

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, December 2, 2010

1 PARTICIPANTS:
2 PPAC Members:
3 DAMON MATTEO, Chair
4 MARC ADLER
5 D. BENJAMIN BORSON
6 LOUIS J. FOREMAN
7 ESTHER KEPPLINGER
8 F. SCOTT KIEFF
9 STEVEN MILLER
10 STEPHEN M. PINKOS
11
12 MAUREEN K. TOOHEY
13 Union Members:
14 ROBERT D. BUDENS
15 CATHERINE FAINT
16 VERNON A. TOWLER
17 Also Present:
18 ANTHONY SCARDINO
19
20 ROBERT BAHR
21 Office of the Associate Commissioner for Patent
Examination

1 PARTICIPANTS (CONT'D):
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3
4 PEGGY FOCARINO
Deputy Commissioner for Patents
5 ROBERT STOLL
Commissioner for Patents
6

7 RAYMOND CHEN
8 DANA COLARULLI
9 JIM DWYER
10 MARTI HEARST
11 JAMES MOORE
12 TERREL MORRIS
13 JOHN OWENS
14 RAHAL VADERNA

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1 P R O C E E D I N G S

2 (10:05 a.m.)

3 MR. MATTEO: Now that we've got
4 everybody in place, we'd like to call this public
5 meeting of the USPTO and Public Advisory Committee
6 to order.

7 My name is Damon Matteo. I'm the
8 chairman, and I'd like to offer my apologies
9 (inaudible) today, not being able to be there
10 (inaudible) unavoidably detained here on the West
11 Coast.

12 I'd like to welcome those here in person
13 and those listening (inaudible). And to kick off
14 the meeting what I'd like to do is have
15 introductions go around the table.

16 Bob, perhaps if you could (inaudible) as
17 well.

18 MR. STOLL: Good morning. What I think
19 I heard you saying, coming in and out, was that
20 you wanted the introductions, and I guess I'll
21 start off.

22 I'm Bob Stoll. I'm the commissioner for

1 patents.

2 MR. BORSON: I'm Ben Borson, member of
3 PPAC.

4 MS. FOCARINO: Peggy Focarino, deputy
5 commissioner for patents.

6 MR. MILLER: Steve Miller, member of
7 PPAC.

8 MR. FOREMAN: Louis Foreman, member of
9 PPAC.

10 MS. KEPPLINGER: Esther Kepplinger,
11 member of PPAC.

12 MS. TOOHEY: Maureen Toohey, member of
13 PPAC.

14 MR. BUDENS: Robert Budens, member of
15 PPAC.

16 MS. FINCH: Catherine Finch, vice
17 president of NTU-245 and member of PPAC.

18 MR. ADLER: Mark Adler, member of PPAC.

19 MR. PINKOS: Steve Pinkos, PPAC member.

20 MR. STOLL: And, Damon, we'll be handing
21 it back to you.

22 MR. MATTEO: Can you hear me there?

1 MR. STOLL: Yeah. The suggestion here
2 is that you get closer to your microphone from our
3 experts here.

4 MR. MATTEO: That's not possible. I'm
5 about as close as I can get.

6 MR. STOLL: Okay.

7 MR. MATTEO: I'll try and speak a little
8 louder, if that helps.

9 MR. STOLL: Yes.

10 MR. MATTEO: Okay. So just a few
11 housekeeping issues as we (inaudible). Some of
12 them will sound familiar.

13 As PPAC members, we're (inaudible) for
14 our private sector (inaudible) then the
15 prospective, but then we always remind all members
16 to leave their (inaudible) sector affiliation
17 behind and (inaudible) and PPAC.

18 So with regard to public (inaudible), we
19 do our best to get public questions. It's not
20 possible to do real-time questions, you can get
21 questions to PPAC at USPTO.gov. We'll try to get
22 those questions answered either at a break or

1 (inaudible) the meeting, and I think we're
2 stumbling over some of those (inaudible) problems
3 now.

4 But for housekeeping (inaudible), if you
5 are dialing in, please place your phone on mute to
6 limit background noise.

7 And, if I may, what I'd like, before we
8 begin in earnest is to take a moment for a special
9 recognition. For those of you who are not aware,
10 PPAC members serve a (inaudible) term as defined
11 by statute. Three of the current members of the
12 PPAC (inaudible) this month, so this will be their
13 last PPAC. Those members are Louis Foreman, Scott
14 Kieff, and Esther Kepplinger.

15 And, if I may, by way of personal
16 reflection, when I first took over as chair of
17 PPAC, I mentioned that anything I might accomplish
18 here was done on the shoulders of giants. Well,
19 as it turns out (inaudible) of PPAC have
20 (inaudible) expression. It's been more like
21 working shoulder to shoulder with giants, and
22 we've done some marvelous work over the course of

1 their tenure here at PPAC.

2 Their contributions to PPAC are too many
3 to name, also too valuable to forget. It has been
4 my personal and professional privilege to work
5 with all three of these talented individuals, and
6 they will be missed greatly. And all the more
7 reason I wish they had (inaudible) this meeting.

8 And Louis, Scott, Esther, do you care to
9 say anything at this point or (inaudible)
10 comments?

11 MR. STOLL: They're good.

12 MR. MATTEO: Okay. All right then.
13 Well, what I'd like to do then is turn it over to
14 Robert Stoll, commissioner for patents, United
15 States Patent Trademark office for opening
16 remarks.

17 Bob, please.

18 MR. STOLL: Thanks, Damon. Before I
19 start with opening remarks, I'd like Ben to
20 actually restate some of the information you
21 provided so that folks can clearly understand how
22 to get their questions in because there were

1 technical difficulties with respect to the voice
2 that came over here.

3 MR. BORSON: Okay. Thank you, Damon. I
4 believe that the questions should be addressed to
5 PPAC@USPTO.gov. We have a facility here whereby
6 they can be presented to us, printed out, and
7 presented to us, and also that we will handle
8 questions as we can. It may not be in real time,
9 but we will have an opportunity to consolidate
10 questions; and there may even be an opportunity to
11 have the public questions addressed in real time
12 during the presentations.

13 Now do we have any microphones here for
14 members of the audience here in Alexandria? Yeah.
15 We can do that. We can handle that. So I believe
16 the address is PPAC@USPTO.gov.

17 MR. BORSON: Thanks, Ben. Good morning,
18 everybody. Welcome to the United States Patent
19 and Trademark Office PPAC Meeting. I think this
20 is the first one of the Fiscal Year '11, and we've
21 very happy to be here this morning to talk about
22 issues related to the Patent and Trademark Office.

1 I will be very brief in my remarks this
2 morning. Most importantly, I would love to thank
3 the members of the PPAC for the annual report and
4 the efforts in putting it together. It's an
5 excellent report. I charge it to everyone's
6 reading list. I think you're going to find a lot
7 of information there with request to the Patient
8 and Trademark Office and our efforts over the past
9 fiscal year, and, again, thank the PPAC members
10 for all their efforts in putting it together and
11 all the efforts over the past year.

12 I just want to talk briefly about what
13 we did last year, and I think most of you are
14 aware that the secretary charged us with reducing
15 first action pendency to 10 months by 2014, and to
16 20 months for full pendency by 2015. And we
17 really, under very difficult conditions, were able
18 to take a real bite out of that.

19 We reduced our backlog through our 699
20 efforts, which was an attempt to reduce our
21 backlog to 699,000 applications by over 26,000
22 cases, and that was in lieu of approximately a 4.5

1 percent increase in filings, a difficult year
2 fiscally in that we were uncertain for a long
3 period of time what our final funding would be,
4 which caused us to not have full overtime during
5 that year and only allowed us to hire at basically
6 attrition rates for the entire year.

7 So I am very proud of the efforts of
8 everyone at the Patent and Trademark Office to
9 undertake this reduction under these conditions.

10 I also want to mention to you that we're
11 continuing our efforts in improving our handling
12 of applications here at the Patent and Trademark
13 Office. Our October figures show that we
14 continued this success into Fiscal Year 2011, as
15 first action pendency was 25.4 months, down from
16 25.7.

17 We've had a successful green technology
18 program that continues to show strong growth, a
19 total petitions received as of November 15th are
20 1,665 with an overall approval rate over 51
21 percent at this point. In addition, 106 patents
22 have issued under this program as of this date.

1 The ombudsman program, which we
2 initiated last year, is working very well. We're
3 finding new ways to assist applicants. In fiscal
4 year 2010, we met all of our quality targets, and
5 our work on improving better patent quality
6 continues into this fiscal year. And I want to,
7 again, thank Mark Adler from PPAC in helping us
8 with new metrics related to our quality analysis.

9 We continued our partnership with POPA
10 as of 2010 and concluded by reaching an agreement
11 on a new examiner performance appraisal plan, and
12 I'd like to acknowledge both Peggy Focarino and
13 Robert Budens' outstanding efforts in this very
14 difficult goal. Thank you both very much for
15 getting us to this conclusion.

16 Patents is undertaking major systems and
17 process redesigns with our redesigning efforts.
18 You're going to hear a little bit about that later
19 on today. We are reengineering top to bottom, and
20 I think you're going to be happy with the progress
21 being made.

22 We've also had a major breakthrough in

1 Telework legislation, and we are currently putting
2 together what will be, I believe, the President
3 signing it very shortly if he hasn't already, our
4 new Telework program here at the Patient and
5 Trademark Office.

6 And with that, I'd like to turn it back
7 over to Damon to proceed with the rest of the
8 agenda. Thank you very much.

9 MR. MATTEO: Thank you very, Bob. I
10 believe next on the agenda we have the finance
11 update, Tony Scardino, chief financial
12 officer of (inaudible). Tony, if you would
13 please.

14 MR. SCARDINO: Good morning. Thank you.
15 Hi, Damon.

16 Hello everyone. Thanks for having me
17 back. When I was here last time, I guess it was
18 late September, I had been on the job about one
19 month, and I'm happy to say I've survive the first
20 three months here at the PTO, very happily in
21 fact.

22 When we talked last, we were going right

1 into the end of the fiscal year, and we had
2 estimates for what our actual final numbers were.
3 The first slide today is actually going to give
4 you a rundown of our actuals for the end of the
5 year.

6 As you'll see -- bear with me. I'm
7 still new to this pointer thing right here. In
8 red, the collection in excess of appropriation.
9 That's usually one of the lines that everybody
10 likes to look at. It's almost \$53 million that we
11 collected in -- more than we had access to in
12 terms of spending. So you'll see our numbers
13 above that actual fees collection number 2069,
14 while our appropriate level is 2016.

15 Also the number -- people like to look a
16 the numbers at the bottom, the final carryover
17 amount. We carried over almost \$223 million; \$122
18 million of that was on the patent side, and that's
19 a good thing under a continued resolution.

20 I'm sure you all know we've been under
21 our continued resolution since the beginning of
22 the fiscal year. It expires December 3rd, which

1 is tomorrow. The house passed another extension
2 that should go to December 18. And there, you
3 know, some of what I say is complete speculation
4 here, but, you know, we all read the same papers,
5 or have access to the same papers I guess.

6 The thinking is that Congress or at
7 least some parts of Congress, some parties, would
8 like to see an Omnibus bill passed, so they wanted
9 to extend the resolution so they could keep
10 working on it. Other folks think, of course, that
11 we're going to have a year-long CR, new leadership
12 in the house. We may want to go back to '08
13 funding levels or '10 funding levels, you know.
14 My crystal ball is as cloudy as anybody else's
15 there.

16 But we, USPTO, would like the
17 President's budget to be enacted. Obviously it's
18 a very good funding level. We think we'll have
19 collections that will enable us to do a lot of the
20 things that we need to do. The surcharge in there
21 is what we, of course, would like to get authority
22 for. So we'll move to the next page and kind of

1 go through that a little bit.

2 We are required each September to kind
3 of revise our estimates or actually revise our
4 estimates to Congress and let them know. Since
5 the President's budget was submitted in February,
6 what are our collections looking now, our
7 estimates for collections to be?

8 So we submitted the following ranges up
9 here. Again, we submit a range because when
10 you're forecasting so far in advance, you're not
11 going to be able to come up with an exact number,
12 but we always have a working estimate. Our
13 working estimate in September when we submitted
14 this to Congress was \$2.431 billion.

15 Now, that assumed the 15 percent interim
16 fee adjustment or surcharge we call it for the
17 entire year, starting October 1st. Because we
18 don't have the surcharge authority, we're not
19 collecting the 15 percent, of course. So whenever
20 -- if a bill is passed, an omnibus that gives us
21 the authority to collect that, we will not be
22 bringing in \$269 million dollars from the

1 surcharge. It will be some number less than that.
2 Roughly, roughly it's about \$1 million per day we
3 lose, and it's not really losing because we're not
4 collecting it. But if we had collected it
5 starting October 1st, we estimated we'd collect
6 about \$1 million extra a day.

7 So, you know, if you do the math,
8 whenever a bill is passed, we'll collect some
9 amount less than our original estimates.

10 So it's probably a longwinded way of
11 saying -- one thing I do want to correct, the last
12 bullet there, "Emphasize Need for a \$200 million
13 buffer," that's actually a typo. It's a \$100
14 million buffer. It was in the President's budget
15 request and also the House the Senate also
16 included that in there.

17 Now there is some discussion that maybe
18 the buffer could be increased. The House and the
19 Senate are thinking about it. There's a lot of
20 things that are still in play, and yesterday was a
21 furious day. They're working on, you know,
22 full-year CR options versus an omnibus option.

1 So, you know, the appropriations
2 committees have been very, very busy, very
3 supportive of our efforts. They understand our
4 needs, but I don't think anyone knows where we're
5 going to end up. So we've been trying to, you
6 know, just educate folks. A full-year CR at 2016
7 with no surcharge authority, you know, would be
8 very problematic, versus the President's budget
9 request, you know, minus less surcharge because it
10 would get passed later in the year. You know,
11 it's a \$350 million swing from 2016, again,
12 because that's the CR rate from 2010.

