hoteling programs.

But if we go through the presentation just very quickly. We'll breeze through the first couple of slides. We do have -- can someone fast forward to the next slide, yes. So we have regional directors in Detroit, that's Dr. Christal Sheppard, my colleague, and she covers the states that are marked in blue there.

The next slide shows my colleague Hope Shimabuku in the Dallas regional office or the Texas regional office. And she covers

the states marked in green.

Next, is John Cabeca who covers the states marked in red.

And then there is myself who covers the states marked in purple.

Moving onto the next slide. I think the objectives of the regional office model, I don't want us ever to lose sight of the fact that part of our reason for existence is to recruit and retain a highly qualified workforce, both on the patent examiners side and the patent trial and appeal board judges.

We have managed to recruit some amazing people from law firms because of the existence of the offices. And I think that's our number one reason for existence. That was the impetus.

We've also learned some really interesting lessons now that all four of the offices are open. And that is that the need for outreach and education is immense. We have -- the number one comment that we get when we go out and talk to anybody, whether it's K-12 all the way up to really highly

trained and very experienced IP professionals, our number one comment is I didn't know the office did that. Whether we're talking about kids' coloring pages. Whether we're talking about camp invention and some of our outreach in the K-12 or our training for teachers on STEM through our National Teacher Summer Institute. Whether we're talking about, you know, our PPH programs or our online interview request forms or our pro bono programs, the single number one comment we receive every single time we go out and talk is I didn't know the office did that, and I learned something from you.

So that is one of the reasons why, as we've brought the regional offices up and as they've matured, we've realized that the outreach and the education needs to be on par with the idea that we are an operational unit and a functional operational unit of the patent and trademark office.

We do act as a hub for IP outreach and education. Especially, we act as the hub in the states where the regional offices are

located. But we also go out to the other states in our regions on a regular basis in order to start developing champions on the ground there, to talk about the office and our office initiatives, and just provide any kind of outreach and education. I always joke with people that if you invite me to speak about intellectual property, number one, I'll show up and your problem will usually be getting me to shut up.

So we also want to provide easier access for USPTO resources. We enhance our stakeholder relationships. And we are trying, you know, as the office, as a whole, to spur economic development as well as innovation.

We had the honor of hosting Secretary of Commerce, Pritzker, at our Rocky Mountain Regional Office second anniversary celebration. And one of the things that she said is that the regional offices underscore the Department of Commerce's efforts to promote innovation, economic growth, and human progress by making our services even more accessible to communities, industries, and

innovators across America.

Each of our regional offices do that. Number one, by creating the high-skill jobs and by working closely with each region's diverse array of innovative industries. And because each of our regions has a little bit of a different focus, we've been able to, with the regional offices, tailor the programming to each one of the regions and really provide some, what I'll call, just-in-time programming for each one of the regions and for each one of our stakeholders.

And I really liked Peter Fowler's rain-on-stone analogy because I think that's the key to making sure that our stakeholders have access to the USPTO and to our programs and processes. It's not enough for them to hear it one time. It's not enough for us to put a press release out. They need to be hearing it over and over and over again. And they need to be hearing it kind of in context, sometimes in those one-on-one conversations.

And so that's what we do on the regional focus. We already talked about the

fact that we provide programming for all levels, from K-12 to IP professionals. We do basic facts to updates on law and procedure to really advance topics for practitioners. We participate in stakeholder roundtables. We regularly go on listening tours and provide the feedback from the listening tours, back to headquarters in various ways. Either we're asking questions that our stakeholders have asked us and then responding to the stakeholders or we're providing information on something that's going on the region to Drew or to Russ or even to Michelle.

We do do international programs, especially, I would say John and Christal given their location to major centers with Canada and then others. We provide just-in-time programming on any topic that's going on within the office. We amplify the programs that are occurring at headquarters by webcasting in our regional offices, the programs that are occurring.

In headquarters, we do a lot of one-on-one conversations. One of the -- I

call it a success story that I like to tell is there was a very experienced patent attorney in one of my states, and he was complaining about trying to get an examiner -- an in-person examiner in Alexandria for an interview. And I said to him, I'm like, well why aren't you just WebExing your interview. And he looked at me and he goes, I can do that? And I said yes you can.

Fast forward two months later, and he basically stood up in front of an IP boot camp in that state and said that it had complete -- using WebEx had completely changed his entire practice, and it was the way to go, and everybody should be doing it.

So sometimes those one-on-one conversations are the ones where you get some real learning and some real cross-cultural knowledge exchange.

We also cohost programs with strategic community partners including other government agencies like SBA and our Congressional delegations on all aspects of an intellectual property. And especially, in

supporting STEM education efforts in our regions.

But I think one of the key strengths of having the regional offices and having the regional directors in place is our flexibility to talk to any audience of any size in order to educate and inform about the office; it's processes, programs, and goals. We put a personal face on a lot of what's happening at the office. And I think that's key in getting the office and its credibility enhanced across the nation.

Our messaging is devised in conjunction with HQ, our CCO team, and the responsible business units within the agency. We focus significantly on making sure that our messaging is absolutely consistent with HQ. And so that any stakeholder around the country is receiving up-to-date and cohesive information about the office and its priorities.

At each one of the regional offices, we do provide services to the public. There's walk-in services. We have work stations. We

have interview rooms to connect applicants to examiners working in the region. And we also have a hearing room in each one of the regional offices. There has been an AIA trial proceeding. I think IPRs in all of the regional offices. And those have been put on very, very successfully.

And in the regional office, here in the Rocky Mountain Region, we've actually done a trademark trial and appeal board proceeding remotely where the attorney for the trademark owner came into our office and argued to the TTAB back in Alexandria remotely. We got a very nice thank you letter about that because it was the first time that this particular advocate's client had been able to see her argue on their behalf because they didn't have the money to travel back to Alexandria. So it really was a very effective way of engaging the client even more in their own intellectual property matters. And I think that's one of the successes of the regional office.

Turning to -- yeah, Dr. Christal Sheppard, Director of Detroit Regional Office,

there are some highlights. You can see the numbers. I think the interesting statistic is that all of us do track our -- the number of stakeholders that we've reached just in order to be able to provide some of these updates. But especially, for Christal, she's reached about 18,000 stakeholders between February of 2015 to the present. And that's a significant number, and they're underserved as well because, you know, when you only have outreach that's coming out of Alexandria, it's very difficult to get to some of the states that don't necessarily warrant the attention or that might not have warranted the attention in the past of headquarters. So I think those 18,000 people are -- and I know that they're very appreciative of our efforts to get out to them.

