

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, December 1, 2011

1 PARTICIPANTS:

2 PPAC Members:

3 DAMON C. MATTEO, Chair

4 D. BENJAMIN BORSON

5 LOUIS J. FOREMAN

6 ESTHER KEPPLINGER

7 MICHELLE LEE

8 WAYNE SOBON

9 Union Members:

10 ROBERT D. BUDENS

11 CATHERINE FAINT

12 VERNON A. TOWLER

13 Also Present:

14 DAVID J. KAPPOS, Under Secretary and Director of the USPTO

15 PEGGY FOCARINO, Deputy Commissioner of Patents

16 JANET GONGOLA, Patent Reform Coordinator

17 BRUCE KISLIUK

18 DAVID LANDRITH, Portfolio Manager

19 JOHN OWENS, Chief Information Officer

20 ANTHONY SCARDINO, Chief Financial Officer

21 JAMES SMITH, Chief Judge, Board of Patent Appeals

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

(8:09 a.m.)

MR. MATTEO: Good morning, everybody.

If we could all take our seats. I'd like to formally open this public session of the U.S. Patent and Trademark Office Patent Public Advisory Committee. My name is Damon Matteo. I'm the chairman of the committee. And what I'd like to do is offer a formal roll call. If we can just move perhaps to my right, starting with Mr. Kappos.

MR. KAPPOS: Dave Kappos, director of the USPTO.

MR. BORSON: Ben Borson, member of PPAC.

MR. SOBON: Wayne Sobon, PPAC.

MS. LEE: Michelle Lee, PPAC.

MS. GONGOLA: Janet Gongola, patent reform coordinator.

MR. MEYERS: I'm Randy Meyers of the Patent Office Professional Association sitting in for Robert Budens today.

MS. KEPPLINGER: Esther Kepplinger,

1 PPAC.

2 MR. FORMAN: Louis Forman, PPAC.

3 MR. MILLER: Steve Miller, PPAC.

4 MS. FOCARINO: Peggy Focarino, USPTO.

5 MR. MATTEO: Thank you very much,  
6 everybody. And just by way of a reminder, PPAC is  
7 constituted based on our broad industry experience  
8 and our different personal and private  
9 affiliations. But while we're here, we speak with  
10 and only the USPTO, an innovation community of the  
11 United States interest. So with that, I'd like to  
12 begin the meeting formally. The agenda has been  
13 handed out to the PPAC members and is available on  
14 the PTO website, under the PPAC section. In  
15 addition to that, as time allows, we'll be taking  
16 questions from the public, and those can be sent  
17 to [ppac@uspto.gov](mailto:ppac@uspto.gov). Hopefully someone will be  
18 gathering those questions, and at the breaks,  
19 we'll be able to answer some questions from the  
20 public. Unfortunately, we won't be able to do  
21 that real time, but as I said, during the breaks  
22 we'll be able to do so.

1                   So without further ado, I would like to  
2                   turn the microphone over to Mr. Kappos, who will  
3                   be providing some opening remarks on behalf of the  
4                   USPTO. Mr. Kappos.

5                   MR. KAPPOS: Okay, well, thank you very  
6                   much, Damon, and good morning, everyone. Thank  
7                   you for joining us here at the USPTO, whether  
8                   you're on web cast or in the room here fairly  
  
9                   early on a Thursday morning, getting started here  
10                  at about 8:00 a.m. It's great to see our PPAC  
11                  team and a lot of PTO colleagues here and to be  
12                  able to engage in continued open discussion and  
13                  get great advice, questions, comments, both from  
14                  members of the public and from our Patent Public  
15                  Advisory Committee. I'd just like to mention a  
16                  few things this morning, first of all, to thank  
17                  the PPAC for your service and for your willingness  
18                  to engage the PTO at a level that I think is far  
19                  deeper, more nuanced than in the past. I think  
20                  that it is to the benefit of the U.S. innovation  
21                  community first and foremost, secondly, to our  
22                  agency in enabling us to do a better job, to more

1 quickly adapt our processes and practices to keep  
2 up with what's going on in your businesses and  
3 your client's businesses, small and large, all  
4 over the country, and indeed, globally.

5 So I think this entity, the PPAC, which  
6 has been important since its inception, has taken  
7 on a new found importance in view of everything  
8 we're trying to reengineer, rethink, reinvent,  
9 reimagine, choose your word or words, at the  
10 USPTO. I thank you for being willing to engage  
11 with us at the level that you are.