13 But we don't think Congress will enact
14 anything that will have 2016. We think they'll
15 either adjust us for the CR period, or they'll
16 pass an omnibus, which is similar to the
17 President's budget. But, again, we really don't
18 know. No one knows, but we're preparing and
19 planning for the best and worst scenarios, worst
20 care.

21 So the current CR expires tomorrow as I
22 said. The next CR will go until December 18th,

1 and we have hopes that a bill, a full-year bill
2 will be enacted.

3 Since we met last, there were all kinds
4 of scenarios proposed, including another
5 three-month extension, which would have taken us
6 to the end of February. The administration does
7 not want to do that. That is just kind of kicking
8 the can down, but, you know, you could imagine the
9 new leadership in the house would like to kind of
10 pass their own budget next January, February. So
11 it's hard to say where we're going to end up.

12 And, finally, for 2012, this all plays
13 into that of course. Whatever we end up with in
14 '11 would drive our needs for '12 to a certain
15 extent.

16 So the OMB -- what's called the OMB
17 passback. We submitted a budget to OMB in
18 September. They pass back their kind of decisions
19 or their thoughts on our budget, typically would
20 have been this past Monday, the Monday after
21 Thanksgiving. They deferred it a week or delayed
22 it a week, so next Monday we'll get our passback

1 from OMB. And then every agency has 3 days, 72
2 hours to respond.

3 So we'll be working hard next week to
4 help shape the President's budget for USPTO. And
5 then once we get final decisions from OMB, we then
6 prepare the President's budget. We provide to
7 PPAC for review, and by February 7th we have to
8 submit a budget to Congress.

9 Any thoughts on '10, '11, or '12? Yes.

10 MR. MILLER: The President's recently
11 announced that freeze on all salaries. What is
12 the effect of that for the PTO for '10-'11?

13 MR. SCARDINO: Well, a couple things on
14 that. President has proposed it for '11, but,
15 again, he proposed the 1.4 percent increase in his
16 budget. So, you know, Congress already marked up
17 all their bills with a pay raise in there. So
18 they'd have to take action on -- it's almost like
19 the President is amending his own budget request.
20 So that's very possible. And then in '12 he's got
21 more control or power over that because he hadn't
22 submitted his budget yet.

1 So what he has told the world is that
2 I'm going to submit a budget with '12 that has no
3 pay raise in there; 1.4 percent was not a huge
4 raise to begin with, but obviously it does have
5 some impact for all employees across the
6 government. We costed out at I think \$18 million
7 for fiscal year 2011.

8 So in essence, you know, the pay raise
9 has always been a little bit of a funny thing in
10 the federal government where the President often
11 times -- not President Obama, any President, often
12 times submits a pay raise, and then Congress will
13 often times authorize a higher pay raise to match
14 the military or whatever it may be. So it's
15 basically an unfunded requirement for the federal
16 government. So federal agencies are used to
17 having to kind of absorb that pay rise.

18 This is the opposite where actually in
19 the omnibus bill, Congress would have to go in and
20 shave out money from every agency and say, well,
21 you don't need the money for the pay raise. So
22 it's a little different.

1 And then for PTO, of course, we don't
2 get budget authority. So there's no money to
3 shave for the pay raise. Sort of a very strange
4 scenario if our collections are the same amount of
5 money, we would have more money to do other things
6 with. We'd pay less people, you know, because no
7 pay raise.

8 MR. STOLL: Let me just add that if
9 enacted by the Congress, this would not affect,
10 from my understanding as proposed, within grades,
11 and it would not affect bonuses, just so that
12 you're --

13 MR. SCARDINO: Right.

14 MR. STOLL: -- aware of those two
15 things.

16 MR. SCARDINO: That's the proposal right
17 now. Yep.

18 Any other thoughts or questions? We'll
19 know more in a week. We'll know more in a few
20 weeks after that, but right now that's all we
21 know. Thank you.

22 MR. MATTEO: The General Legislative

1 update. Dana?

2 MR. COLARULLI: Good morning. My
3 friend, Tony, was faster than I thought he would
4 be.

5 Well, I thought what I'd do is -- and I
6 don't have the -- is there a remote for the
7 slides? My apologies.

8 Good morning. What I thought I would do
9 this morning, being that this is the -- this is
10 the last meeting at the end of the 111th Congress
11 is do a little bit of a wrap-up for you, but we
12 can go through this fairly quickly. I'll also
13 give you a sense of at least what we're seeing for
14 the 112th and what the agenda might be.

15 So at the end of the 111th Congress, you
16 know, our challenges continue to be the same.
17 Funding is number one, and there is two places
18 where we're having discussions with the hill. One
19 is continuing with our appropriators. The other
20 is with our judiciary, the committee of oversight
21 for the Patient and Trademark Office.

22 As you all know, the House judiciary

1 committee introduced a bill earlier this year, so
2 there is both authorization and appropriations
3 areas on the Hill that we're having these
4 conversations. We expect to continue those
5 conversations in the 112th given that bill did not
6 move forward in the House judiciary.

7 Patent reform clearly is the second big
8 priority, and then there is a number of other
9 technical and substantive law changes that we'll
10 continue to push. Some that weren't done this
11 year, things like our proposed fix for GIPA
12 fundings, our proposed fix for clarifying the pay
13 for judges, two pieces of implementing
14 legislation. I'll go into a little bit more
15 detail here, but there may be other things that we
16 want to be more proactive next year on in the
17 112th -- proactively sending up to the Hill in
18 reaction to case law.

19 So those are discussions that we're
20 having right now. But as of the end of the 111th
21 Congress, these three items still continue to be
22 our big focus.

1 So in the 111th we had some successes,
2 really over just the last year. The Trademark
3 Technical Corrections bill that was one of the
4 pieces that the administration had sent up and
5 asked Congress on. They did. Supplemental
6 appropriations, the \$129 million to help support
7 our patent backlog reduction. That was a huge
8 success.

9 More recent successes, our Telework
10 Enhancement Act, has not been signed by the
11 President yet, enabling the agency to expand its
12 Telework flexibility or provide more flexibility
13 in this Telework program, and I'll talk a little
14 more about that in a second.

15 I included this last bill, you know,
16 clearly a relevant IP bill, but really the
17 majority of it simply was technical corrections.
18 There is also a small provision adjusting the
19 Trademark Bullies study that the office is
20 currently engaged in developing.

21 So those are the three items I wanted to
22 just quickly highlight. One was the Trademark

1 Bullies study. We're working on that. Congress
2 has directed us to complete a report by March
3 17th, St. Patrick's Day. The amendment I
4 mentioned from the Copyright Corrections Bill
5 merely was on the phrasing of the scope of the
6 study. It changed the word "corporations" to the
7 purpose of which there was some suggestion that
8 corporations, merely by enforcing their trademark
9 rights, would be violating the law. Clearly
10 that's not how we took it. The Technical
11 Correction fixed that, but otherwise, that's one
12 of the things that's in front of us, which I
13 reported to the TPAC on last week.

14 Supplemental appropriations, I think
15 we've talked about that quite a bit in this forum.

16 And then the Telework legislation.
17 That's the newest bill, and it makes sense to
18 spend a couple seconds on that. There were
19 basically three parts of that bill that affect all
20 federal agency in the Telework program. First
21 series of provisions really were to bring up other
22 federal agencies to where we think PTO already is,

1 really taking Telework as a serious business
2 model, making our Telework program part of our
3 overall operations. It encourages other agencies
4 to do that.

5 A second provision provides for a test
6 program at GSA that other agencies can apply to,
7 to their flexibility in their travel regulations
8 and expend Telework opportunities.

9 A third provision is a PTO specific
10 provision. This is one that we had extensive
11 conversations with the Hill on. To in effect
12 allow us to waive our biweekly requirement for
13 examiners to return to the office, and it requires
14 a number of things including creating an oversight
15 committee to implement this particular provision.

16 The President has yet to sign this bill,
17 but we expect him to do so probably in the next
18 week. He is 10 days from when it was sent from
19 the Hill. It was sent I believe just at the end
20 of last week or the beginning of this week. I'm
21 losing my days now. But we expect it actually to
22 be signed within the next week, and when it's

1 signed, we'll move immediately to create an
2 oversight committee and start implementing this
3 provision, which really will allow us to take our
4 Telework program to the next step.

5 So pending -- this is a slide that I've
6 shown to this group previously, and I think I've
7 mentioned a number of these already: Patent
8 reform legislation clearly, the House Judiciary
9 Funding Stabilization Bill. The four remaining
10 easy pieces, the implementing legislation I
11 mentioned, that's the Hague and the PLT;
12 performance rights, another issue that has been
13 pending over a few Congresses, and the
14 administration and DOC has supported that
15 legislation. So that will be reintroduced next
16 year we expect.

17 And the last category, IP Attaches. We
18 continue to see proposals to expand to alter our
19 IP Attache program. Generally the proposals are
20 supportive proposals of our current IP Attache
21 program, so we expect those conversations to
22 continue next year as well.

1 So what can we expect for the 112th
2 Congress? Republican majority in the House. You
3 know, it's unclear what changes the new Republican
4 leadership of the judiciary committee might choose
5 to implement. There has been an IP subcommittee
6 in the past. We've heard rumors that that might
7 be on the table again this year, but certainly the
8 leadership changes. And actually, it's going to
9 change both in the House and the Senate.

10 In the House, the majority has changed,
11 so the ranking member, Lamar Smith, is the
12 presumptive committee chair. Leadership elections
13 don't take place until the new Congress convenes.
14 So these decisions will officially be made by the
15 end of January, but we assume, and, in fact, it's
16 clear that Lamar Smith also assumes that he'll be
17 the chair; and he is already trying to make plans
18 and build his agenda for next Congress. And we've
19 talked to him a few times, both the staff and the
20 member himself.

21 This is a member that has a background
22 on patent reform. He helped to initiate a lot of

1 the discussions four Congresses ago. He held a
2 number of hearings. He has, I think, a vested
3 interest in seeing this legislation through. So
4 this could be good news for patent form.

5 He also, in recent statements, has said
6 that he's looking to work with his Senate
7 colleagues so that any bill that's introduced, you
8 know, can move through the House and also be
9 addressed by the Senate. So we'll be watching
10 that closely, certainly current Chairman Connors
11 will still be in the leadership; so we'll watch
12 him as well.

13 On the Senate side, one change in the
14 ranking member. Sessions was the ranking member
15 this year. That member has gone off to another
16 committee, and Chuck Grassley from Iowa is likely
17 to be the ranking member in the 112th Congress.

18 Now Chuck Grassley has been involved in
19 the patent reform discussions. In particular, he
20 has been very supportive of what is a more minor
21 change in the bill on Bayh-Dole and the royalties
22 that universities can receive under Bayh-Dole,

1 increasing those royalties available to the
2 university.

3 So he may be active. It is unclear how
4 vested he is in the overall patent reform.
5 Although, as I said, he has been involved in the
6 discussion throughout.

7 I've already suggested this last bullet.
8 So from comments from Lamar Smith and others, it
9 suggests that patent reform may move quickly, at
10 least in the beginning of the next Congress to be
11 introduced and to at least start its progress.
12 It's, as you all know, a number of hurdles to
13 moving legislation, but at least I think we can
14 expect seeing a bill introduced pretty quickly,
15 probably in the house and then to the Senate maybe
16 at the same time, yet to be determined.

17 But I think certainly patent reform will
18 continue to be one of those things that both the
19 House and the Senate want to get done, so I think
20 that's a good sign for seeing legislation happen
21 in the 112th.

22 I know Tony had spent some time already

1 on what the current situation is with our funding.
2 Tony is spending a lot of his time, and I'm
3 spending a lot of my time as well trying to watch
4 progress on this and really make sure that folks
5 on the Hill who are making decisions understand
6 what our request is. And not only they understand
7 the need for the funds, but they also understand
8 the need to have both of these two things, both of
9 these bullets.

10 If the Congress gives PTO the ability to
11 increase its patent fees by 15 percent, they also
12 need to give us a parallel ability to spend those
13 fees, and we've been very strongly arguing that we
14 should be able to spend all of the fees that we
15 collect. It's a very delicate time at PTO. We're
16 making some progress. That progress will come to
17 a dramatic halt if our funding is in jeopardy.

18 So, you know, we've been trying to be
19 good advocates on behalf of the agency here, and
20 this case is supporting the President's request
21 and supporting what we know the agency needs to be
22 successful.

1 So with that I'll end, but I'm happy to
2 take any questions that folks have about what may
3 or may not happen next Congress.

4 MR. ADLER: I don't know that this is
5 for Dana, but maybe it's for your, Bob. What are
6 the budget implications of the Telework
7 legislation if it was expanded and changed in
8 terms of the reporting requirements? Have you
9 factored that into the 2011 or 2012 budget?

10 MR. STOLL: We are working on that. I
11 think that there is some factors in the 2011
12 budget for it if I'm not mistaken, but the -- I
13 mean, we're going to have to buy setups for remote
14 locations. There is the discussion of how many
15 times we bring folks back and pay for their --

16 There are costs associated with it. I
17 don't know what the actual numbers are, but I can
18 have somebody get those numbers to you guys.

19 MR. COLARULLI: And I'll add that, you
20 know, part of the discussion with the Hill as this
21 legislation was being addressed, the Hill asked us
22 for, you know, what our cost savings would be.

1 You know, there's been lots of discussion as this
2 bill moved forward on what are the costs and what
3 are the potential savings. So we have some
4 information on that as well I can share.

5 MR. PINKOS: Thanks, Dana. Just a point
6 of clarification or expansion, the key crux of
7 this -- please tell me if this is correct -- is
8 that, you know, now the office will be able to sit
9 down with Robert and others and have the
10 flexibility to essentially have a nationwide
11 workforce, to have examiners working potentially
12 from anywhere if the office can pull it off from a
13 training, and IT standpoint, and reporting
14 standpoint, and also, as Mark asked about, a cost
15 standpoint of how often do people need to come
16 back to the mothership and who bears the cost. Is
17 that correct?