But they've done -- Detroit does trademark Tuesdays, patent Wednesdays. They've done IP basics and resource scores. And you can see some of the pictures. I think the lower picture is the Girl Scout IP patch day that they did in Detroit. So the next

slide gives just a little bit of the schedule in Detroit, some of the highlights just from this year.

Moving onto Hope's office, the Texas Regional Office down in Dallas. They opened up in November of 2015. They will be fully staffed by Q1, FY17. They've got about 15 patent and trial appeal board judges there. I think for both Hope and I, the regional challenges are just keeping up with the pace of economic growth in our states and for Hope, specifically, it's the wide variety of industries. And she has an immensely diverse international population throughout her states. They have done quite a few things including a biotech customer partnership meeting, that was really, really successful.

Moving onto my colleague, Mr. Cabeca, out in Silicon Valley. Some of their highlights, they opened up in October of 2015. They will have about 125 employees all total when they get everybody staffed up.

As you might expect, the Silicon Valley office is heavily working with startups

and entrepreneurs. They do a lot of tech-specific partnership meetings including software biotech because a lot of those companies are right out in John's region.

But John also has done outreach in Alaska and Hawaii. He's got quite the breadth of travel arrangements to make. And I think, you know, that probably is one of the challenges that he has out there.

And then it comes to the Rocky Mountain Region. We've been open since July of 2014. We have about 120 employees in the office when you consider everybody that's here. Our priorities are startups as well. The Kauffman Foundation provides an index every year, and in 2015, six out of my nine states were in the top 10 of the Kauffman Foundation's startup index.

So we spend a lot of time working with startups and entrepreneurs to educate them about the intellectual property system. We are supporting STEM education. We work with the region's federally funded labs quite a bit because we have over 21 federally funded

labs in -- just in the state of Colorado. We've also done some reaching out to our Native American populations, and we're also in the process of establishing robust partnerships with stakeholders. Especially, our SBA partners in the region. There's a nice marriage between the outreach efforts that SBA is doing and the outreach efforts that we're trying to do, and we're targeting some of the same audience. So we've joined forces on a lot of events.

Since January of 2016, our office has reached over 11,500 stakeholders. Our challenge though is that we have a mere 825,000 square miles to cover as well as I think 24 Native American tribes and other types of diversity that we have to manage. One of the things that we'll be doing is the first Spanish Saturday seminar in conjunction with the Office of Innovation Development. And Mindy Bickel's team, we're doing the first Saturday Spanish or Saturday seminar in Spanish here in Denver in conjunction with National Hispanic Heritage Month.

And so we are looking at how we can be creative in our outreach efforts. Again, though on the outreach side, that isn't our only goal, although it is an important goal for our region and our stakeholders in the region. The most important goal though is making sure that we're supporting headquarters in being a place where we can recruit and retain really top talent in a lot of diverse fields.

So that's the end of my presentation. I hope it's been informative. Are there any questions?

MR. THURLOW: Molly, just one comment and then a question. Just to give you a very small example, I received an email this morning from an in-house attorney asking how he can get more involved in the patent office activities, and he's located down in the Texas area. So I said as a first step, he may want to reach out to Hope down there, and that's a very good starting point. So that's something that we couldn't do several years ago. So that's very positive.

The second point is you mentioned strategic community partners. So much things going on with universities and so on. Do you have any particular reaching out to universities out there?

MS. KOCIALSKI: We work in conjunction with the universities in each one of the states. For my state in particular or my region in particular, we've done multiple programs with the University of Utah and multiple programs with the University of Nebraska, especially at Lincoln. We work with the -- and the University of Colorado and the University of Denver here in Colorado. We work with their tech transfer offices, doing education. We're happy to go out and talk to engineering classes. We really do work with Mindy's group in terms of university outreach so that we can reach the different universities in each state. I'll be going to Idaho next week, and we'll be talking to the university of Idaho. We work with the law schools and any kind of entrepreneurial clinics that they have to support them, either

through educational efforts or even just to be able to promote those efforts around the country.

I had the honor of visiting the Flat Head Community College -- Flat Head Valley Community College in Montana, and they're doing some amazing things with respect to supporting entrepreneurs. And one of the gaps that entrepreneurs have, especially if they're building something that needs a prototype, is that getting a tooling shop to do their prototype for them is really expensive because it's so expensive to retool. And they don't want -- machine shops don't want to retool for just a, you know, small portion. And so but Flat Head Community College has a full machine shop, and they're doing -- their students need projects to work on. So they're doing a program where an entrepreneur can come in, have a student machine the prototype, come up with the manufacturing plans. The entrepreneur gets to go fishing at Glacier National Park while the student is doing kind of like a student senior project.

And so there's innovations like that that are going on around the national that we get to hear about and then we get to disseminate as well. So we look at ourselves as kind of the bridge between what's going on in the university communities and the bride to entrepreneurs. Because I think there are some marriages that are going on or that can be going on that are really effective for both parties.

But with respect to the in-house person, definitely have him call Hope.

MR. THURLOW: Will do. Thank you very much.

MS. KEPPLINGER: Thank you.

MS. KOCIALSKI: Or any of the regional directors.

MS. KEPPLINGER: Thank you. Thank you very much. That's Molly Kocialski. And I appreciate it. I think it's a very useful function that you all are serving. I do think that there are some budgetary and finance things that we have to keep in mind with the regional offices. And so that would be my

only -- my only reaction as a cautionary thought. But thank you very much.

MS. KOCIALSKI: Thank you.

MS. KEPPLINGER: All right, I think we're ready now to move on to the PTAB updates, and we have David Ruschke, and I think he's got a number of additional people that he can tell us about. Thank you.

MR. RUSCHKE: Thanks, Esther, great to be here. I'm David Ruschke, fairly new Chief Judge of the PTAB for the last three months. I'm looking forward to a long effective relationship with this group moving forward. I do have my permanent deputy, Scott Boalock next to me, and I do have a number of the other team members that put this slide deck together. There're a lot of components here that we wanted to discuss today. A little organizational piece, then what to do is to go through the statistics on appeals, the statistics for the trials and, hopefully, we can talk about the amendment practice, as well as our new IT system, PTAB end-to-end. So, we have a lot to cover, so I'll get

started right off the bat. I'll cover the first few topics, and then turn the rest of them over to the team as we get to them. Just wanted to give a quick overview of where we are. As I said, Scott and I are essentially now permanent in our positions in the Chief's chambers. We are, again, have different trial divisions. We have put out for vice-chief positions so that we're going to be filling these sort of mid-level management roles, hopefully, in the near future. Again, we have a Board executive that handles a lot of the administrative piece for us. There will be some tweaking that'll be done, but we have essentially reached stages when it comes for hiring for the judges. We're at 270, approximately. We are not hiring any additional judges at this time; and our projections for the future are conservative based mostly on attrition. We will probably be adding some additional divisions and some additional trial sections as noted; and, hopefully, coming to a formal structure, and fairly permanent structure, for the upcoming

years given our caseload.