12 All of this is made more exigent by the  
13 passage of the America Invents Act now several  
14 months ago, which has taken the notion of the PPAC  
15 and its relationship both to the U.S. innovation  
16 community and to the USPTO to an entirely new  
17 level with quite substantial new responsibilities  
18 that have been placed on the PPAC, not the least  
19 of which is the fee setting related  
20 responsibility.

21 So I think a major challenge for us  
22 together, the USPTO, the PPAC, and indeed, the

1 U.S. innovation community is going to be to  
2 effectively implement this legislation its first  
3 time through, setting a precedent, I hope, for  
4 effective implementation on an ongoing basis, but  
5 important feature and a critically important  
6 feature is going to be that fee setting feature.  
7 We are doing our best here at the PTO to come up  
8 with first passes of all of the regulations. And  
9 you'll hear from Janet in a little while. I think  
10 you'll be seeing as many as ten NPRM's coming out  
11 next month now I guess, since it's now December  
12 1st. And we'll be looking for great guidance and  
13 input from the PPAC, indeed, from the U.S.  
14 Innovation community on those.

15 But perhaps most critical, and certainly  
16 one of the most visible, if not the most visible  
17 of all of the new sets of rules is going to be the  
18 fees. We're doing our level best to think them  
19 through initially as we really need to do from a  
20 cost for service perspective, from a good policy  
21 perspective. But the PPAC is going to play an  
22 incredibly important role in bringing kind of a

1 basing and leveling and view of the entire U.S.  
2 and, in a way, global innovation community to help  
3 us in the number of iterations we're going to be  
4 making on the fees to get them right.

5           So I just focus on that to say if  
6 there's anything we're going to be relying on the  
7 PPAC for, looking to the PPAC for, of a brand new  
8 nature here in implementing the AIA, it's going to  
9 be help on those fee setting provisions. I don't  
10 mean that exclusively, but I mean that as clearly  
11 a focal point.

12           So a couple of other things I'll mention  
13 and then I'll stop. So the AIA is, you know, I  
14 don't need to tell the people in this room, a  
15 very, very big piece of legislation. Janet will  
16 talk about that more in a little while. We are  
17 very focused on effectively implementing it, and  
18 by effectively, I mean thoughtfully, good policy,  
19 listening to our IP community, the PPAC and all of  
20 the small companies, and individuals, and  
21 universities, and medium sized companies, and  
22 large entities that are sending us input, and they



1 are sending a lot of input, and it is really,  
2 really excellent.

3 In order to get this legislation right,  
4 I believe a couple of things are going to need to  
5 happen. Number one, we're in an era where the  
6 government can't do this alone. Just like  
7 responses to major natural disasters, it's clear  
8 that things are happening so big and so fast that  
9 there's no entity no matter how capable it is that  
10 can handle them alone.

11 I believe the new model of the 21st  
12 century for effective governance is going to  
13 involve much more collaboration between government  
14 and citizens, in this case, a specific citizen  
15 community, that's the USPTO's user community and  
16 it starts with the PPAC and then it includes all  
17 of the others that I've mentioned.

18 The AIA is no different. We're going to  
19 implement this legislation effectively only if we  
20 work well and we are all part of its  
21 implementation, the USPTO, the PPAC, the user  
22 community. And I know it's hard work, it's a lot

1 of work. A lot of us here at the PTO are taking  
2 it on. We know you'll take it on in the PPAC. We  
3 need the whole USIP community to take it on, too.  
4 I really believe this is just part of a larger  
5 national and global trend where there needs to be  
6 a new manner of thinking about the role the  
7 government plays and the role that citizens play  
8 in making our country effective, and it's got to  
9 be a lot more collaborative than it was 10 or 20  
10 or 30 years ago. We just don't have all of the  
11 solutions.

12 But I think we benefit in the IP  
13 community because we've got a really good  
14 functional working relationship between our agency  
15 and our constituency, and so I don't say these  
16 things with any trepidation or with any concern, I  
17 say them with optimism. I think if we keep  
18 running the plays that we've been running between  
19 the USPTO, the PPAC, and our entire user  
20 community, we can and will implement this  
21 legislation extremely effectively.