18 But the idea though is that you now have
19 the --

20 MR. COLARULLI: Authority.

21 MR. PINKOS: -- authority to do that.
22 The chains have been loosened and people don't

1 have to come back twice a week or twice a bi-week,
2 excuse me.

3 MR. COLARULLI: And an easy way to think
4 about this is, you know, we've expanded our
5 flexibility within the 50-mile radius. The
6 biggest impact for this bill is it allows us to do
7 beyond 50 miles what we're already doing within
8 the 50 miles. And technically what the bill does
9 is it allows an employee to waive their
10 entitlement to the agency paying for their travel
11 back.

12 We have employees right now that are
13 paying their own way, and we are forced to require
14 them to come back every two weeks. We want to
15 expand the program, allow these employees to
16 continue to do this, and, frankly, not require
17 them to come back when they don't need to. That
18 travel back to the office is downtime. It's time
19 that's not productive time, and it's a burden on
20 the employee that's not necessary.

21 MS. KEPPLINGER: I wondered if you could
22 tell us something about the implications for

1 in-person interviews, which I know the
2 practitioners that I am familiar with find these
3 to be extraordinarily helpful and more helpful
4 than a telephone interview, if you know anything
5 about that. And, secondly, would there be
6 opportunities for interviews off premises, which
7 in the past have not been permitted.

8 MR. STOLL: Again, Esther, we're working
9 on all of that. We've been -- we will be
10 experimenting with different mechanisms for
11 undertaking that in the future. We are discussing
12 a lot of issues whether to maybe have a location
13 outside of the Washington Metropolitan area for
14 holding a personal interview somewhere close to
15 where they're residing.

16 We are -- we currently have issues with
17 respect to personal interviews now with folks,
18 almost 3,000 of them, telecommuting. There have
19 been some problems with it, but I think that we're
20 working those out. And it's possible that we may
21 be using technology solutions where there is more
22 of a video, maybe not in-person but a capability

1 of seeing, for example, the applicant pointing to
2 a graph and saying this is what I mean here.

3 So we're looking at all different
4 aspects, and of course we'll be in discussions
5 with Robert Budens as to find the most effective
6 methods for being able to provide applicant with
7 an in-person interview or something as close to it
8 as possible.

9 MR. MATTEO: Okay. No more questions
10 from the floor? Very good.

11 What I'd like to do then is introduce
12 Peggy Focarino, deputy commissioner for patents,
13 who will give us an operations update.

14 MS. FOCARINO: Okay.

15 MR. MATTEO: Peggy?

16 MS. FOCARINO: Thank you. Thanks,
17 Damon. I'm going to quickly give you an overview
18 of some of the highlights of the last fiscal year,
19 and I think that Bob Stoll has touched on several
20 of these at a higher level. So I'll give you a
21 little more detail. I'll quickly go through them
22 so that we can have an opportunity to have a

1 discussion afterwards on any areas that you want
2 to have some more discussion on.

3 Let's see. Okay. So as Bob mentioned,
4 we experienced an increase in our filings in FY10
5 that were at level a little over four percent of
6 what we had predicted. So that added to the
7 backlog obviously. We experienced an increase in
8 productivity, so we finished the year at 104
9 percent of our goal, which was really good
10 considering some of the changes that we had put in
11 place including giving more time to examiners. So
12 it's not something that you would intuitively
13 expect.

14 We granted 233,000 patents, so our
15 output was up in grants, allowances. Patent
16 allowances were at 240,000.

17 And Bob mentioned our initiative to work
18 off our backlog, and I think we had talked about
19 this the last time. But we really had a big push
20 from our examiners to work off new cases, and it
21 resulted in 27,000 cases being worked off in the
22 fourth quarter.

1 So they really made a great effort at
2 trying to reach that 699,000 goal, and I'll show
3 you in another graph how we ended up exactly. I
4 think Bob mentioned it, but even though we didn't
5 make it, I think we really came close and a lot
6 closer than we thought we would based on that
7 increase in filings that we experienced.

8 In quality, Bob mentioned our two
9 quality metrics that we did come out at the end
10 higher than our targets. As you know, we've added
11 new quality measures. So we now have a total of
12 seven, and Bob Bahr will be talking a little bit
13 more about that.

14 And our board numbers continue to be
15 fairly decent, although it's an area that you're
16 going to hear about. We've got some initiatives
17 to try to improve the quality of the cases going
18 to the board. But affirmed and affirmed in part
19 are at 63 percent for the year.

20 The tech support, also we had a good
21 year in trying to make progress because we've had
22 some issues in '09 with amendment entry continuing

1 to go up. You can see there that at the end of
2 the '09, we're almost to 35 days for an amendment
3 to be entered, and in Fiscal Year '10 we finished
4 the year at a little over 5 days. So really huge
5 push to get those timeframe way down.

6 And tech support, we also have an
7 independent quality review of their work, and
8 their error rate is under 2 percent, so really,
9 really good. And they -- they can continue to
10 exceed their production goals, and their quality
11 error rate targets, and their amendment entries.
12 So they also had a phenomenal year.

13 Bob mentioned the Green Tech, and he
14 told you how many petitions in total down there;
15 but this just shows you the breakout of how many
16 are awaiting decision, the grants at 800, a little
17 over 50 percent dismissals, and then how many were
18 denied.

19 The Ombudsman program was also
20 mentioned. I thought you would be interested to
21 see by tech center the volume of inquiries, and
22 your attention probably will be drawn to those two

1 mechanical tech centers on the right. We are
2 looking into those particular inquiries in detail
3 to see what the reasons are. Is it something to
4 do with perhaps more training is needed in those
5 areas or could be the volume of work. It could be
6 pro se applicants.

7 Some of the initial feedback we're
8 getting is that some of the inquiries in those two
9 areas really are more general in nature and could
10 have gone to the General Inventor Assistance
11 Center. So we're really trying to get drilled
12 down to make sure we don't have a problem in this
13 area that we really need to address. So we're
14 trying to get the team to really dig in and find
15 out why, but the overall feedback on the program
16 has been fairly positive.

17 Interviews. Esther just asked a really
18 good question about interviews, and interview time
19 is up. And these are examiners picking up the
20 telephone in most cases to call applicants. You
21 can see they spent 138,000+ hours in FY10 doing
22 this, and it has resulted in I think a lot of

1 positive feedback from our stakeholders and
2 hopefully leading to early disposition of the
3 issues in an application.

4 The First Action Interview Pilot
5 Program, has resulted in an allowance rate that is
6 over twice that of other filings. And, again, you
7 know, we're trying to strive for collaborative
8 relationship with stakeholders and to move our
9 culture in that direction. So I think, you know,
10 we're definitely on our way. We still have a lot
11 of work to do.

12 And Bob talked a bit about the
13 interview. We had a meeting on this yesterday.
14 Esther, it's actually on my list to talk to Robert
15 about because we would like to get a team together
16 to try to focus on a plan to address this personal
17 interview issue. In particular, I think it was
18 mentioned that examiners within the 50-mile radius
19 now have their duty station changed, right? So
20 that's a couple thousand examiners, but as we
21 implement the new Telework legislation, we will be
22 adding to this issue. And we really need to find

1 some productive solutions to it.

2 The backlog. I mentioned that we had a
3 really big push in the fourth quarter, so you can
4 see that we didn't make our target; but we came
5 pretty close. And as filing increase, as you
6 know, and depending on the budget situation with
7 the hiring, we may be making really good progress
8 and then, you know, kind of have the rug pulled
9 out from under us so to speak. But we continue to
10 make a lot of headway here.

11 The pendency. We've got some really
12 aggressive targets, so this just shows you where
13 we finished in '10, at the end of Fiscal Year '10.
14 And we have a target first action pendency of 10
15 months and total pendency of 20 months in 2014 and
16 2015 respectively. So we will have efforts that
17 are focused on that, that I'll talk a little bit
18 about in a minute.

19 The allowance rate. We had an increase
20 in our allowance rate. I told you how many
21 patents were granted, but the allowance rate is up
22 from what it was in '09. We don't have a target

1 for an allowance rate, but, you know, certainly we
2 want to get actions per disposal down, which we
3 are going.

4 We are encouraging that examiners reach
5 out and indicate allowable subject matter in early
6 time and prosecution, and certainly we're on our
7 way to getting people to be much more focused on
8 that.

9 This just shows you what the quality
10 targets were and also where we ended up at the end
11 of the year. On our historical measures,
12 obviously we're doing quite well, but we know that
13 those were not necessarily as balanced as our
14 stakeholders thought; so we've added new measures,
15 which we will be looking at.

16 This is a really interesting slide in
17 that it shows you currently, if you look at all
18 the cases that are in the backlog, it shows you
19 the age of the particular cases that are in the
20 backlog, so anywhere from the newest cases filed
21 that are 1 or 2 months old out to, you know, some
22 that are several dozen months old. And if you

1 think about getting to 10-month first action
2 pendency, that backlog tail that shown there has
3 to be compressed so that cases are not really,
4 really old because you will never get to 10-month
5 first action pendency.

6 So we have a team together led by Jim
7 Dwyer, and we are coming up with a plan to try to
8 work that backlog tail off. And we'll have to
9 really focus on that over the next year, two years
10 in order to even have a hope of making 10-month
11 first action pendency. You just can't have older
12 cases in your backlog to make that kind of
13 pendency. So that will be a critical, critical
14 initiative.

15 Esther?

16 MS. KEPPLINGER: I hate to bring it up,
17 but two questions. In this backlog, are RCEs
18 included?

19 MS. FOCARINO: No.

20 MS. KEPPLINGER: Okay. So that's the
21 one problem --

22 MS. FOCARINO: Right.

1 MS. KEPPLINGER: -- with all of this
2 data because actually even on your backlog
3 numbers, this graph is actually probably up not
4 down because the RCEs aren't included.

5 MS. FOCARINO: You're right. You're
6 right.

7 MS. KEPPLINGER: So it's a little
8 misleading --

9 MS. FOCARINO: Mm-hmm.

10 MS. KEPPLINGER: -- and that's -- and
11 because RCEs are such a significant number of the
12 cases right now, it skews all of your statistics
13 if they're not included.

14 MR. STOLL: I do believe that on the
15 dashboard, the RCEs are included. So it is
16 discernable as to where the RCEs affect the
17 pendency issues.

18 This is a totally different issue
19 though. We're trying to attack that tail,
20 exclusive of the RCEs, as we've decided, as you
21 well know, to move where they actually appear on
22 examiner's docket now to special new instead of

1 amended, but this is a different initiative that's
2 honing in on the tail of the non-RCE filings. But
3 I just want you to be aware that those numbers
4 with RCEs are on the dashboard.

5 MS. KEPPLINGER: Understood, understood.
6 But if somebody just looks at some of the things,
7 they can be misled.

8 MR. STOLL: Well, for definitional
9 purposes, the backlog is, not counting the RCEs,
10 initial case filed before an examiner picks it up
11 for our first office action.

12 MS. KEPPLINGER: But it's serialized
13 filing, utility plant and reissue. Right, right.
14 Okay.

15 MS. FOCARINO: Okay. Let me just go
16 back to this a minute. So these are the ages of
17 the cases. You can see that we have some very old
18 ones, and just for your information, that backlog
19 tail portion, most of those cases reside in tech
20 centers 2600 and 3700. So these cases are not
21 uniformly spread over the course. So there's a
22 very big challenge in trying to leverage resources

1 and perhaps even move work around to be able to
2 attack this tail. Those will be the two key
3 components of the initiative, is looking at where
4 the resources are that might be able to do this
5 work, or if the work has been classified in an
6 area that perhaps could be just as well examined
7 in another area at a high level of quality, then
8 we have to look at those ways of getting this
9 backlog down.

10 We made changes to the count system, as
11 you know. We talked about that in several PPAC
12 meetings, and I think that's going very well. And
13 some of the metrics that we put in place to try to
14 capture the consequences are looking fairly good.
15 I think one of them is perhaps the RCEs, and, yes,
16 the backlog has grown in that area.

17 The performance appraisal plan changes
18 that we implemented, implementation just took
19 place last month, so we'll be looking at the
20 effects of that and hopefully see some good
21 results from that.

22 Our hoteling program. Again, we

1 continue to have high interest in this. It's a
2 big recruitment thing for us in terms of getting
3 -- you know, people definitely like the
4 flexibility that it offers and often times come
5 here with that in mind that they would like to
6 eventually hotel. But that forces us to continue
7 to look for improvements in our ability to
8 collaborate and to train in a virtual environment
9 and to interact with our stakeholders also so that
10 it's transparent. And as we've been discussing,
11 we have some challenges there, but I think we're
12 -- you know, we've got some collaboration tools
13 that we are currently testing that are very robust
14 and I think will really be a big improvement.

15 The hiring for last year. We ended up
16 hiring 276 examiners, and we had a mixture of
17 examiners that had previously worked at the
18 agency, so they were reinstated. We had some
19 retirees that came back. We had almost 100
20 examiners that had experience in IP, and then we
21 had about 133 new examiners that had come in with
22 no experience.

1 So we continue to focus our efforts on
2 hiring sort of a diversified population of
3 employees, and we have our work cut out for us
4 this year because we have a goal of 1,325 new
5 examiners to bring in. So our hiring coordinators
6 are very, very busy.

7 We had a low attrition rate last year.
8 That rate, 3.27 percent, does not reflect retirees
9 and transfers, but it's still very low. I think
10 if you added retirees and transfers in, it's about
11 4.6 percent.

12 MR. ADLER: Peggy, how many people does
13 that 3.27 equal?

14 MS. FOCARINO: I believe it was 280 or
15 something like that.

16 MR. ADLER: About the same as we hired?

17 MS. FOCARINO: Yeah. We didn't quite
18 get to the replacement hiring number. I think it
19 was just about equal. Right.