Any questions on organization?

Otherwise, I'll move to the statistics. I want to start off with the appeals.

Obviously, I view, and this is coming from Michelle and Russ, as well, the appeals are our bread-and-butter, really, when it comes to the Board's work, and so, I wanted to make sure that this comes first and foremost in our minds; although, obviously, our PTAB trials get a lot of press and play out there, appeals are very, very important to us and this very first flight, I think, is really important to us. We're moving in the right direction when it comes to the backlog. As you can see, this is based on the fiscal years, FY 12, where we hit a peak. We have been moving in the right direction ever since then, and you can see where we are year-to-date on the far right. We are now under 17,000 in our backlog. We still have a long ways to go, and there is some debate as to whether when we get the backlog down and our pendency down whether that will infuse additional cases into the

system. That remains to be seen. Right now, I think we are working very, very diligently to get this down to our goal, which would be more down in the one-year pendency range. That's, essentially, a year-over-year. This is, what we're looking at, on a monthly basis, and you can see how it's trending down, again, in the right direction, month-over-month.

Those slides that I just put up excluded reissue and re-examine. I did want to show a little bit here where we are with respect to those appeals. The reissue appeals in blue, very, very small number, we only have data back to November 2015; Ex parte re-exam appeals are staying fairly constant, year-over-year, or, this is actually month-over-month; the inter partes re-exam appeals, as one might expect, are going down. There are very, very few inter partes re-exams still left out there.

I wanted to talk about pendency a little bit here. This is actually showing our pendency by technology center. Again, it's a little bit tricky to see, but I think, what

it, again, shows is that we are trying to, right now, we are essentially in, perhaps at an average may be of about two years, and what when we talk about pendency in this slide, we are somewhat limited by the technology and the reports that we can get out. We're talking about once the appeal is decided. We've looked back and say when was it actually assigned an appeal number, that's our pendency number. So, this is looking historically backwards and that's why you can see right now that on average we are probably in that two-year timeframe. I'll show you on the next slide, again, this is very difficult to see, and I can even hardly see it on my number, on my slides. But, the top slide is, again, the slide that I just put up and then the bottom three slides are for FY 13, FY 14, and FY 15, when it comes to pendency. Again, the column on the far right, that's coming out of the re-exam unit, and so, that's why those are seven months because of the special dispatch requirement that we have. But, again, you can see that based on technology centers there

might be a little bit of a hastening on some of the ones on the left-hand side, but for the most part, they're all in that range; and, again, hopefully, we'll be moving our pendency down to a level where we'll be enticing more and more applicants to use that procedure going forward.

This slide, which I think is an interesting slide that I know that we talked about a little bit yesterday. This again is on the left-hand side showing the outcomes year-to-date for FY 16, showing approximately 60 percent are affirmed, 12 percent affirmed in part, about 28 percent reversing the examiner; and I think the interesting part is if you look at FY 13, 14, and 15, these percentages have not changed markedly over the last three years. So, there is definitely a consistency on the Board when it comes to handling these appeals.

Lastly, our interference data --

MR. THURLOW: David, let me just --

MR. RUSCHKE: Yes.

MR. THURLOW: -- interject, if you'd

go back to that slide for one second. First of all, we've had a long day to day; we've emphasized several very positive things and I never want to just run over that decrease in the inventory of the ex parte appeals. When I first started in 2012, as a member of PPAC, that number was 27,000 range -- there was no hope of coming down. So the fact that just four years later it's down at 16-, 17,000 and likely going down even further is a really positive thing, and, you know, just want to commend the office for that.

For this slide, we mentioned yesterday in our subcommittee meeting, what's valuable, today there's a lot of discussions about sharing the information between different groups at the Patent Office, and we look at the affirmants rate in blue, but the information as we discussed yesterday in the green and the red, as far as outcome of the appeals, and them reversing decisions, and any way to share that information with the examiner core is lessons learned is something that we hope the office can do more of. So,

just wanted to interject.

MR. RUSCHKE: Absolutely, that's a great comment. I think we take that to heart. Drew and I were just in a meeting earlier today talking about the cooperation between Patents and PTAB on a number of issues and, I think, this is exactly where we need to go. And again, thank you for the kudos on the dropping of the backlog. Of course, I will give much credit to my predecessors. I have very little to do with that at the present time. So, they set it up in the right direction and, hopefully, we'll continue that going forward.

MS. KEPPLINGER: One comment, which is not substance, it's only visual. I'm visually challenged and I've raised this before, black letters on a dark color, you can't read; but I did see this morning on someone else's slide the solution, and that's white letters. If you use white, you'll be able to read it, because even when I look at this, I can't read any of the numbers. So, perhaps, if you'd consider that. That's

just -- because I can't read them.

MR. RUSCHKE: Am I on? So, Esther, it's funny that you said that because Scott and I were just in a meeting yesterday where we were going through the entire deck for the next round and that's exactly the comment that came up. So, these will be revised and, hopefully, we'll be able to make it much more visually appealing to the reader; but I appreciate your comments.

And, again, let me just finish off this section real quickly. This is on interference inventory over time, and then you can see the pendency on the right-hand side. With that I'll leave it to Scott to talk about trials.

MR. BOALOCK: Thank you, David. So, we'll just go ahead and move through these. You've seen these statistics before. These are posted on the website monthly; but we'll just review those and then we'll go and talk about motions to amend and PTAB end-to-end. So, we're over 5,000 total petitions since the beginning, over 90 percent are IPRs. There's

though a small, but growing slice of the PGRs that you see. We've had about 30 to date. We think that will start to grow over time. As far as the number of petitions, this just shows, again, broken down by the last two fiscal years, plus the current fiscal year, what the relative distribution is. It's been pretty steady again, dominated by the IPRs which are in yellow. They're running about 90 percent of our filings. This chart, which again, I appreciate this EKG-type chart that you've seen before is one that is perhaps hard to see, but I think what you do see here is the trends which is that for the past 12 months. The filings have been relatively stable, and they're averaging in the last 12 months about 142 total petitions a month. Sometimes they go up into the 170s or so, but, and occasionally, they dip down just to 100 or a little less, but we're pretty well centered now about 142 new petitions a month, which has really helped us in a lot of areas because this workload is stable. Part of the reason we're able to make such good progress on the

backlog is, with the trials being stable, we don't have a great demand for new resources to be dedicated to trials; so we can use those judge resources on the appeals and getting the backlog down.