22 So with that said, the other thing that

1 I wanted to mention is that we're also aware that  
2 there's no way, no matter how much we all  
3 cooperate and how hard we all try and how  
4 thoughtful we all are, that we will get this all  
5 exactly right in one year in the case of the  
6 provisions that go into effect after September 16,  
7 2012, or in 18 months in the case of those  
8 provisions that go into effect after March 16,  
9 2013. So what I mean to say by that is that we  
10 accept that this -- while we're going to try to be  
11 as perfect as we can, this process is going to be  
12 iterative and it is going to go on beyond the  
13 initial round of changes, beyond, for instance,  
14 putting in place and in play the post grant  
15 provisions, just as one example.

16 We accept that there will be an  
17 iteration component to this and we're not afraid  
18 of that. We, in fact, think that that will be the  
19 strength of getting a great implementation over  
20 time. It will be all of our willingness to learn  
21 from how things go initially and cycle back and  
22 iterate on them. So I say that so everyone knows

1 that, you know, we don't think we're doing this  
2 once and then we're all done and we're going to,  
3 you know, go off golfing or something like that.

4 This is all going to be done as round  
5 one, followed by round two, followed by however  
6 many other rounds we need to have to get each of  
7 these provisions where they make sense for the IP  
8 community, they drive clear, high quality, fast  
9 results at low cost, they're simple, they're not  
10 putting burdens where the burdens shouldn't be,  
11 they're implementable by the USPTO, they're  
12 appropriate for our community.

13 So the last thing I wanted to say is  
14 just some thanks to some key members of the USPTO  
15 team who are here. I start with Janet Gongola,  
16 who was courageous to come over from the  
17 Solicitor's Office where she has been a star for  
18 quite a few years to take on the now I'll say  
19 really daunting role of running our implementation  
20 of the AIA. Janet is doing an absolutely  
21 fantastic job. I think I could speak for the  
22 whole agency and say we couldn't be more thrilled

1 to have her leading that effort. So, Janet, thank  
2 you for that, and you all will get to interact  
3 with Janet more in just a minute.

4 Secondly, I'd like to congratulate and  
5 thank new incoming Commissioner for Patents, Peggy  
6 Focarino, my partner and colleague for all the  
7 time that I've been here and a truly fantastic,  
8 gifted public servant who I believe and am sure  
9 has 100 percent of the confidence of our entire  
10 patent examining corps, which is really important,  
11 has got the right teaming relationship, honest  
12 adult functional relationship with our important  
13 Patent Office Professional Association Labor  
14 Union, and has got the currency with the entire  
15 intellectual property community, from knowing the  
16 system inside and out for so many years. I could  
17 not be more thrilled to have Peggy as my partner.

18 We'll, of course, miss the current  
19 commissioner who's retiring, Bob Stull. Bob did an  
20 absolutely fantastic job in his time as  
21 commissioner, so we wish him well in his next  
22 endeavors. But, Peggy, I'm just thrilled.

1       Congratulations on your soon to be completed  
2       appointment, and thanks for taking on that role.

3                 And then lastly, I'd just like to say,  
4       since I see a lot of PTO colleagues here, thanks  
5       for your continued efforts, leadership. We're  
6       implementing this legislation and improving this  
7       agency as a team, and I truly believe that it is  
8       the entire team, you know, all of us at this  
9       agency and our public advisory committee's and our  
10      community that are doing this together, so thanks  
11      for your leadership and support for all of us here  
12      at the PTO.

13                So, Damon, with that I'll stop. I'll  
14      try and stay a little while longer.

15                MR. MATTEO: Thank you very much, Dave.  
16      On behalf of PPAC, I'd like to thank you for your  
17      kind remarks. And I guess also on behalf of PPAC,  
18      I'd like to say that we're all equally earnest in  
19      our desire and our intensity to work with the PTO,  
20      to attack the challenges in front of us and the  
21      new ones that have been posed by AIA, in  
22      particular, the fee setting authority. And we're

1 looking forward to increasing the community  
2 cooperation and, frankly, collaboration between  
3 the two groups, the PTO and the PPAC.

4 As I mentioned when we first started,  
5 PPAC was constituted with the notion of different  
6 constituencies, different regions, and as  
7 surrogates for each of those constituencies and  
8 regions, we're certainly willing to do that. But  
9 also one of the more important functions of PPAC  
10 is a bridging function between the PTO and the  
11 innovation community at large. So I'm looking  
12 forward to working as a surrogate, as an  
13 individual, and I think all of us are looking  
14 forward to being participants in the process. So  
15 thank you again for the opportunity. I know we're  
16 all looking forward to it.