20 MR. BORSON: Peggy, how do you expect
21 the attrition rate to change as the economy picks
22 up and there may be other opportunities for

1 examiners offsite.

2 MS. FOCARINO: Right. I would think we
3 could expect to see an increase in attrition,
4 particularly in the electrical and computer areas
5 as those industries, you know, need hires. So,
6 you know, hopefully -- we have a lot of
7 initiatives in place that we focused heavily on
8 retention, but certainly the economy is a factor
9 in all of this.

10 And we also have now a new training
11 academy program where we've cut the duration in
12 the academy from 8 months to 4 months. So we have
13 a new program there also that we're monitoring
14 closely to see, and we haven't see the first class
15 graduate from this 4-month training yet. But, you
16 know, we had done a lot of surveying over the last
17 couple of years on the 8-month program, and it was
18 pretty unanimous that both the SPEs and the
19 examiners in the program felt that that was too
20 long of a period of time and that 4 months seemed
21 to be more appropriate. So we'll see how
22 effective that is.

1 MR. BORSON: I have a related question
2 to the economy picking up elsewhere. If the
3 President's pay freeze, increase freeze goes into
4 effect, have you run any projections on what that
5 would do to attrition?

6 MS. FOCARINO: Well, we're on a special
7 pay scale, so it has some impact obviously. But,
8 you know, I think that will definitely not be in
9 our favor, and I think we experienced a decrease
10 in the amount of attrition because I think people
11 perhaps were looking at federal employment on the
12 heels of '09 and thinking that there was -- you
13 know, if you consider overall the compensation
14 package, that it was a pretty good one. But I
15 think it will hurt us. It's just hard to predict
16 how much.

17 Robert has something to add to that.

18 MR. BUDENS: Actually I was going to
19 propose a slightly different view on the attrition
20 numbers if the economy picks up. Admittedly it's
21 an unknown, but historically when we've been able
22 to hold onto examiners for more than about four

1 years or so, we tend to keep them, mainly because
2 they've been away from the, you know, the lab, or
3 the engineering spaces or whatever for long enough
4 that it gets a little more difficult to go get
5 back into that realm.

6 We've gone through a fairly significant
7 lengthy period now where most of the examiners we
8 have, have been on board for several years. We're
9 hiring some, but we haven't hired really very many
10 in the last two years.

11 It's very possible that we may not see
12 as much of an increase in attrition as we might
13 have expected in other periods of time, but what
14 we might see is also maybe an increased difficulty
15 in bringing people on board, especially with the
16 pay freezes coming into play now. And if a hiring
17 freeze comes on board, we're in deep kimchi.

18 But just a different thought. I mean, I
19 think it's all speculation, but it would be
20 interesting to see what happens.

21 MS. FOCARINO: Yeah. Robert is right.
22 If we look at our data, you can see that if

1 examiners are here three years, then the attrition
2 rate goes down to under 3 percent. But, again,
3 it's hard to predict. If we have a lot of newer
4 examiners in here and they haven't, you know,
5 reached that threshold or -- and we are hiring a
6 lot in the computer and electrical area. That's
7 where we -- at least history shows us we seem to
8 be vulnerable in terms of losing examiners with
9 the less experience to the outside.

10 And then just -- Bob mentioned this
11 also, but we're looking at, you know, improving
12 our systems, both the entire system itself. And
13 you'll hear a little bit more about that from our
14 CIO, but also looking at the process and trying to
15 reengineer that.

16 And Jim Dwyer is looking at that with
17 his team and Christian Chase and areas where we
18 have duplicative processes, or we can improve
19 processes so that we're just not automating a
20 system that really is not as efficient as it could
21 be. So there's a lot of effort in that area.

22 So, any questions? Robert?

1 MR. BUDENS: Yeah. Peggy, on the
2 Telework issue, do you have current numbers of how
3 many people we have teleworking that live outside
4 the 50-mile commuting area?

5 And, number two, has the agency, you
6 know -- you know, we've been talking in PPAC for
7 quite a while about the problem of having people
8 come back, and we've always said it would take an
9 act of Congress to change that. Well, now we've
10 had the act of Congress. Has the agency done any
11 projections yet that if we -- you know, if and
12 when we get the details worked out in the joint
13 committee and stuff, how many people, who are
14 currently living within the 50-mile radius, may
15 choose to move out the 50-mile radius?

16 MS. FOCARINO: Yeah. Good questions.
17 The last numbers I saw, there were probably about
18 70 examiners that live in other states outside of
19 the 50-mile radius.

20 And, you know, we've done surveys to ask
21 the examiners, if you could move and not have to
22 come back in, would you? And, of course, a lot of

1 them say they would. How many that translates
2 into when it acts comes down to it? Well, now you
3 can so go ahead. I'm not really sure, but I would
4 expect a significant number would move.

5 But because of this legislation out, I
6 think there's no time to waste to try to figure
7 out how to make sure that we continue to be able
8 to communicate with applicants and with each other
9 and training. The four- month academy program, a
10 lot of the training will be CBT, not only in
11 person, but also you can access the training
12 either via webcast or CBT. So that we are
13 covering all bases in terms of the modes of
14 training, and we just have to start thinking about
15 doing many, many things virtually or at least
16 having the capability. So it's definitely going
17 to be a challenge.

18 MR. BORSON: Okay. Peggy, thank you
19 very much.

20 MR. PINKOS: Can I have --

21 MR. BORSON: Oh, a question. Yes,
22 Stephen.

1 MR. PINKOS: Hi, Peggy. Thanks. Going
2 back to the green tech program, do you know what
3 percentage of those petitions are from non-U.S.
4 Applicants?

5 MS. FOCARINO: I don't. I don't see
6 Jackie Stone here, but she sort of administers the
7 program. We probably -- I don't know if we have
8 that data. Do we, Bob?

9 MR. BAHR: I'm not aware.

10 MS. FOCARINO: Yeah. Yeah. I'm not
11 sure, Stephen, but I'll inquire. And if we can
12 get that data, I'll certainly share it with
13 everyone.

14 MR. PINKOS: And is there sort of
15 published criteria? Like for petitions that are
16 granted, dismissed, and denied, is there --
17 there's a significant number, so I'm not sure you
18 can generalize, you know, the leading basis for
19 dismissal or denial.

20 MR. BAHR: I don't think we have -- I
21 don't think my thing is working.

22 We don't have that, like the various

1 types, but it's all kinds of things. You know, a
2 lot of it is just --

3 MR. BORSON: I'm sorry, Bob. For the
4 benefit of those that are not here, maybe pick
5 another station with a -- oh, there you go. That
6 seems to be on now.

7 MR. STOLL: It's on, Bob.

8 MR. BAHR: Oh, wow. It's on now. We
9 don't have it published. Petitions get turned
10 down for many different reasons, and the older
11 ones, when we had a filing date requirement,
12 sometimes that would be missed. Sometimes it was
13 just, you know, statement is not there, but it's a
14 variety of reasons.

15 MS. KEPPLINGER: I can speak from
16 personal experience. I think initially also they
17 had requirements --

18 MR. BAHR: Right.

19 MS. KEPPLINGER: -- as to subclass. So
20 some of them were dismissed because they -- or
21 denied because it wasn't -- they weren't
22 classified in the correct subclass.

1 Some of my clients, we suggested other
2 subclasses, and they accepted them into the
3 program.

4 They don't have those requirements now,
5 so I suspect the numbers have changed since they
6 changed -- since they amended the criteria for
7 entering it.

8 MR. PINKOS: So what's the general
9 definition of a type of application that qualifies
10 as a Green Tech?

11 MR. BAHR: Well, it would be an
12 invention that helps the environment, that, you
13 know, contributes substantially toward improving
14 the environment, or cuts down on greenhouse gases,
15 or, you know, improves energy, you know, more
16 energy effective. So those are the primary
17 reasons. Or energy efficiency and new types of
18 renewable energies.

19 MS. KEPPLINGER: If you look -- there's
20 a federal register notice --

21 MR. BAHR: Yeah.

22 MS. KEPPLINGER: -- that lists a

1 significant number of things. I mean, it can be
2 scrubbers in, you know, smokestacks, all sorts of
3 things.

4 MR. BORSON: Okay. Are there any
5 further questions from the floor?

6 MR. ADLER: I mean, it's obvious -- I
7 mean, it's very good that the backlog is starting
8 to come down because you've focused on trying to
9 get those older cases out of the system, but the
10 pendency numbers to get to 10 and 20 from where
11 they are now still requires a lot of reengineering
12 or changes to get anywhere near there in the time
13 frame. And I know that the QIR effort and Jim's
14 reengineering work is some of it, and we'll hear,
15 I guess, from that. But there really isn't much
16 change right now in the pendency numbers.

17 How we going to -- I mean, do you have
18 any thoughts about how we're going to get from
19 where we are to where we need to be?

20 MS. FOCARINO: Well, as I said, Jim
21 Dwyer is really spending a lot of time on this.

22 Bu, you know, I think, Mark, to your

1 question, I mean, the backlog is one thing, and
2 you can work off a significant number of cases in
3 the backlog. But the age of those cases runs a
4 wide spectrum. So they're kind of two different
5 things in a way.

6 So to get pendency to 10 months, you
7 really have to focus on the age of the cases that
8 you're doing in addition to the amount of cases
9 that you're doing. So, you know, we're looking at
10 a plan that would focus 80 percent of our
11 firepower in that backlog tail, and it has to be
12 strategic like that because if you just focus on a
13 certain volume of cases being worked off, you're
14 not going to get to the 10 months.

15 But we --

16 MR. PINKOS: I understand. But even if
17 we look at the tail and you reduce that tail.

18 MR. BORSON: Could you turn your
19 microphone on, Mark?

20 SPEAKER: The thing is, is they're
21 limited so they don't all open up.

22 MS. FOCARINO: Okay.

1 and other initiatives, the thought was that we
2 increase our throughput so that we start to work
3 off more and more of the backlog. And, again, of
4 course that's very much budget dependent so that
5 we can get those 1,300.

6 But our actual, even though right now
7 we're in that 700,000 range of backlog, we've
8 determined an ideal backlog, which is what the
9 expectations would be at 10 months, and that's in
10 that 350,000 to 370,000. So if you look at that
11 as our working inventory, the rest of that is the
12 backlog.

13 So from our models we determine what
14 resources we need to get that down and making some
15 assumptions on filing rights and so forth. So
16 that's one issue.

17 The second issue is what Peggy was
18 talking about as the tail. Currently, if
19 everything was homogenous that an examiner could
20 pick up cases, we wouldn't have that distribution
21 tail. It would be basically everything would be
22 right around that 25 months pendency, which is our

1 average pendency now, but it isn't.

2 Well, a lot of what's in the tail area
3 is electrical engineering work and specific
4 electrical engineering work that needs to get
5 done.

6 We know we've been using hiring models.
7 We've been trying to hire in that area, but,
8 again, there's a point of where you maximize your
9 abilities to train a certain type of technology
10 and to work off the cases in that specific area.

11 So our thought was with looking at the
12 tail is what other methods can we do beyond just
13 hiring because hiring would be very difficult to
14 hire in that specific area and train in that area,
15 is to look to other ways in which to move that
16 work. So we put a concept of putting an incentive
17 in there and to look at classification issues, as
18 Peggy was saying, because sometimes there is work
19 that could be shifted easily. There is other work
20 in which we know we're probably going to have to
21 do some retraining of the examiners.

22 MR. BORSON: Yes. Scott, please.

1 MR. KIEFF: Maybe just to broaden this
2 out. I mean, I think the different comments that
3 have been made so far reflect different guesses
4 about how empirically all of this will play out,
5 and we might or might not convince each other.

6 But can I ask a totally different
7 question, which is much broader, and I don't know
8 whether in particular Bob or Ray wants to weigh in
9 on it. But the electrical area seems to be the
10 area where almost all of our public patent reform
11 debates, policy debates, and Supreme Court
12 activity have been about how patents are just bad.
13 They're trivial. They are clogging. The ones
14 that are at their best are valid and infringed but
15 tiny. They're little paperclips that weigh down
16 every business transaction.

17 And so one macro -- I'll just wait until
18 the question is done being asked and then -- so
19 one macro question is, if society tells us these
20 patents either don't matter, or are bad, or matter
21 and are good but in really small ways, does that
22 tell us anything about how we ought to be thinking

1 laws say. We do have a policy function where we,
2 you know, recommend to the Secretary of Commerce
3 policies, and in doing so we are actually looking
4 at some of what you're saying.

5 I think, for example, if you look at our
6 three- track proposal, it allows applicant to pick
7 the rate at which they want to actually prosecute
8 their application. So those that really aren't
9 interested wanting to move it quickly can park it
10 in track 3, and those wanting an accelerated
11 examination in 12 months soup to nuts can go
12 through track 1.

13 So that kind of does it a little bit.
14 It's moving in the direction you're talking about,
15 and it's not subject matter specific because there
16 are folks in the pharmaceutical area that want to
17 accelerate quickly, and there are applicants in
18 the electrical area that don't. So, I mean, it
19 doesn't violate any of our treaties, and I think
20 it really is important in that it allows folks to
21 decide how they intend to prosecute their
22 application. And it allows them to make the

1 determination as to whether they value -- so that
2 they want a quick application through the system
3 or not.

4 MR. KIEFF: Yeah. And that makes great
5 sense, and I don't want to -- I mean, I don't
6 think we can solve these problems here, and I
7 don't think anything we're doing is bad or wrong.
8 I just -- even that example though, seems to run
9 directly contrary to the major current in the
10 policy debate, which is I'm an Intel or, you know,
11 some big -- and it's precisely because you
12 applicants out there are choosing to take the new
13 submarine track, right. The old submarine track
14 was -- well, we know that. That's gone.