The next slide is the technology breakdown. On the left, the big slide is the current year-to-date breakdown of technologies and the two on the right are the last two fiscal years; and you can see that the trend we're seeing so far, and we've remarked on this before, is that the TC1600 slice of the pie has grown this year compared to where it's been previously. It's been somewhere around 9 percent or so before; it's now 13 percent to date this year. The mechanical piece -- the TCs 36-, 3700 have been pretty steady; and the electrical TCs have shrunk just a little bit as the biopharma TC has expanded. So, that's the trend that we see there.

The next slide is preliminary responses filed. There's not much new to report here. There's still an overwhelming percentage of patent owners who chose to file

a preliminary response in all of the proceedings. So, the --

MR. SOBON: Judge Boalock?

MR. BOALOCK: Yes.

MR. SOBON: I have a question. I think external organizations do this sort of statistics. Do you also keep track of the types of participants in the trials and maybe you could provide those to the PPAC? I'm thinking particularly of how many of these cases are operating entity against operating entity, and how many are operating entity versus licensing entity for the cases?

MR. BOALOCK: No, we don't keep track of the identity of the entity. I know that there are outside folks who take a look at that; but we don't provide a categorization of operating entity or non-practicing entity, or -- and because there's no small entity discount, we don't even have a breakdown of small versus large entities, so. But that's something that I think other studies have looked at, but that's not a characterization that we make; and I'd add it's maybe not

always an easy characterization to make because depending on the technology company you may think of as an operating company may or may not be active in that area. So, it's just something that we haven't done and, I think, it would be challenging for us to find the additional resources to do something like that, at least right now.

MR. THURLOW: Scott, just going back to your earlier point about PGRs --

MR. BOALOCK: Mm-hmm.

MR. THURLOW: -- I got the sense that you're comfortable with the number now. I guess my question is, we expected to ramp up, but is there ever a thought of, or a concern of folks not using it, or stakeholders not using it, and trying to get some feedback from the stakeholder community as far as would you consider using it? If not, why? Just to get a general feel. Obviously, it's based on the applications filed on or after March 16, 2013, but --

MR. BOALOCK: There's probably opportunities for additional stakeholder

education. I know, I mean, David has some thoughts from his experience in European practice. I think, as to where it might be advantageous for people to consider post-grant reviews and, you know, as far as where that might make sense, and there's sort of a feeling that there's an untapped potential right now. Of course, there's also a growing number of patents that are issuing under the first inventor to file regime. So, as that number really starts to take off, and, I think, it has started to, we may see some more activity. Of course, with only nine months, you have to be on your toes to be able to file one of these to get everything put together from the time you're aware that it's published until the nine month phase has rolled over.

I don't know, David, if you have other --

MR. RUSCHKE: Well, and just in terms of contacting the stakeholder community, so I'm on the panel up in New York for IPOs meeting in September, and in our planning session, this topic, exactly, came up. So,

we're definitely trying to engage the stakeholder community on that. I'll be talking about it frequently in a lot of my talks I'll be out at Stanford, actually, giving the keynote address in October. So, I also plan on bringing it up probably more than people might want; but I do think it's an untapped resource for portfolio and risk management that we need to really explore as U.S. practitioners.

MR. THURLOW: Thank you.

MS. KEPPLINGER: Scott, before you continue on the slide that you just had up there --

MR. BOALOCK: Okay, sure.

MS. KEPPLINGER: -- and on the number of IPR petitions filed by month there in the --

MR. BOALOCK: Yes.

MS. KEPPLINGER: -- top left-hand corner, does PTAB differentiate between an original petition versus motions for joinder or joinder petitions, where there're more or less, duplicates?

MR. BOALOCK: Right. Between the originals and what are sometimes termed ME2s or --

MS. KEPPLINGER: Yes.

MR. BOALOCK: -- essentially duplicates. No, these are just the raw number of petitions filed, but when you actually look at the grouping of them, you know, there's a high percentage that are related to either earlier challenges or other challenges, but this graph here just shows the number of petitions filed, not the number of, say, unique patents challenged.

MS. KEPPLINGER: Will that granularity help the PTAB in terms of determining work resources or true pendencies, or something like that?

MR. BOALOCK: Right. I think where it really comes into play from our prospective is, as you mentioned, with the resources because if you have cases that are -- well, if they're true duplicates, then it's really not much extra work at all other than the additional caption and making sure that the

same parties are included, and so, from a resource point of view, what we do is when we get related cases and especially the ME2 types, those go to the same panel assignment so that there's efficiency; and so, if there are ME2 petitions that actually means that there's more capability among the judge course still available to be tabbed should there be a need, and if it's not all used up, of course, the judges are flexible in their dockets, and if there are no inter partes review petitions to be worked on that day, then they'll start working on some appeal matters, so. But, you're right, that is something that does impact the workload of the judges.

MR. THURLOW: Scott, just a very quick follow up, because I received feedback from some folks at the Bar Association just on joinders, so since you mentioned it.

MR. BOALOCK: Mm-hmm.

MR. THURLOW: There seems to be, at least from this one person's perspective, some confusion on joinder, and they were asking for clarification if there's anything specifically

they should do for a ME2 joinder request, and I'm not sure if they give enough guidance in the decisions when its denied or not. So, I only say it as a comment, I don't know a particulars of this.

MR. BOALOCK: I think that we can take that on board as sort of something we can look at to maybe look for other opportunities for the stakeholder education. Of course, we have the potential of adding things to say our trial practice guide, which gives guidance to practitioners in different matters. We have representative decisions. So, we can look to see if, perhaps, there are additional decisions we can look to that give guidance that will make representative, or perhaps precedential, for guidance to the Bar.

This chart here is just looking at the institutions by technology. It's just looking at, again, it's divided by technology center, and you can see that other than designs which has a 57 percent institution rate, the next lowest institution rate is the TC1600 there at the bottom, the biopharma,

which is about 63 percent institution.

Now, this chart here does talk a little bit about joinders. So, this is looking at both -- in the upper left is inter partes reviews; to the right of that are CBMs, and in the bottom are PGRs; and then what you have is a breakout of the current fiscal year all the way to the right, and the prior two fiscal years as you move to the left. And what this is showing is the yellow, our petitions that were instituted. The green and yellow hatched above it are joinder petitions that were granted, and then the blue, and again, apologies because we have the black lettering on blue, but those are denials. And, so, what you can see is that the number of petitions for joinders started out -- that were granted in 2014 -- there were 15 of them; there were a large number in 2015, over 116 joinder petitions. That's probably due to a peculiar family that we had of just a very large number of additional joined petitions that happened then. And then this year, we've had 59 granted, to date. So, you know,

there's still sort of a robust motion practice for joinders. So, again, we'll look into opportunities to do a little more outreach and education. And, again, for the PGRs -- the numbers are small, but they are growing. If you see here, 2015, we only had 3 that were instituted. Here we've had eight instituted and three denied. Again, the numbers are small but they are on the way up.

MS. KEPPLINGER: I'll do just a time check because --

MR. BOALOCK: Okay, sure.

MS. KEPPLINGER: -- we're like five minutes from where we would be at the next, so.

MR. BOALOCK: Okay, well, why don't I just skip over -- because the rest of the statistics, again, are sort of ones that we've looked at before? There are the settlements, the stepping-stone chart that we've talked about before, and this is similar to what we've seen our graph of what happens to the claims on a petition-by- petition basis in IPRs. We've talked about these before -- the

outcomes, we've talked about before. I would just note because I don't know that the label is as clear as it should be. We're going to work on this. This includes CBMs, IPRs, and PGRs. So, these are all three of the trial-type outcomes. Now, of course, PGR outcomes are very few.

Amendment practice, I'll just go over very briefly. There was a study on motions to amend that were done recently by some of our judges. I'd like to especially call out Michelle Ankenbrand who's here in the audience with us who did the lion share of this work, required looking at all of the motions and reading through them, and categorizing them. And what this just shows is, as of April, and it was a very labor-intensive thing to do, so, it's something we might do periodically, but not too often. But, as of April, you can see that 8 percent of the completed trials had a motion to amend, 2 percent of the pending trials, or 2 percent of the trials were pending with a motion to amend.

And then, the next slide takes that orange slice of 8 percent and expands it out to say what happened afterwards; and you can see that 62 percent of that 8 percent ended up where a motion to amend on the substitute claim was decided. The other 40 percent, there was no decision on the motion to amend for a variety of reasons. And, then, the next slice looks to what happened to those that were decided of the 118 motions to amend with substitute claims back in April, 112 were denied, and then there were some that were granted, and a few others that were granted in part. The one thing I'd like to draw your attention to because this is what gets all the public attention. But, what gets a lot less attention is this chart here, and I think it's deserving of some study, and this is the reasons why those substitute claims were not entered. And, I think, when you look at them, you'll see that in 80 percent of the cases, they were denied for substantive reasons. The same sort of reasons that if you were in original prosecution and had put forth an

amendment, the examiner would have rejected your amended claims for either being non-statutory subject matter, not having adequate written description, not being definite, anticipated or obvious, the claims scope was enlarged, there were an unreasonable number of substitute claims; or where there were multiple reasons given, you'll see that 24 out of those 27 had anticipated or obvious as a reason. And, so, there were about 19 percent or so that were what we thought purely procedural reasons, but -- another thing that we have -- we have this complete study on the website. I know that we're running low on time. I'd also mention on the website, we have a listing of all of the cases that were used to generate the study. So, folks can go, look through them; there's obviously, some judgment calls at times on, is this purely procedural, or is it perhaps substantive. But, we've got the data that we used on the website.

MS. JENKINS: Speaking of data, --

MR. BOALOCK: Yes.

MS. JENKINS: -- is there any data on how many of the patents have also filed for reissue?

MR. BOALOCK: That's something that I know we're, you know, we're working on. It can be kind of a tricky thing to find because -- so, we'll look and see if we can present something on that to you maybe next time.

MS. JENKINS: That would be great, thank you.

MR. BOALOCK: And then the last chart on the motion to amend study just showed that the number filed, it peaked in 2014. There're still about 50 motions to amend in 2015, and as of April, we were, you know, halfway through the fiscal year, roughly, and we were on our way to getting about another 50 motions to amend this year.

The last thing that I'll mention, just very quickly, is PTAB end-to-end. I think, as you all know, we deploy PTAB end-to-end to replace PRPS and all of our AIA trial types except for derivations. That will

be coming a little bit later, at which point we'll entirely be able to retire PRPS. I know the IT teams put out a tremendous effort to get this deployed, and there's been a very robust customer-service effort underway to catch all of the defects and tried to get those fixed as expeditiously as possible. There's on our website, we have a customer service number and an email address. So, if anybody is experiencing issues, please continue to send us email. We're making fixes. We have sort of a list of known issues and work-arounds, but we are working to try to get this fixed up and take care of all the known issues as soon as we can. And, here's our customer-support links if there are questions. They really do welcome the comments. They try and get back to any email inquiries. They're trying to get back as soon as possible, within a day, to at least let you know that you've been heard and we're working on it. And, they do keep a list of everything that we get in, so feel free to let them know if there are things that aren't working right.

MS. KEPPLINGER: Great, that was very informative, all of the statistics and information. I don't know if we have any more questions or comments from anyone. Thank you and good to have you with us, David.

Okay, next we have got the OCIO, and I think we've got Debbie Stephens, Associate Commissioner for Patent Information Management, and David Landrith, PE2E, Portfolio Manager. Thank you.

MR. LANDRITH: So, just diving right in, these are the big four products that we've been reporting on for some time. We have a document application viewer. Our latest milestone is achieving eDAN parity in May of this year. That's a very big milestone. It sets us up for the first retirement of a major IT system in USPTO history. It has taken -- we had projected that we would retire the system one year after the training completed -- the training completed in September of last year. We are not going to make one year, but we are going to be within shooting distance of that, so that's very

good. With official correspondence and examiner search, we currently have a small pilot audience testing these products. We've been incrementally increasing those with the most recent releases in July. The focus for examiner search, right now, is primarily on performance, and for official correspondence, we're working on a lot of performance issues, as well as making sure that the workflow is set as needed. Cooperative patent classification continues to grow in maturity. We're looking to automate a lot of things that had been implemented in a manual operation, initially, in order to both meet deadlines and understand how automation needs to work. It continues to work towards CDS automation. It's taken longer than we had anticipated, and it's partly because the CDS functionality exists just for patent examiners, and we're trying to create it -- or U.S. patent examiners -- we're trying to create it so that it works both with U.S. and EPO patent examiners, and also make sure that we do it in a way that automates things; and sometimes

that's more difficult than kind of mixture that CDS uses in automated manual processes. So this is the progress on the document application you viewed with Dave, it's adoption. The graph starts there at the beginning with in September, when we completed training, September of last year; and this is current as of a few weeks ago. What we see is the blue line is the document application viewer; the red line is eDAN. So, we have about two-thirds, a little more than two-thirds, adoption on the document application viewer, and it has overtaken eDAN in usage. So, both of those are terrific benchmarks. By comparison, Windows 10, which just recently reached its one-year mark, had 38 percent adoption rate; and then, Apple's most recent operating system update, which came out at about the same time as this, has about 47 percent. So, this is good by any measure within government or in industry.