15 Prosecution latches has dealt with it. But now
16 it's you're just --

17 There's this big pool of applications
18 that, had they been brought to our attention in
19 standard setting meetings, had they been surfaced,
20 you know, we might not have built our Fab for \$5
21 billion. But, golly gee, that's what is holding
22 us up.

1 So, again, we can't solve all of it, but
2 I'm just -- I'm trying to figure out how do we
3 take these very real, very heartfelt, hardheaded,
4 good thinking, working that is going on here and
5 marble that into conversations with the Solicitor
6 General's Office so that when the United States
7 Government is talking to the Supreme Court, the
8 Supreme Court is getting an accurate understanding
9 of all the things you're doing. And when people
10 are up on the Hill flogging you, I mean -- you
11 know, these debates are caricature debates, right?

12 So the question is how do we -- how do
13 we make them more accurate.

14 MR. CHEN: Scott, hi. My first reaction
15 was -- to your question, which is a fair one
16 because I think there is a sentiment out there
17 where people are, within a certain industry, have
18 some skepticism about patents. My first reaction
19 was, oh, Scott, I thought you were the pro-patent
20 guy. I don't understand, but I'm just kidding
21 about that.

22 MR. KIEFF: I'm not in favor of that --

1 MR. CHEN: No. I understand.

2 MR. KIEFF: -- but I recognize they're
3 out there.

4 MR. CHEN: The second reaction I have is
5 I think that PTO is doing a lot of things to try
6 to do everything it can to improve quality under
7 the circumstances we're in.

8 Bob is absolutely right. We have to
9 administer the laws that have been given to us by
10 Congress and then as interpreted by the Federal
11 Circuit.

12 And to that end, we've been doing our
13 share of examination guidelines. This past
14 summer, we updated the KSR guidelines, right,
15 because we're doing everything we can to give as
16 much information and instruction to the patent
17 examiners to understand what is, in many ways,
18 kind of a difficult area to make that kind of
19 judgment. So to give them as many road maps as
20 possible with as many examples as possible can
21 only help the process.

22 I think, secondly, we're, you know,

1 really considering doing what we can to remind
2 examiners about all aspects of Section 112. And I
3 don't know if that's already been discussed here,
4 but that's something we're also looking at very
5 deeply.

6 So there are a number of things we're --
7 we're doing here to try to improve the process.
8 We have to be careful, of course, to not devote
9 attention to one specific industry. That's not
10 our -- never been our approach. Everyone agrees
11 that shouldn't necessarily be our approach.

12 But you are right that -- and maybe I'll
13 get into this a little more when I give my little
14 presentation, but it's not just about us in this
15 room figuring out what patent law ought to be,
16 right. There is a lot of generalists out there
17 that have become all the more interested in patent
18 law, and so it's up to us to do the best we can to
19 effectively communicate.

20 MR. STOLL: Mr. Chairman, I would
21 respectfully request that we take a 10-minute
22 break. I think we're a little bit ahead of

1 schedule, and my understanding from my friends on
2 the outside is that they're not hearing any of
3 this great discussion. And so I think we need to
4 reboot, and I think that takes about 10 minutes.
5 And I think this would be a perfect time.

6 (Recess)

7 MR. MATTEO: Okay. Please, and
8 actually, Ben, if you can indulge me, I could tell
9 the operations update was ongoing. I couldn't
10 hear anything that was being said, so I don't know
11 if we managed to wrap that up, or if we need to --

12 MR. BORSON: Yes. That's been wrapped
13 up. So next on our agenda is Robert Bahr.

14 MR. MATTEO: Very good. Then, Robert,
15 if you would, please. Robert, associate
16 commissioner for patents examinations and policy.
17 If you would start our quality initiative update
18 for us, please.

19 MR. BAHR: Okay. Thank you. First
20 thing, I don't have a set of slides, but I do have
21 a handout for you. It's basically an Inspector
22 General's report from the Department of Commerce.

1 I didn't want this to surprise you since we had
2 been working so long on the quality team.

3 The Inspector General had actually also
4 been studying the quality issues. They had been
5 charged in mid 2008 with doing a study of our
6 quality assurance practices, and they conducted
7 this study for about a year, year and a half. And
8 they've issued this memo or report on it, and I
9 just wanted to go over it with you.

10 They had a number of recommendations.
11 The first recommendation is that they basically
12 noted or felt that the technology centers lacked
13 standard policies and procedures for quality
14 assurance reviews. The concern was the lack of
15 procedures for resolving errors reported by the
16 Office of Patent Quality Assurance, or OPQA, and
17 for reviewing the referrals and treating them
18 within the AIPA time frames, and for having
19 consistent practices for charging examiners with
20 errors, and for establishing clear criteria for
21 closer reviews of individual patent cases.

22 First I should explain that, you know,

1 their first comment to us was that these OPQA
2 reviews are such that most of these patents issue,
3 and they have patent term adjustments. And we
4 pointed out that, gee, you know, most patents we
5 issue today have patent term adjustments because
6 of our backlog, and the problem is not the OPQA
7 review it's the backlog.

8 And then they noted that back in 2008
9 and earlier that many of the reviews done by OPQA
10 took longer than the seven months and resulted in
11 patent term adjustment for failing to meet the
12 4-month issue deadline. And that was correct;
13 however, my predecessor, Drew Hurtzfeld changed
14 the procedure back in 2009 to make it much more
15 streamline, and today roughly 2 percent of all
16 patents get patent term adjustment because we miss
17 the 4-month-to-issue time frame. And, actually,
18 if you look at only the cases that went through
19 OPQA, only 1 percent of them got patent term
20 adjustment for missing the 4-month-to-issue time
21 frame.

22 And the way it works is that the OPQA

1 reviews are concluded on average within 30 days of
2 the date we mail the Notice of Allowance, and the
3 issue fee is not even paid on average within 70
4 days of the date you pay the Notice of Allowance
5 -- the applicant pays the issue fee in response to
6 the Notice of Allowance. So the bottom line is
7 that the OPQA process, as it runs today, doesn't
8 result in us missing the 4-month-to-issue time
9 frame in the AIPA.

10 So with respect to that comment, I think
11 we're already there. Unfortunately, when we tried
12 to explain this to the IG, they said, "Well, we're
13 only reviewing 2008 and earlier." So they didn't
14 take into account any changes that we made. So
15 that issue has been addressed.

16 Now with respect to clear criteria for
17 reviews of individual patent cases, what they are
18 referring to is the second pair of eyes programs,
19 and we have, in essence, discontinued those. So
20 there's no change that would need to be made with
21 respect to that.

22 Their next issue is the consistent

1 practices for charging examiners with errors.
2 What they said, and I'll move to the next line, is
3 that the OPQA in the Office of Patent Quality
4 Assurance lacks a substantive role in the final
5 disposition of these error cases. And what they
6 felt is that OPQA should decide whether or not an
7 examiner is charged with an error, and that OPQA
8 should be in charge of the final disposition of
9 the application, namely follow it through, you
10 know, to make sure that the error gets corrected.

11 Now we disagreed with their conclusion
12 there, as we feel that charging examiners with
13 errors for purposes of a performance appraisal
14 plan, it's not a quality assurance program. It's
15 not part of that. It's a management function, and
16 we've purposefully kept the OPQA process separate
17 from the management process so there's no -- you
18 don't get the same people -- people reviewing
19 their own work, you know, the work that they're
20 responsible for.

21 So we have purposefully kept OPQA
22 separate from the management of the technology

1 centers, and we don't want to combine them in the
2 way that the Inspector General suggests that we
3 do. So we felt that it would be better for the TC
4 management to be responsible for deciding whether
5 or not to charge examiners with errors and also
6 for making sure that the error gets fixed, you
7 know, if it's a patentability error before a case
8 is finally issued.

9 Now they did say that we should be more
10 consistent about whether to charge examiners with
11 errors, and we agree with that. You know,
12 consistency is always a good thing, but we did not
13 feel that it would be appropriate to have that be
14 an Office of Patient Quality Assurance function.

15 Then they noticed that the Office of
16 Patient Quality Assurance lacks a formal training
17 program, and they're somewhat correct in that we
18 probably don't document it as well as we should.
19 But you have to step back and look at the context
20 of this. We don't take a group of new examiners
21 and send one off to Patent Quality Assurance.
22 Patent Quality Assurance is not an entry level

1 position. We take experienced examiners. So it's
2 not -- we're not taking people who we really need
3 to give specialized training on examination
4 practices and on patent case law. You know,
5 they're ones who already know it.

6 So from that perspective, we give the
7 OPQA, you know, quality assurance specialists, the
8 same training that we give examiners for matters
9 of patent examination and on patent law. We do
10 also give the quality assurance specialists
11 training on how to fill out the forms and, you
12 know, how to conduct a review; but I guess we
13 probably should document that better so that, you
14 know, the next time this comes up, we can point
15 out, you know, that we do give this training. But
16 in perspective, we've hired four quality assurance
17 specialists in the last four years. So, you know,
18 we hire one a year. So it is not something you
19 set up a patent training class for because it's
20 just not practical.

21 And, finally, the other recommendation,
22 which is a little disconcerting is that they found

1 instances of improper records, dispositions.

2 Now when they brought this up, we took
3 -- or at least I personally took a little issue
4 with them including it in this quality report
5 because the improper records disposition was, in
6 their view, situations where cases were coming up
7 on what we call our signatory review program,
8 where a supervisor was reviewing cases of an
9 examiner either because it was decided whether or
10 not they were going to get a promotion, or the
11 decision was whether or not to take a personnel
12 action against them.

13 Now neither of those situations have
14 anything to do with our patent quality assurance
15 program, but it got lumped into this because
16 sometimes our technology center quality assurance
17 specialists do these functions. And so they felt
18 that since that was the case, they would include
19 it in this report. I guess if our TC quality
20 assurance specialist J-walked, they'd include that
21 in this report.

22 But, you know, what they are complaining

1 about is, in essence, that when a TC personnel,
2 you know, a manager, would review a case, they
3 would make notes on things they felt was right or
4 things they felt was wrong, and then at the end of
5 the day they'd meet with other managers. And it
6 was decided whether to write it up officially or
7 not to write it up officially, and the practice
8 was to basically discard these notes when they
9 were no longer needed; and those are the notes
10 that it was felt we need to keep. And the reason
11 we need to keep it is there is some litigation
12 against the Department of Commerce that is going
13 on, I think for over 10 years, and there's a
14 litigation hold relating to that litigation. And
15 because of that litigation hold, we need to keep
16 all records that -- you know, all documents that
17 relate to personnel actions in essence, and you
18 can correct me if I'm wrong.

19 And so it's a fairly extensive volume of
20 documents that we need to keep, and that is what
21 we ran afoul of. It's not documents being thrown
22 away that we have to release under FOIA. It's

1 documents that we have to keep because of this
2 litigation hold.

3 So that's what you're seeing in this
4 report. I didn't know if anybody had any
5 questions about it.

6 MR. BORSON: Yeah, Bob. Thank you very
7 much. I wanted to ask one sort of question
8 related to the correction of errors that are
9 identified through the quality metrics or the
10 metrics, however you want to say it.

11 MR. BAHR: Yes.

12 MR. BORSON: One of the comments in this
13 report is that the OPQA does not seem to be --
14 there is sort of disconnect between the TCs and
15 the OPQA, and that if there is an indentified
16 error in a TC, that it is not necessarily
17 corrected. And so I wanted to ask sort of two
18 related issues. One of them is about this report
19 and how you think the OPQA can more effectively
20 address errors in the TCs and have them corrected.

21 And a slightly broader question is who
22 should be responsible for initiating correction of

1 those errors? We've had conversations in prior
2 PPAC meetings about whether this is something that
3 should be left exclusively to applicant to come
4 in, and to petition, and to sue, et cetera, or
5 whether an identified error in a TC should be
6 corrected sua sponte by the office.

7 MR. BAHR: I should point out that these
8 errors were ones that an applicant wouldn't be
9 motivated to correct. These were where OPQ
10 identified a case with an un-patentable claim and
11 sent it back to the TC. And the TC should have
12 reopened to, you know, to make the appropriate
13 rejection.

14 Now I don't want to make it sound like
15 it happens routinely. It happened a couple of
16 times. There were a few instances they
17 identified. I don't know exactly how many, but
18 I'm told it's more than one. But it's certainly
19 not the norm. The norm is for the TC to withdraw
20 the case from issue and reopen the prosecution,
21 but apparently on a couple of occasions the cases
22 were not corrected; and we have to put in a check

1 to stop that.

2 MR. BORSON: Yeah. That I understand
3 and so that's fine.

4 MR. BAHR: That's what the report was.

5 MR. BORSON: Okay. That's -- so that's
6 specifically what the report was addressing --

7 MR. BAHR: Uh-huh.

8 MR. BORSON: -- the issue of these false
9 positive errors, a patent that issued with a claim
10 that should not have issued. Then maybe if I
11 could generalize it and go back to what about
12 errors that were made that resulted in the denial
13 of a valid claim.

14 MR. BAHR: Well, the problem then, or
15 the situation there is we basically correct it
16 when we next take the case up for action. So I
17 guess, yes, it requires a response by the
18 applicant.

19 MR. BORSON: Mm-hmm.

20 MR. BAHR: You have to understand that
21 normally an error, it's not that we rejected the
22 application. You know, we issued a rejection

1 where we should have issued a Notice of Allowance.
2 Normally what the issue is, is that one claim or a
3 couple of claims were rejected on a basis which
4 they should not have been, or the rejection was
5 inadequate.

6 So it's not a matter of that a case was
7 rejected where it should have been allowed. It's
8 a case was rejected where it should have been
9 rejected for a different reason or some claim
10 should have been allowed, and that is why we don't
11 step in and, you know, issue a new office action
12 two months later while the applicant is preparing
13 a response.

14 MR. BORSON: Okay. Thank you. Robert?

15 MR. BUDENS: Sorry, Bob. This one can't
16 -- you know, this report can't -- I've got to have
17 some comments on this one.