MR. GOODSON: David, Mark, over here. I think the people need to know that the transition to DAV is, or its adoption, is

somewhat voluntary until, I believe, by the end of the year where eDAN will be phased out, right?

MR. LANDRITH: That's correct. The POPA and OPEN have engaged in extensive and very high quality outreach efforts to encourage, but there have been no institutional, or otherwise, mandates or incentives to switch. So, this is completely voluntary.

MR. GOODSON: This is very, very good news.

MR. LANDRITH: Thank you.

MR. LANDRITH: So, in the overview slide, I went over examiner search. This provides kind of the history and a few more details. Were there any questions on examiner search? We're on track for the December 2016 release to the core; although that remains an aggressive deadline. And the same is true for official correspondence.

So, our content management system -- right now, the USPTO systems each have their own repository for content with the

need to make these highly available and disaster-free recovery compliant. We are consolidating those in order to have a single solution that meets those needs. That, at a high level, involves three steps. The first is designing and implementing a storage solution and data solution that'll store things; the second, is migrating the historical data; and the third, would be inserting it into the operational process so that it receives and serves the data. So, what you see in the status describes -- we've run into some hiccups with the high-availability in disaster recovery of the solution that we've done thus far. So, we're backing off of that in order to design a new one. However, work on migrating historical data, writing the algorithms and the routines in order to migrate stuff from different sources, is continuing, as well as the work that would be done to insert this into the pipeline, finding the correct hooks in the legacy applications, as well as how we integrate with the PE2E applications.

So, patent center -- we've talked a lot about receiving text, XML text from applicants. This is the first report that we have on a project to do exactly that. The name of it is Patent Center. So, the initial focus is on accepting what's called Office Open XML, which is the DOCX format, and converting it to XML for IP in order to see how that works, and initially, we're limiting that to non-provisional utility applications. So, that's the claims spec and abstract for those. In April of last year, we began gathering requirements in working with stakeholders. In December, we deployed a prototype for log-in and user identification, internally. And then in June, we deployed, also internally, a version so that we can test the submission of these, both coming in through EFS-Web, as well as being displayed in private pair. This month, we are out-launching a limited beta to five customers that is basically our June release with improvements in order to see how it works with them. See how they like it, take

feedback, refine our requirements; and in December we plan to release a beta to the same audience that adds capabilities that will handle the full life-cycle treatment of non-provisional utility applications. Beyond that, we are looking both to expand functionality, incorporate the feedback, as well as expand the number of different applications that we take. So since we are not taking in data as text, we're rather taking it in as PDFs, the data for PE2E project is what converts the stuff to XML for us right now. As of July of this year, we've converted 212 million pages; so it operates very efficiently. As you can see, year-over-year, that's about a 50 percent increase in the throughput. And that's every application that comes in gets converted and the turnaround time is about four hours, on average.

So, global dossier. That's been released for a while now, and it is sharing the published documents. The next phase is exploring a way to share non-public documents;

and that's substantially more difficult because it has much more rigorous security requirements. So, we're working right now -- our next major deliverable is a production- ready document sharing system that will share non-public documents, pre-publication documents. So, this is not going to go into production, but it will help us though resolve the substantial legal, technical, and international issues that will surround this kind of a solution. While we're resolving these issues, and once we do resolve them, we will, obviously, have more work to do on this. But this, I think, is a big milestone in getting there.

So, as I mentioned CPC continues to mature and work toward CDS retirement with emphasis on automating processes and reducing turnaround time through automation; and that's the same theme for CPC, IP office collaboration tools. Questions?

MR. LANG: So, that looks like you made great progress on the roadmap that we've been on for a while now. Question, in terms

of the GAO Report that came out recently, there was some commentary there comparing the capability available to U.S. examiners to EPO examiners, and I wonder if you have any commentary about what they've said because what I recall is that they talked about that even after the completion of this roadmap, there's certain integrated search capabilities with respect to non-patent prior art literature that would still be less available in the U.S. than it is to their European counterparts.

MR. LANDRITH: Yes, so, one of the challenges with the existing search system is that it's based on technology that is quite old and it is, actually, in terms of support, being end of life; and then, it is organically grown rather than kind of receiving a strategic direction in order to encompass things. So that changes to it, like for example, the changes we did to the CPC are lengthy and very expensive; and, as a consequence, we've only made changes really -- I don't know if I can get in trouble

for saying this -- but, to meet compliance needs, because it's very difficult to expand things functionally and justify that given the effort, and one of the reasons why the exploring search technologies projects is important, or, I guess, the product is search for P, is because it creates a new foundation for a search that will allow us to expand much more easily the number of search repositories that we're able to offer to examiners. So, while the initial focus is on the current set of collections that are being searched within the legacy application, and that's necessary in order to meet deadlines and just to make sure that we're able to create that new foundation, we quickly want to begin adding additional collections -- non-patent literature, foreign collections, and the like. Does that answer your question?

MR. LANG: Yes, that's great to hear.

MS. JENKINS: A question on changing functionality. How hard is it if, say, the examining core doesn't like a particular

aspect that's been developed by IT, but maybe likes the public version instead? I've actually heard anecdotes that the examining core likes global dossier via the public access rather than through their own access. How hard is that, like what do you do with that?

MR. LANDRITH: So, yeah, actually I saw a demo just a few weeks ago of both to get a hands-on feel for that, and I can see exactly why examiners prefer the public access. That's kind of the second generation version of the examiner product; and one of the things that we're exploring is basically bringing the examiner product up to date with what the public has. The examiner product pre-dates the global dossier product by quite a bit, and it's baseline was the functionality that is in eDAN; and so, the global dossier started kind of fresher and didn't have as many deadlines constraining those possibilities. So, but, that's definitely something we're going to pursue. Thanks for bringing that up.

MS. MAR-SPINOLA: David, I have a question. In this report, as best as I can recall and see for myself, there wasn't a component on security.

MR. LANDRITH: Mm-hmm.

MS. MAR-SPINOLA: And, so, that's kind of a pet topic of mine. And, so, just briefly, if you can give us an update on the security measures that the Patent Office is doing and forecasting. And then, if I can just make a request that in future reports that there is that component there, --

MR. LANDRITH: Sure.

MS. MAR-SPINOLA: -- an update of sorts.

MR. LANDRITH: Yeah, we can do that. We have -- with all the PE2E stuff, all of those have been granted authority to operate. What we've done so far in PE2E has been all within the PE2E Intranet and, so, much of it falls under the auspices of the security that is around, you know, not just parameter security in the building, but that the Internet security surrounding the local area

network and the like -- the VPN that people use to get in. We will have, for example, challenges with the Patent Center, which is open to the public and, you know, interacts in sophisticated ways with in-house systems, and that's something that we can definitely keep you updated on.

MS. MAR-SPINOLA: Thank you.

MR. LANDRITH: You bet.

MS. JENKINS: I do want to just -- I'm in commending today -- so, I want to comment the IT group for all their hard efforts and diligent efforts with respect to, as I've lived through with other committee members' sequester, how do we get the IT system back to where it was; how do we hire more people; how do we get this all done. So, you diligently go through numerous projects trying to figure out with the agency; what the best way to get them done; and trying to keep us in the game, so to speak. So, thank you.

MR. LANDRITH: Thank you.

MS. KEPPLINGER: Okay, thank you so much for the presentations. We appreciate the

updates and the hard work.

MR. LANDRITH: Thank you, Esther.

MS. KEPPLINGER: Okay, next we have Tony Scardino, Chief Financial Officer, for our budget update. Thank you.

MR. SCARDINO: Good afternoon. So, one of the advantages of being here before I'm scheduled to speak is to hear what my predecessor said, and more importantly, what PPAC members said; so, with that I'm hoping that I'm not too late for the praise that you've been giving out, Marylee. I know it's late in the day --

MS. JENKINS: I don't know, let's see what you say, Tony.

MR. SCARDINO: Okay, all right. Fair enough. I got to earn it. All right, so, the (inaudible) going to shock you, it oftentimes looks the same in the sense that we try to give you a heads-up on what's going on the 16, 17, and 18, whenever I do this three years running. And then we, of course, have some fee estimates, as well as the fee review, or fee review making package, we'd like to

discuss today.

So, 16 is going pretty much according to plan, not specifically every single line item, of course, because there's always differences in terms of exactly what came in when in terms of maintenance fees versus filings; but overall our collections are as we had anticipated; and spending is more than what we're bringing in, but, again, it's still according to what we thought we would spend. We always plan to spend more than we collected this year, and we would be dipping into the operating reserve to meet our spending requirements with the anticipation that a year, down the road or so, we will replenish some of the operating reserve. So, general operating philosophies, some years we'll dip in, some years we'll add to the operating reserve.

MR. SOBON: Tony, is there a reason, a particular reason or set of reasons for that for this year. Like, for instance, you know, other organizations that would be more for capital spend that is intended for longer

term. It's not just all "operating," but --

MR. SCARDINO: Right.

MR. SOBON: -- are there some reasons for the overages?

MR. SCARDINO: Basically, the reasons are that spending requirements with IT investments and such have gone up a little bit, which is why we are proposing to raise fees. So, you'll see that we propose to add to the operating reserve with the added income that would come in through the reserves, through the new fees.

MR. SOBON: Okay. And, related to that, there was the discussion, obviously, last session, and in something that, you know, I think you may be getting to this, but, is there any indication of, you know, where are filings, and what's the trend line for filings, and also, in particular, a number that's related to fee setting, where does third- stage maintenance fee renewals stand compared to estimation or planned?

MR. SCARDINO: All right. So, filings are up a bit. I mean, you know,

normally we project roughly 4 to 5 percent increase in filings, or at least we have over the last several years. This year, we took that down to about 1 percent. We found that they're actually at a greater rate than that, and there're serial filings versus RCEs. RCEs are up even more. All serial filings, I think, are up around 2 percent. Right, sounds about right. So, higher than we had projected, but still not to a point where it has been in the past.

MR. SOBON: So that means, secularly it could be lower than the trend line.

MR. SCARDINO: Over the last four or five years, yes.

MR. SOBON: (Inaudible), may be below expectation of the normal trend line then?

MR. SCARDINO: I guess that's one way of looking at it, but it's not below what we expected this year.

MR. SOBON: Exactly, right, okay.

MR. SCARDINO: And then maintenance fees, actually third-stage maintenance fees

are just as we had planned, if anything, a tiny bit higher than we thought. So, again, here's where, you know, this is through three quarters of the year, we have spent, as I mentioned, pretty much where we thought we would. The operating reserve end-of-year for patents would be a little more than \$300 million. Again \$300 million is what we've considered to be the floor of ideal. So, that's a little bit more than one month of operating requirements. So, if there was ever a government shutdown or sequestration again, the idea is that we would want to have money in the bank to help us manage through that.

Moving to 17 -- nothing's changed since we met in May, actually. Committees have marked up our budgets. Of course, our fiscal year ends September 30th. We don't anticipate that an appropriation will be enacted before then; but, of course, anything's possible. More likely, they'll have what's called the continued resolution. Anybody's guess to how long it could go; it could go to right past the election in

November; It could go into, you know, after the new administration takes office in January; it could go to March, I've seen before, or it'll just hunt for six months to work things out and then manage from there.

The challenge under a continuing resolution for all Federal agencies are you cannot have new program starts, and you have to live at last year's appropriation level. For us, for the USPTO, not as problematic because we have access to our operating reserve so we can use prior year monies. But, again, not ideal, but we're used to it. It's pretty much the exception rather than the norm.

So, in the Congressional reporting requirements, there are some things we reported back in May in terms of just status reports, quality reports, and our IT development, and things like that. Nothing that was shocking, or abnormal, or unlikely to be something that we could easily deliver. We're used to it.

And now, fiscal year 2018 -- of

course, normally what would happen is the President submits a budget the first Monday in February of each year. Next February, the new President will only have been in office for a couple weeks when the first Monday in February rolls around. So, a new budget is not delivered from the President to the Congress like it normally is. It's usually later into the winter or early spring. As a result of that, as well as the concept that this administration shouldn't be submitting a budget for something in 2018 -- when the next administration, it'll be their whole first full fiscal year, OMB doesn't require a formal budget submission in September like they normally do, but from us, since we are a multi-year budget organization, we do actually still provide them estimates in terms of spending, as well as revenue. So, a lot of our budgetary requirements will be locked in to the extent that we know what our spending requirements will be and we know what some initiatives we would like to pursue, but those policy decisions won't be made until the next

administration comes into play. So, you'll be seeing things for us for fiscal year 2018 over the next several months because it won't be locked down -- if I had to guess -- for at least six months, probably a little bit after that.