18 First of all, as somebody who was shall
19 we say rather actively involved with the Inspector
20 General in some of the aspects of this report, the
21 first thing I would say is I'm not sure I agree
22 with your analysis that this was directed at just

1 OPQA. I think that the original charges to the
2 Inspector General from the members of Congress was
3 to look at the, you know, quality assurance of the
4 examination process. So I think it goes --

5 MR. BAHR: Robert, I just want to make
6 clear. I don't disagree with you. I agree with
7 you on that, and that's why they did that. I was
8 just clarifying for the members of the PPAC since
9 they were working on a patent, to make it clear
10 that they're not -- that some of these things
11 didn't relate to how we measure, you know, come at
12 our quality measures.

13 MR. BUDENS: Not in the sense of OPQA.

14 MR. BAHR: Right.

15 MR. BUDENS: I mean, it could measure --
16 it could look at it from what's going on at a tech
17 center level stuff, and I think it was intended to
18 do that.

19 The other thing I wanted to take issue
20 with was the issue of the destruction of the
21 records because I don't think that that issue is
22 also just limited to, and limited because of the,

1 you know, lengthy pending litigation. I think
2 that they were determining that things like
3 signatory authority records are part of, you know,
4 promotion process and could become part of a
5 litigation process, and, therefore, needed to be
6 kept for at least some period of time; and the
7 agency's own, I believe, comprehensive records
8 database or whatever said they should have been
9 kept for a while.

10 And I think we're going to be -- you
11 know, we're going to be investigating that, guys,
12 at some time very soon because I think that those
13 records need to be available to examiners, you
14 know, to see what comments are made when, you know
15 -- on their signatory reviews and stuff like that,
16 so that it's easier for an employee to determine
17 if they were treated fairly and whether there's
18 issues that need to be taken up.

19 So I'm just letting you know that I'm
20 not sure I, you know, agree with your total
21 assessment of this report here.

22 MS. KEPPLINGER: Just a followup. It's

1 more in the line of a suggestion really, and I
2 spoke to Peggy for a second. But followup to
3 Ben's point about situations where an application
4 is rejected, and there may not necessarily be an
5 assessment that there was an error by a supervisor
6 or whatever.

7 But my experience is that the SPEs are
8 uneven in terms of you could have an interview
9 with an examiner. You could have the interview
10 with the SPE. Some SPEs will push the examiner to
11 take the legally correct position, some will not.
12 And so what happens is you end up having to have
13 interview after interview to get to someone who
14 will take an action, and in some cases it's been a
15 cross for me; and that's worked very well.

16 But I would suggest that you have more
17 mechanisms in place for getting this kind of
18 resolution easier and faster because I had one
19 case where it took me five interviews. All the
20 evidence had been in the case from the very
21 beginning, before first action, and it was
22 clearly, you know, an unexpected results, all

1 sorts of evidence.

2 And so maybe in the pre-appeal brief
3 conference you could have the option for a
4 personal interview with different people that have
5 looked at the case previously so that there is
6 more interaction. And I would venture to guess
7 that this is one mechanism for helping you to
8 reduce your pendency because the faster you can
9 get resolution and the more you can get people not
10 to need to file an RCE, the better off you're
11 going to be with reducing the backlog and the
12 pendency.

13 MR. BORSON: Yeah. There used to be a
14 procedure involving technology specialists whose
15 role was to do that, and I don't know what's
16 happened to that or whether that's been wrapped up
17 into the pre-appeal.

18 Maybe Bob or Peggy, you'd like to
19 comment on that?

20 MR. STOLL: I think Bob Bahr has been
21 working actively in that area.

22 MR. BAHR: We're trying to come up with

1 some proposed pre-appeal brief changes that, you
2 know, expand on the current pre-appeal brief
3 opportunities to try and get resolution.

4 I think, Esther, you probably would want
5 to get resolution even earlier. Is that correct?

6 MS. KEPPLINGER: Yeah.

7 MR. BAHR: Yes.

8 MR. BORSON: Okay. Well, if there are
9 no further questions, Damon, you want to move
10 ahead?

11 MR. MATTEO: Hello?

12 MR. BORSON: Hi, Damon. Yes. Bob Bahr
13 has finished. Oh, maybe not.

14 MR. BAHR: I had two more things. First
15 is that, with respect to the quality metrics, I
16 wanted to point out that our ultimate metric was a
17 composite score with respect to the seven metrics,
18 but it was felt that maybe for each metric we
19 should have an individual target. But we didn't
20 exactly want to have a specific target where if
21 you fell a little bit below it, you know, it was
22 not sufficiently good.

1 So what we have done is we are going to
2 set up what I'm going to call ranges for each of
3 the seven individual ones. So if you hit 96.3
4 instead of 96.4, no one considers that failure as
5 long as you're within a reasonable range for each
6 of the individual metrics. And I --

7 MR. STOLL: Bob, could I --

8 MR. BAHR: Sure.

9 MR. STOLL: I hear we're having a slight
10 technical difficulty. It would be very helpful if
11 anybody who speaks into the microphone speak
12 directly into their microphone because it drops
13 off on those people listening on phones.

14 MR. BAHR: Sorry. I'll try to get
15 better. And the second issue is with respect to
16 quality measures. We are in the process of
17 working on Section 112 guidelines for examiners to
18 try and have more consistent application of, you
19 know, the requirements for definiteness, written
20 description enablement.

21 And that's all for me.

22 MR. BORSON: Okay. Thank you. Damon?

1 MR. MATTEO: Thank you very much,
2 Robert. What I'd like to do now is introduce
3 Raymond Chen, solicitor of the USPTO, who will
4 give us a brief update on patent litigation.

5 MR. CHEN: Thank you. Yes. I'm Raymond
6 Chen, and in the Solicitor's Office we continue to
7 remain extraordinarily busy with all forms of
8 patent litigation, not just appeals from patent
9 board decisions but also evaluating and filing
10 amicus briefs, whether at the federal circuit or
11 at the Supreme Court.

12 Just in terms of filing -- people filing
13 appeals from patent board decisions, in the past
14 decade, typically it ranges somewhere between 30
15 to 40 notices of appeals from patent board
16 decisions. Then last year in 2009, the number was
17 55 from the patent board. And now this past year
18 in 2010, it was up to 68.

19 So we're seeing a line of growth that
20 sort of matches more or less the growth of patent
21 board production of patent board decisions. It
22 doesn't correlate exactly, but I would say it's

1 something on the order of 1 percent of all patent
2 board decisions ultimately get appealed up to the
3 federal circuit; and that's where the solicitor's
4 office steps in. So we're seeing that growth, and
5 we've had to do some -- we've finally been able to
6 do some backfilling of attorney vacancies. So now
7 we're up to full strength.

8 As for some of these other more high
9 profile litigations, I wanted to quickly give a
10 report on the Therasense oral argument as well as
11 well as briefly touch on some pending Supreme
12 Court cases.

13 As for Therasense, that's the
14 inequitable conduct en banc case at the federal
15 circuit, and that doctrine just so intimately
16 affects the applicant/examiner relationship here
17 at the PTO. We were fortunate that we were able
18 to file an amicus brief in that case and then also
19 get 10 minutes of oral argument time to present
20 our views on what is really the best way to
21 recalibrate that doctrine.

22 Just very briefly, we were urging for a

1 specific intent to deceive, so we were expecting
2 some kind of true egregious culpable conduct on
3 the part of the applicant before you were to
4 assign inequitable conduct liability in that
5 instance. The should-have-known standard that
6 you've seen in some federal circuit opinions to us
7 appears to encompass negligent behavior, and
8 that's just in our estimation too low and not
9 appropriate to knock down otherwise valid patents
10 just on that score alone.

11 Also when it comes to what is the proper
12 standard for materiality, the PTO is looking to
13 its current Rule 56, which has been on the books
14 here at the PTO for 18 years now where we amended
15 what our prior version of Rule 56, which was the
16 reasonable examiner's standard that the federal
17 circuit has essentially adopted as the still
18 existing materiality standard.

19 In our view, so much of the outcry about
20 this doctrine is exactly what this agency heard 20
21 years ago and attempted to try to ameliorate when
22 it amended Rule 56 to be either the kinds of

1 information that actually renders a claim prima
2 facie un-patentable or is otherwise a kind of
3 information that somehow undermines the position
4 of patentability that an applicant took before an
5 examiner. In that sense, in our view, that is the
6 two kinds of information that a reasonable
7 examiner would consider important in considering a
8 patentability determination.

9 And so what the 1992 rule did was make
10 more definite an objective and otherwise more
11 vague, loose standard that we had enacted in 1977
12 and then the federal circuit soon adopted in the
13 early 1980s.

14 So just getting back to the oral
15 argument, it was interesting in the sense that,
16 for those of you who didn't hear it, much of that
17 argument, which went on for over an hour, seemed
18 to be devoted to the materiality standard. There
19 didn't seem to be that much discussion from the
20 bench on the intent to deceive element, and that's
21 not surprising probably because the overwhelming
22 vast majority, essentially -- uniformly across the

1 board, all the amicus briefs were advocating a
2 specific intent to deceive and urging the court to
3 eliminate some of these other articulations of the
4 intent standard that would include forms of
5 negligence.

6 And so what seemed to be the debate was
7 should the court move all the way to a but-for
8 causation, which is much further to the other side
9 of the spectrum than our current Rule 56, let
10 alone our old Rule 56, which the federal circuit
11 currently follows, but instead would be
12 essentially only those kinds of information that
13 would render a claim un-patentable or invalid.
14 That's the only kinds of information that would
15 warrant an inequitable conduct finding so long as
16 that person had an intent to deceive, to withhold
17 it, or misrepresent it.

18 So that is the basic gist of what's
19 going on. I would expect that an opinion would
20 come out in a few months. I won't predict what
21 will happen, but it was interesting to see that
22 the focus was either a but-for standard or the

1 PTOs current Rule 56.

2 Another issue that's important to the
3 PTO is the recent en banc decision by the federal
4 circuit called Hyatt v. Kappos. The en banc court
5 held that essentially when an applicant seeks
6 review of a patent board decision, an adverse
7 patent board decision, in District Court under 35
8 USC Section 145, the applicant has an unfettered
9 right to introduce any and all forms of evidence
10 he or she wishes, even the kinds of evidence that
11 could have been presented to the examiner in the
12 first instance but for whatever reason the
13 applicant elected not to give it to the examiner,
14 and so in so doing the applicant has the right to
15 have a completely de novo proceeding in front of a
16 D.C. District Court judge.

17 In our view, that's not only bad law,
18 but it's bad policy, bad government to completely
19 circumvent the administrative process by
20 permitting applicants to essentially go right
21 around the entire agency process. We're the body
22 that is statutorily authorized to examine and

1 issue patents, and now this outcome has permitted
2 a different outcome where essentially a District
3 Court gets the chance on its own to evaluate
4 patentability based on evidence that an applicant
5 has the opportunity to withhold from an examiner.

6 We're considering filing a cert
7 petition. We're seriously considering that
8 question along with the Department of Justice.
9 Cert petition would be due February 7th.

10 In terms of a couple other Supreme Court
11 cases in the patent realm, one is called Global
12 Tech v. SEB. Very quickly, that's the question
13 about what is the state of mind to be liable for
14 inducing another person to infringe a patent under
15 35 USC Section 271(b).

16 It doesn't specifically require some
17 knowledge component in 271(b), but the law for a
18 while, within the federal circuit, has been
19 understood to require some knowledge and intent to
20 actually induce someone knowingly to infringe a
21 patent rather than just inducing a certain type of
22 behavior that unbeknownst to the parties

1 ultimately infringes the patent.

2 The government is in discussions right
3 now on whether to file an amicus brief, and the
4 PTO, of course, is actively involved in that. I
5 can't tell you what the outcome is going to be,
6 but we're considering that. And an amicus brief
7 could be filed either as early as Monday, December
8 6th, or it could be filed as late as January 3rd.

9 The other more recent Supreme Court cert
10 grant is the Microsoft v. i4i case. This is
11 perhaps most significant of all these cases that
12 I've been talking about because it goes toward
13 what should be the standard of proof for
14 overturning a patent on validity grounds. Right
15 now the law has always been under the federal
16 circuit that you have to prove that invalidity by
17 clear and convincing evidence. Microsoft has
18 filed a cert petition urging the Supreme Court to
19 take that down to a mere preponderance of the
20 evidence standard, which would very potentially do
21 a dramatic devaluation of patents across the board
22 on that score.

1 I think Microsoft's second backup
2 question to the Supreme Court is what about
3 evidence that the examiner never considered in the
4 first instance and is now being relied upon to
5 challenge the validity of the patent in District
6 Court. Should there be a varied standard of proof
7 there? Maybe for evidence that the examiner first
8 considered, it's clear and convincing evidence,
9 but if it's brand new evidence, then maybe that
10 should be just a preponderance of the evidence
11 standard.

12 We're going to be actively involved in
13 that one again. My sense is there are other
14 components of the government that are also
15 interested in this issue, so there's going to be a
16 lot of conversations going forward. What I would
17 say is there is an interesting Supreme Court
18 decision in 1932 called RCA, that if you're
19 interested in learning about the origins of the
20 clear and convincing standard, that one is worth
21 looking at.

22 And there is a federal circuit decision

1 by Judge Rich called American Hoist in 1983 where
2 the federal circuit, as a brand new court, was
3 trying to make all kinds of decisions about
4 various standards, and in that case the federal
5 circuit took its best shot at explaining, in its
6 view, why it should be clear and convincing
7 evidence. But at the same time, it was a bit of a
8 nuance position in the sense that the court was
9 saying for evidence that was never considered by
10 the PTO in the first instance, perhaps it can be
11 easier to meet that clear and convincing evidence
12 standard in validating a patent.