The fee review -- we're still planning to publish the MPRM in this fall. But, as you know, as we have discussed before, because of the change in administration, it will kind of be on hold until the next administration, and then the next director will decide whether we will continue to propose fee changes next year. If everything goes according to plan, we think new fees would go into effect a year from now.

That's it for my formal presentation, but I'm happy to take questions, or praise. Yes?

MR. GOODSON: I had one quick question.

MR. SCARDINO: Sure.

MR. GOODSON: Who knows what's going to happen with the election, and then the

Senate, in terms of confirming a new director, would the interim director have the ability to put in the new fee schedule?

MR. SCARDINO: Legally, I'm not sure of that question; practically, I would probably say no.

MR. GOODSON: Okay.

MR. SCARDINO: But I'm not an expert on that.

MR. BAHR: Hi, this is just based upon what has happened in the past. In the past, a new administration says that any rule changes have to be approved by someone appointed by that administration. That would be possible if we sent it down to the Department of Commerce and there was a new Secretary of Commerce, and they approved it, then we could move forward with a rule of change. Like I said, that's what's happened in the past. A new administration can do what they want.

MR. SCARDINO: Any questions or thoughts?

MS. JENKINS: Well, I mean, I'm

assuming, and maybe this is the wrong assumption, that you are not doing your budget numbers based on fee increase.

MR. SCARDINO: We're actually doing our budget numbers with and without.

MS. JENKINS: Right.

MR. SCARDINO: Yeah, planning for the best case scenario. We're hoping for the best, and planning for the worst.

MS. JENKINS: Yeah, exactly, yeah. Okay, I commend you on that.

MR. SCARDINO: Whooo, I had to work hard for that one. Thank you.

MS. KEPPLINGER: To that question, I mean, that's why you see some differences in the numbers because you had made certain assumptions --

MR. SCARDINO: Correct.

MS. KEPPLINGER: -- as to the fees that have had to be revised --

MR. SCARDINO: Right. So, the Congressional budget from last year, or this past year, included a higher fee package, more increases than what we're looking at now; so

you almost have three sets of numbers -- what was proposed then; what we're looking at now; and what could happen if no fee package goes forward --keeps us busy.

MS. KEPPLINGER: Chen has a question from the public.

MS. WANG: Hi, this could just be my ignorance, but what does the reserve look like? How deep is the reserve; how far in can you, you know, dig into the reserve?

MR. SCARDINO: So, the operating reserve -- we have an operating reserve for patents, and we have an operating reserve for trademarks. The goal is to have anywhere between one and three months for patents in reserve. In other words, one month would be one month of operating requirements would be the floor, the minimum we want to get to, and three months would be the optimal level; and the idea is when you dip below the one month, you would consider changing fees; and if you got to a three month optimal reserve, you would consider, again consider, reducing fees. So, we're sitting around one month, a little

bit more. In 17, to be honest with you, we're going to go below that, most likely. Not tremendously below it, but probably \$275 million in operating reserve, so Drew and I, and Rick, and several others in this room sit on what's called the Financial Advisory Board where that is kind of an operating premise when we're reviewing requests to spend more money or to raise or lower fees, or whatever it may be. That's kind of where we start. What would that do to the reserve?

MS. KEPPLINGER: Okay, anybody else. Thanks, Tony, great job.

MR. SCARDINO: Sure.

MS. KEPPLINGER: Oh, did Dan, did --?

MR. LANG: I just said, thanks, Tony, great job.

MR. SCARDINO: Thank you.

MS. MAR-SPINOLA: We're going to -- I totally think you did a great job.

MR. SCARDINO: Thank you. I'm loving this. I could stay all day. Thank you.

MS. KEPPLINGER: -- Okay, thank you.
Now, we'll give it over to Drew Hirshfeld,
Commissioner for Patents for some closing
remarks. And you're doing a great job
there --

MR. HIRSHFELD: Thank you.

MS. KEPPLINGER: -- especially with
the guidelines you and Bob put out.

MR. HIRSHFELD: I was also going to
say, but Tony just left the room -- but I was
going to say Tony is doing a great job,
and -- he came back for that, yeah. We'll
keep that theme going for you, Tony. In all
my years of having PPAC meetings, I will also
say this might be the most timely PPAC in
terms of staying on the agenda that we have
done. Anyway, I'd like to, I'm going to keep
my remarks very short.

There's not much I can add to a
great meeting like we had today. I did want
to thank all the PPAC members for all that you
do and all your hard work. I know people see
you publicly today and what you provide, but
we certainly know there's much more behind the

scenes that you are helping us with between these meetings, and we greatly appreciate your work. I also want to thank all the PTO colleagues of mine who are here today. I am surrounded by people at USPTO at all levels and in all areas who are extremely dedicated, professional, and very hardworking, and hopefully, you're seeing today and other PPAC meetings the manifestations of their hard work.

I do want to return to Michelle Lee's opening remarks where she spoke a lot about quality and self-improvement, and, hopefully, you also are seeing that is a theme for us at PTO. From the minute Michelle got here, she has been pushing continued improvement. For as long as I will be in the current role that I am in, and in any other roles at PTO, I also will be pushing continued improvement. That's something that we should always be focused on and, hopefully, you're seeing all that in the manifestations of that. For us, PPAC is a chance for us to show you what we've been working on and to hear your

feedback and your additional thoughts about how we can improve; and, again, I'll end with a thank you to everybody who plays a hand in helping us make the PTO a better institution for all of the public. So, thank you very much, and with that, I will end my remarks.

MS. KEPPLINGER: Thank you, Drew; and I would just reiterate Drew's comments about thanking all the people in the USPTO that we routinely work with because everyone is extremely gracious and helpful about getting any information that we request so that we can better understand what is happening and, hopefully, provide some sort of suggestions or comments on what's going on. And, I especially want to identify Jennifer Low who is invaluable in helping to facilitate these meetings; getting the information coordinated among all of the subcommittees; making sure we get the agendas put out in time; making sure we get the agendas for each of the subcommittee meetings; and also taking care of the public notice that has to go hand-in-hand with any of these meetings.

So, thank you all and thank you to the public for attending.

MR. SOBON: We have to thank Madam Chairman for running a very, very timely and fantastic meeting. So, thank you, very much.

MS. KEPPLINGER: Well, I have to acknowledge that Drew indicated to me that we were going to go significantly over on one of the sessions, so, thank you all; and see you in a couple of months. Thanks.

(Whereupon at 3:20 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

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

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