13 The last thing I want to bring up is
14 there is a mandamus petition at the federal
15 circuit pending. It's called In re BP
16 Pharmaceuticals where BP, as a defendant in a
17 false patent marking civil action, has sought to
18 dismiss that on the grounds that it didn't have an
19 intent to deceive the public with its inaccurate
20 marking of patent numbers on its products. And
21 that motion to dismiss was denied by the District
22 Court.

1 BP filed a Mandamus petition urging the
2 federal circuit to adopt a much more rigorous
3 pleading requirement for pleading the deceptive
4 intent element of false marking claims and to
5 adopt basically a rule 9(b) -- Federal Rules of
6 Civil Procedure 9(b) standard, which really
7 requires a more detailed pleading of why BP and
8 other companies really intended to deceive by
9 inaccurately marking.

10 That was something that the United
11 States Government, the Department of Justice filed
12 an amicus brief in that case urging the federal
13 circuit to adopt Rule 9(b) and the heightened
14 pleading requirement for false marking claims
15 because there is a deception requirement in the
16 statute, and deception should follow what the
17 federal circuit has done in inequitable conduct.
18 Where last year, in a decision called Exorgen, it
19 said to plead inequitable conduct, you have to
20 meet the heightened pleading requirements. So,
21 likewise, the federal circuit should do the same
22 for false patent marking, and the PTO was involved

1 in that amicus brief.

2 Hopefully that was a coherent summary of
3 some of these cases that we're working on. If
4 there is any questions, I'm happy to take them
5 now.

6 MR. BORSON: We are a bit over time on
7 our schedule, and what I would propose is that if
8 there is some urgent questions now, we address
9 them quickly if we can and then take a break for
10 lunch.

11 Yeah. We're scheduled to return at
12 12:20. It's now 12:06.

13 Damon, do you have any comment about
14 that?

15 MR. MATTEO: No. Thank you.

16 MR. BORSON: Yes. Hi, Damon.

17 MR. MATTEO: Apologies for the technical
18 problems. I was going to suggest that we break
19 now and reconvene at 12:30.

20 MR. BORSON: That's fine. We'll break
21 now --

22 MR. MATTEO: So there is adequate time

1 to --

2 MR. BORSON: -- and come back at 12:30.

3 MR. MATTEO: -- get and make their way
4 through lunch.

5 (Whereupon, at 12:08, a luncheon
6 recess was taken.)

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1 behind this initiative.

2 We started working really closely with
3 the patents organization to find out what we could
4 improve. During process mapping we discovered the
5 patent appeals center conducted a formalities
6 review and then forwarded the brief to the patent
7 examiner, and they conducted a formalities review.
8 Then our board's clerical staff would conduct a
9 formalities review and then forward the brief on
10 to the judges to decide the appeal on the merits,
11 which is where we want to get.

12 Identification of all these steps
13 resulted in an opportunity to evaluate what was
14 redundant and what we could do to improve. We
15 looked at a lot of different options, but everyone
16 pretty much settled on giving the board the
17 ability to review the briefs was the best option.
18 And the rationale behind that is pretty apparent.
19 The rules for brief compliance are kind of there
20 to get the brief and the appeal in front of the
21 judges at the board, and the board would be in the
22 best position to understand if the briefs could be

1 decided by the judges.

2 Errors which don't really prevent the
3 board from deciding the appeal really don't think
4 should delay the cases any further. So the
5 examiner also can be confident that once they've
6 got the brief, it's compliant, and they can focus
7 the resources they need to on actually reviewing
8 the case and prepping the examiner's answer.

9 In terms of results, we went from a high
10 of between 30 to 40 percent cases being kicked
11 back during the appeal brief compliance review to
12 about 8 percent in 2010. So that's a significant
13 improvement. As a consequence, this also
14 inherently reduces pendency by at least one month,
15 given that's the period to fix your brief and
16 avoiding the need for a replacement brief, and a
17 large number of appeals, and the costs, and the
18 annoyance to the client as it were.

19 We have had some pretty favorable
20 response to this initiative from its inception.
21 From April onward it was immediate reduction in
22 the number of returned briefs, and, you know, ever

1 since we published this initiative in the Federal
2 Register on March 30th, I think it's been pretty
3 well received.

4 MR. BORSON: Thank you. Any questions?
5 Comments? Sure. You have a comment?

6 MR. MILLER: I think it's laudatory to
7 the PTO and to the whole process that you've
8 listened to the public, and this was definitely a
9 sore spot amongst practitioners. There is more to
10 do, but I'm glad that at least this issue has been
11 addressed. And let's continue to do these types
12 of things to make the office run more efficiently.

13 MR. BORSON: Here, here.

14 MR. MATTEO: Okay. Great. It looks
15 like we're in position to move on to the CIO
16 update, and we have from the PTO John Owens and I
17 believe also Marti Hearst.

18 MR. OWENS: Good afternoon. It's nice
19 to see you all again.

20 So brief update on patent (inaudible)
21 and things are going very well.

22 Just to recap, Fred is still the serial

1 lead for patents. Our chief IT strategist, Marti
2 Hearst, has picked up an acting duty as our
3 program manager. We have received resumes, and we
4 are actively interviewing for a direct report to
5 Mr. Kappos and myself, who will be acting as the
6 person focusing on making sure this gets done and
7 done well.

8 We've also obtained the special help of
9 Mr. William Ulrich, who is a world renowned expert
10 at modernizing IT systems. He has written several
11 books, and I have used his work in the past when I
12 worked at AOL and was migrating CompuServe to the
13 AOL platform. I am very happy to be working with
14 him, and we have his expertise helping us evaluate
15 the deliverables.

16 The three contractors are working on
17 prototypes. We have daily meetings going on with
18 them, and we hope to see results. We are on
19 schedule. So we have the documentation now on
20 their proposed architecture was just delivered
21 this week, very excited about that.

22 Here is a couple of dates. So the

1 prototype will conclude on 2-18, and we are on
2 track for that. The user interface design that
3 Marti is actually leaving with a different set of
4 contractors has a beta demo on January 15th, and
5 we are beginning the conversation on how to
6 convert the legacy data to XML, which obviously is
7 key since we are moving to an XML format going
8 forward instead of a picture.

9 Let's talk a little bit about the MPEP.
10 Beta 1 for the online tool for public comment as
11 well as the internal XML editing will be in this
12 month, and we are on track for that.

13 We have a Beta 2 planned with a search
14 and annotation for the public -- excuse me --
15 search and annotation internally and public search
16 capability for the second quarter, a little later.
17 We wanted to make sure that everything was working
18 internally first before we give it to the public
19 and something happens that we didn't plan for.
20 And then, of course, production rollout for
21 everyone global FY 2011.

22 So this is a big portion of how we're

1 moving forward, not only with the transparency of
2 how we're going to present how we do business here
3 at the USPTO, but allow people to make comment and
4 collaborate with the world in general on our
5 practices.

6 We have a little demo for you, and it's
7 going to seem odd that I'm going to demo you a
8 product that was built for trademarks; but this is
9 why I'm going to do that. Trademark has a product
10 called TDR. It's the way that they retrieve
11 documents off of our system, and we decided in
12 trademarks for their next generation system and
13 modernization to rebuild this product as one of
14 the first products we rebuilt. And we built it in
15 the cloud. The front end is in the cloud. It's
16 operating in the cloud in the demo you're about to
17 see. The backend is housed securely here.

18 This allows us a great deal of
19 protection, particularly against those that would
20 mine, or attack our data, or use the public
21 interface to get data from us without us being
22 able to say no. So it's an added layer of

1 security, and we were very pleased on how this
2 works out. And what you're going to see is a new
3 paradigm that looks very Web 2.0 like because it
4 is, and it allows someone to pull down an entire
5 docket in their original formats in a folder
6 compressed or the entire docket in a PDF, which
7 means we dynamically convert all of the
8 documentation in and embed them in a PDF file.
9 And we can add more file formats as we go along.
10 This is something that we are actually considering
11 releasing not only for trademarks but later for
12 patents as well.

13 So I'm going to turn it over for the
14 demo, please.

15 MR. VADERNA: Thanks, John. I'm going
16 to switch over to the demo now. By the way, my
17 name is Rahal Vaderna. I'm development manager on
18 the trademarks project for the TDR.

19 MR. MOORE: I think you're in the wrong
20 window. No? There we are.

21 MR. VADERNA: Okay. So I'm assuming
22 everyone is able to see the browser, also on the

1 board on the site and also on the website now.

2 Just to start the demo -- TDR is the
3 Trademark Document Retrieval application. It's an
4 existing public-facing application, and just to
5 give a context how this application looks in
6 today's world versus how it will be looking moving
7 forward. So if you look at this site, this is the
8 existing public facing application. It provides
9 the features as it's shown, which is based on the
10 serial number, international number, registration
11 number. But if you look at it, the feel is not
12 Web 2.0 based. All the docketing and all the pages
13 are based on a different one.

14 So I would like to give a small demo on
15 the new application. What I'm doing here is I'm
16 trying to search a document based on the U.S.
17 serial number, and the number which I'm going to
18 type on is 76515878. And as John was mentioning,
19 this application is also posted on the Google
20 Cloud, but the web services of the backend
21 component is secured in the USPTO natural. And
22 even if you look at the URL, I know it's difficult

1 to watch, even the URL for that application is
2 ATC.USPTO.gov which is the government domain name,
3 although the application is hosted on the Cloud.

4 So now if you'll look at the
5 application, the search results, and the results
6 all are showing in one page. It has a Web 2.0
7 look where we could do sorting on the column based
8 like, for example, put sort based on document
9 description and it sorts in alphabetical order.
10 And I could reverse the sort. Same way I could do
11 it on the mail create date, and it does that.

12 Another functional (inaudible) provided
13 as part of this application, which is similar to
14 the current application is to show this
15 application in a document viewer without PDF
16 plug-in. And I'm going to show one document.
17 This is the document viewer plug-in, and if you
18 look at it, this shows both the JPEGs and the XMLs
19 in the format of mail friendly, which is STML and
20 also the PDF, the JPEG images.

21 Another cool thing, this is a small
22 document, but if you have a document which is say

1 100 page, you could actually switch to those pages
2 automatically, and it just transfers those pages
3 around that.

4 Another feature which allows you is when
5 you click the download button, it allows you to do
6 a PDF, and it downloads that document as a PDF.

7 MR. OWENS: The system dynamically
8 converts the content into the PDF on the fly.
9 It's also useful to note that we don't need an
10 extra viewer; that we dynamically convert the
11 content in that viewer to HTML, which means you
12 won't need -- or the graphics to JPEG, which means
13 you won't need a TIF viewer anymore, so we can
14 move into the more modern graphical formats
15 automatically.

16 So dynamically behind the scenes, we're
17 not only protecting our environment, we're giving
18 you a modern user interface. Above and beyond
19 that, we're dynamically converting the content to
20 something much more useable to you.

21 Please continue.

22 MR. VADERNA: In extension to the

1 current application, we are also providing the
2 original contents for the viewer for further
3 users. If they are not satisfied with these
4 contents, they could download the original one and
5 then format it as per their need. When they
6 download original, it downloads in the form of a
7 ZIP file, and if you look at the contents of the
8 ZIP file, it pretty much provides you the basic
9 contents as stored in the repository.

10 Content provided means the consumer can
11 take this and present it in its own format and
12 shape. So in the future direction from the web
13 perspective is you provide the documents, and then
14 you could present it to your clients based on your
15 needs.

16 MR. OWENS: Could you show them how we
17 can convert it all on the fly to a single PDF,
18 please?

19 MR. VADERNA: Sure. So this is again
20 the selection, and if you do the selection, it
21 converts everything into a single PDF. And if you
22 look at it, this is the full document in the PDF

1 format.

2 MR. OWENS: That's all those documents
3 you saw there checkmarked converted on the fly
4 into a PDF and delivered as a single file.

5 MR. VADERNA: In addition to this, what
6 additional capabilities from an administration
7 perspective we provide is, if you look at it, this
8 site is, again, based on the Web 2.0 principles
9 where help is hidden behind the question mark. So
10 that if the user needs to see the help, the could
11 see the help, and if you look at it, this is the
12 format the help is.

13 Right now I'm logged on as an admin, so
14 it allows me to change the help online
15 dynamically. So I'm going to show you how I could
16 change the help.

17 MR. OWENS: This was important for us
18 here internally at the USPTO. Before when we need
19 to change websites, change help or text
20 dynamically, there was a process by which patents
21 would have to fill out a work request. The CIO
22 would have to perform, do a bill, do a push, and

1 it was very, very long.

2 Now we are giving the ability for
3 trademarks, and when we have a product like this
4 for patents, the ability for them to control the
5 text, the look and feel, the help, the comments,
6 the facts, or the FAQs all dynamically without us
7 having to do a build. It takes CIO no time
8 whatsoever, and it's on the fly.

9 So we have removed CIO from having to
10 oversee the text, very much the same as we're
11 removing the CIO from the publication of the MPEP
12 like we did for removing the CIO from publishing
13 web pages.

14 My organization is a facilitator of
15 services not a publication unit, so it is very
16 much our goal to remove ourselves from that and
17 put the control directly into the hands of patents
18 and trademarks, which is important. Less
19 important for you all, but very important for us
20 internally here.

21 MR. VADERNA: So just to demonstrate
22 what John was suggesting is I'm going to change

1 the number from 5727 to 935229354. And if you'll
2 look at it, this number is changed dynamically at
3 the same time, and it is available to user to see
4 it and its live change on the application in the
5 production.

6 Similar functionality, we are providing
7 the (inaudible), which is to provide if the system
8 maintenance is down or if there is new
9 announcement coming for the TDR from an
10 application perspective or from a news
11 perspective. It could do those changes also
12 dynamically. So just the same concept but a
13 different idea and different business process. If
14 I save it, it just shows up automatically there.

15 So that's on the business functionality.
16 At the same point in time, we also introduced the
17 web services, which are exposed to the external
18 vault. And I'm going to show a couple of examples
19 how those web services are exposed, which any
20 consumer can use those web services for their
21 application, in-house applications or building
22 applications as of it. And one of the example I'm

1 going to give it is -- the search which we did
2 first, based on a serial number, and it returned a
3 result set. It returns a result set in an XML
4 format, which will showed on an STML in a web tool
5 format. But this is the result set which I did a
6 search automatically and it could show up on your
7 browser. You could use the same URL, build your
8 application on top of it, or build your data
9 mining tools on top of it. This is one example
10 which gives you the metadata about a document.

11 Another example which I showed in the
12 document viewer is you could look into the
13 document viewer, and instead of the document
14 viewer, it would show up in an STML format on your
15 browser directly.

16 So we say this example in the document
17 viewer. Now we are seeing the same example
18 without the document viewer capabilities but into
19 your native browser. This is the STML format, but
20 we could also deliver it in the native format of
21 the document, which is content.XML if I do it.
22 And it returns me the document in its native

1 format.

2 MR. OWENS: So this is important because
3 we have a large number of organizations around the
4 globe as well as in the country that want to
5 interface directly with our content. Of course,
6 up to this point, we haven't provided those
7 interfaces or those web services that they could
8 use.

9 The Google front end that exists in the
10 Cloud that was demoed previously uses these same
11 set of interfaces, which we could now public to
12 anyone, and we still afford all of the same
13 protections internally against abuse; and anyone
14 can use them. They could build their own products
15 and services to use these tools freely without us
16 getting involved.

17 This also disaggregates our interfacing
18 our front end user interface from our backend
19 development effort. We can continue to develop
20 our core infrastructure and not affect negatively
21 the front end, which is important because we're
22 going to be using that Agile iterative model I was

1 describing to you earlier in our past meetings
2 because those two things will be built
3 independently, largely.

4 So this is demonstrating -- by the way,
5 we did use Agile development practices to build
6 this product. We have also used all the most
7 modern technologies.

8 So I'm going to end the demo here, but I
9 wanted you to know that above and beyond anything
10 else, though this isn't a patents product, it does
11 demonstrate that our own organization did build
12 this product. We worked with contractors doing
13 the front end. The backend web services were
14 built by USPTO federal employees that are
15 developers, which is a big change from where we
16 were a year ago.

17 So I know it looks like a lot of
18 gobbledygook, and you're probably saying, wow, the
19 CIO just geeked out on me. I don't know what he's
20 really talking about. But there's a bunch of
21 things to be exemplified here, and just a quick
22 recap because I do think it's important to build

1 your confidence as we move forward with the
2 patents end to end system: Built on modern
3 technologies, built on a cloud platform, built
4 with flexibility, built with user interface and
5 user intentions in mind, providing capability that
6 they don't have today. Though it's not radically
7 different, we are moving towards there. It was
8 done in iterative development, and above and
9 beyond that, it's flexible.

10 Okay. All right. I'm sorry to take so
11 much time, but we'll get right into the next big
12 thing that we're doing, which we've talked about
13 before, is the new laptop. And I'm happy to say
14 that the very first laptops in the beta one
15 program were delivered yesterday. Unfortunately,
16 someone forgot me. I'm not until next week. I'm
17 a little disappointed in that, but that being put
18 aside, the first laptops for beta one planned for
19 December. We did make it; 100 users are getting
20 the beta laptop.

21 We're about to shift over to the other
22 camera. I think those that -- nope. That's me.

1 There we go. And we're going to show you the
2 tools, the patent examiner tools being worked. I
3 know Robert has been very cooperative with us as
4 POPAs representative to make sure that the best is
5 given to examiners.

6 And, again, the laptop is one of the
7 most modern we can buy today. It's on the most
8 modern platform with the most modern security
9 patches put on it, Office 2010, as well as all of
10 the old products and services. And trust me,
11 getting some of these old applications to work on
12 this platform was quite interesting. Though we
13 look at -- I know Marti and I look at replacing
14 here in their future. We wanted to make this
15 update now. The best way to sum it up is folks
16 are impressed with the speed and performance of
17 this system. It will make a difference. I don't
18 want to speak for Robert, but that's at least my
19 opinion.

20 So why don't we take it away. Go ahead
21 with the demo.

22 MR. MORRIS: All right. Hello. My name

1 is Terrel Morris, and I work with Fred Schmidt and
2 Sira. And I typically do these presentations and
3 show everybody all of the different software
4 applications that the examiners use, but there's
5 not a lot of time left.

6 What I would like to show you are some
7 of the main programs that we use. For example,
8 East I have over here, which allows us to search
9 for patent data, and I have already performed a
10 search in here. And I can browse through it just
11 like I could on the old system. This new system,
12 as you can see, we can flip through this very
13 rapidly. Even do the auto flip that examiners are
14 used to, flipping through there, highlighting from
15 the search terms that were put in there is exactly
16 the same as it was before.

17 And that's the really the point of the
18 demo is all of the tools that examiners currently
19 use perform exactly the same way on the new laptop
20 as they did on our old platforms, except the new
21 platform provides it that much more quickly
22 because of the multiple core processors and the

1 larger RAM.

2 The biggest different that we have is
3 the switch to Office 2010, and you can see that
4 while we can create our own office actions just
5 like we have in the past, just the software itself
6 is considerably different with the ribbons that we
7 have. But we have managed in here -- you can see
8 we put all of our Oaks special features in one
9 place instead of having them in dropdown menus.
10 So it does help it make it more convenient than it
11 was before, and we still get the speed boost with
12 it.

13 In addition to that, we have the ability
14 to continue doing our electronic red folder
15 processing, so we can initial off on IDS's and
16 whatnot, putting all of our special tags on them
17 and saving them to the electronic red folder.
18 That then allows us to -- let me get back to Oaks
19 -- go to our console and post these office actions
20 off to wherever we need them to go. Like this one
21 here is already off for review by a supervisor,
22 and they can -- I can't do it from her because I'm

1 not logged on as a supervisor -- could approve the
2 office action and then have it counted and mailed
3 so that our external customers will receive the
4 office actions, all of this, again, working
5 seamlessly with the same manner that it used to
6 work on the old platforms.

7 Our TSS also had the ability to open up
8 Madras, and, again, even though this one seems to
9 be written in a DOS shell, it still works just as
10 well. I apologize. It has a blue background. It
11 blends right in, so it's hard to tell that there's
12 actually a window there. But you can go in
13 through here and open up an application just by
14 using the normal functionality networks. They're
15 wonderful.

16 There we go. Always if it criticize it,
17 it makes it faster.

18 Okay. So we have the table of contents
19 and everything else that was typically done from
20 this. So everyone that is in the patent core
21 still has access to all of the tools just as they
22 did before. They have all the same functionality

1 they had before. Nothing has changed, except that
2 it is much, much faster, and it puts us into a
3 position to move forward with patents end to end
4 and the use of new tools.

5 MR. OWENS: Of course, along with this
6 comes, if we could pan out a little bit -- at the
7 same time we're deploying the laptops, we're also
8 deploying a brand new voice over IP phone system.
9 Unlike the voice over IP phone system many of us
10 do not today that we have deployed based on the
11 Nortel system, which was very much a first
12 generation type system, this is a fifth generation
13 system, one of the most modern that you can
14 possibly get.

15 It is crystal clear, and I would ask
16 that anyone that would like to walk up to it and
17 place a phone call, you can do so. International
18 calling is blocked of course, but the phone is
19 fully functional and operational. Yes. It does
20 have a color display with a picture of our
21 Randolph Square Building on it.

22 But this phone system has been in

1 deployment in one of our buildings for over a
2 year. It has been very well received, excellent
3 quality and support services. It also has a
4 software counterpart. We're leaving it to each
5 business unit to determine whether or not the
6 examiners will get a handheld phone set or a
7 headset, as needed. Obviously there are certain
8 limitations. You don't want to carry that around
9 with you. It's kind of big and bulky, but it will
10 bring a much more stable phone environment to our
11 organization to replace that old Legacy piece of
12 equipment that we've been toting around for quite
13 some time.

14 We're also in the middle of the
15 evaluation or at the end of the evaluation now for
16 a new collaboration suite for video conferencing,
17 desktop sharing, document sharing, and so on,
18 which as we look to expand with our teleworkers
19 across the continental United States, we are going
20 to need those capabilities to keep better in
21 touch, and that evaluation should be over this
22 month.

1 So -- and just to recap, we have -- all
2 right. The first beta starting now; that's 100
3 users. Come January, the second beta starts.
4 That adds another 200, and come February we have a
5 third beta that adds another 200 users. The first
6 examiners will see it in the second beta, and the
7 deployment starts -- my commitment to Mr. Kappos
8 that it would start in second quarter fiscal year
9 this year. It will be the very last possible
10 moment, unfortunately, the way the schedule worked
11 out, but I will -- I do plan on making that
12 commitment. It will happen. And then we go into
13 a full rollout. Mr. Kappos would like it done by
14 the end of this year or next year. Fiscal years
15 confuse people, but it might take us a little bit
16 longer since there are 15,000 people to really
17 take care of including contractors. Of course,
18 contractors will get it last. But we do have
19 permission from all three unions to move forward,
20 and we are very impressed with the program so far.

21 I'd like to give a special thanks to
22 Wendy Garber. Some of you might remember Wendy.

1 She is acting as our special SES and helping me
2 manage through these issues and certainly
3 appreciate all the support I'm getting from Fred
4 Schmidt and Sira.

5 That's it.

6 MR. BOORMAN: Okay. Thank you, John.
7 Any comments?

8 MR. ADLER: Yeah. I have a comment.
9 This is great. I mean, thinking back a year where
10 you were and when you came and talked about the
11 architecture and trying to wire things together by
12 hand it felt to where you are now on the cloud
13 computing, using the consulting, the speed of the
14 progress has been great. I just want to say is
15 really impressive. I mean, considering where you
16 were and where you are, and I usually don't say
17 anything nice. So I figured might as well take it
18 for who it's coming from. All right. Thank you.

19 MR. OWENS: I'd like to thank you for
20 that, and certainly express my thanks for the
21 entire team. It is a team effort. It is patents
22 and as far as trademarks, it is trademarks. It is

1 the entire business unit. It is the support of my
2 team.

3 Of course, it wouldn't be possible,
4 certainly, without the proper funding, and I know
5 as we examine that going forward, one of the
6 biggest risks -- my job usually is to handle the
7 risks, but sometimes I will take the opportunity
8 to talk about them. My biggest risk of course is
9 coming across a lack of funds. That has had, in
10 the past, a serious detriment to the progress, and
11 last year we got focused. Mr. Kappos championed
12 in the organization to push for the funding
13 necessary to get this done, and if that were to
14 change, our progress would significantly dampen.
15 And I don't want to see that happen, and I know
16 Mr. Stoll doesn't want to see it happen either.

17 But thank you very much for the praise.
18 It's very welcome.

19 MR. MATTEO: And I would echo that.
20 Early on I was the lead on the OCIO relationship
21 for (inaudible), and from the inside from where we
22 were to where we are now, John and their team has

1 done phenomenal work in an amazing amount of time,
2 so (inaudible).

3 MR. BUDENS: I'd like -- John, a quick
4 question. First of all, so that you aren't
5 putting words in my mouth, I would agree with what
6 you said earlier. They have demoed this for us.
7 I brought in all the officers of POPA plus our
8 automation team and stuff like that. I must say
9 we were a bit more dazzled than I expected to be,
10 so we're looking forward to getting these tools
11 out.

12 One question I had, and I just want to
13 make sure I didn't hear wrong, did I hear you say
14 that in the second -- that the examiners aren't
15 going to get these until the second beta or the
16 first because my impression was that we were going
17 to be in both the first and second -- or in the
18 second and third beta, the January and February
19 betas.

20 MR. OWENS: That would be accurate, the
21 January and February betas. Yes.

22 MR. BUDENS: Okay. For some reason I

1 thought I just heard you say the February one, and
2 I was like --

3 MR. OWENS: No, no, no.

4 MR. BUDENS: I was having a heart attack
5 there.

6 MR. OWENS: No, no. January and
7 February is still accurate. If I misspoke, I
8 apologize.

9 MR. BUDENS: Okay.

10 MR. OWENS: That is still accurate. As
11 far as the cost, obviously we covered a lot today.
12 You can narrow it down for me. I can tell you in
13 the supplemental that we received last year, money
14 was earmarked for certain things. Laptop
15 replacement, it wouldn't cover it all, but \$20
16 million was set aside for that out of memory. I
17 could be wrong. And \$10 for the replacement of
18 the collaboration tools, the phone system, et
19 cetera.

20 So I can, of course, provide accurate
21 numbers later, but I believe in a previous
22 presentation I talked about that. So I would

1 stand corrected by any written paper that exists,
2 but there are various costs.

3 Thank you, Robert, by the way.

4 MR. BORSON: Okay. Thank you very much,
5 John. Damon, do you have anything to add at this
6 point?

7 MR. MATTEO: No. I would like, however,
8 to (inaudible) questions for John. If not, we can
9 proceed to wrapping up the public session here.

10 MR. BORSON: There doesn't seem to be
11 any call for further comment from here, Damon.

12 MR. MATTEO: Okay. So unless there are
13 any comments on any topic, what I'd like to do
14 first is point everybody to the PPAC website where
15 they can find a copy of our annual report just
16 released at [www.USPTO.gov/\(inaudible\)/PPAC](http://www.USPTO.gov/(inaudible)/PPAC), and
17 you can also get a copy of (inaudible) at the
18 website as well.

19 So if there are no further questions or
20 comments from the floor, I'd like to end the
21 public session and perhaps take a 10 to 15 minute
22 break to clear the room and make the appropriate

1 technical adjustments. And we'll convene with the
2 executive session (inaudible) minutes after the
3 hour.

4 Thank you very much.

5 (Whereupon, at 1:10 p.m., the
6 PROCEEDINGS were adjourned.)

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

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