17 And what I'd like to do now is start  
18 with congratulations, but then turn the microphone  
19 over to the brand new commissioner for Patents,  
20 Ms. Peggy Focarino.

21 MS. FOCARINO: Thank you. Good morning,  
22 everyone. It's a pleasure to be here with you

1       this morning, and I'm happy to be here to discuss  
2       progress and issues within the patent's  
3       organization. Members of PPAC, you bring a wealth  
4       of experience to our organization. We really  
5       appreciate your insights and dedication to helping  
6       us solve our most pressing operational and policy  
7       challenges, and as you know, we have many of  
8       those. I'd like to welcome our newest PPAC  
9       member, Michelle Lee, and I look forward to  
10      working with you, Michelle.

11                Many important changes have taken place  
12      since we last met in September. Most notable,  
13      obviously, is the passage of the America Invents  
14      Act. So we have Janet Gongola here, our patent  
15      reform coordinator, who will discuss the details  
16      of the implementation of this really important  
17      law.

18                We released several Federal Register  
19      notices, and Janet will be briefing you on that  
20      and other related policy issues. The Track 1  
21      program started with the enactment of the AIA.  
22      And we have, to date, received a total of 1,501



1 applications, 648 of these this fiscal year, and  
2 several of these have already had a notice of  
3 allowance mailed in them, so that's really great  
4 news. And Bruce Kisliuk will brief you on our  
5 operational highlights. But I'd like to just say  
6 a few words about our recent progress. Our  
7 backlog reduction campaign, which is called  
8 Clearing Out the Oldest Patent Applications, or  
9 COPA as we affectionately call it here, has  
10 produced outstanding results. The current backlog  
11 of applications awaiting first action by our  
12 examiners dropped to 667,477 applications. So we  
13 made a huge dent in our backlog, but also in  
14 clearing out the oldest applications.

15 So that effort that we undertook  
16 beginning last year will continue this fiscal year  
17 because the program was such a great success. And  
18 we will have another campaign to clear out 260,000  
19 of the oldest patent applications. So it's a real  
20 stretch goal, but we think we've got the right  
21 processes in place to do that and we're really  
22 well positioned to do that.

1           Another related program to this effort  
2           is called our PPOP effort, which is our Patent  
3           Pipeline Optimization Program, and that's an  
4           initiative that addresses applications which have  
5           significantly slowed or delayed prosecutions in  
6           them. And we've had great success in locating  
7           these applications and getting them back on track  
8           and moving them to disposition. So we continue to  
9           make good progress despite the rise in application  
10          filings.

11           Our attrition rate has remained  
12          extremely low, it's under 4 percent. Our hiring  
13          efforts have resumed and we've got a great hiring  
14          team in place and they're out as we speak and also  
15          conducting a big job fair now. And we are hiring  
16          up to our goal of 1,500 examiners this year. So  
17          we have a great progress and we have a great  
18          process in place to be able to have a successful  
19          hiring year. So overall, the patents organization  
20          is working more efficiently, but we continue to  
21          look for ways to improve our processes and we will  
22          need your input and guidance for sure.

1           So I'm now going to turn the discussion  
2 over to Janet, who will give you the agency's  
3 progress and the AIA law implementation. But I  
4 want to thank you for your guidance and support,  
5 and I really look forward to working with all of  
6 you over this next year. Thank you.

7           MS. GONGOLA: Good morning, everyone.  
8 Thank you to PPAC for inviting me to come back  
9 again this month and give you an update on our  
10 implementation efforts. Before I begin, I want to  
11 express sincere appreciation to Director Kappos  
12 and Deputy Commissioner Focarino for their confidence in  
13 me, as well as the entire PTO team, to achieve the  
14 implementation that we want for our 21st century  
15 Patent Office.

16           What I'd like to do today is to update  
17 you on where we stand with the various  
18 rulemakings, studies and programs that the America  
19 Invents Act requires us to put into place in  
20 varying time periods. So at any point, I hope if  
21 you have questions, you will feel free, interrupt,  
22 ask any questions that you have, and I'll walk you

1 through in a sequential fashion. So the progress  
2 of our rulemakings, we have 19 statutory  
3 provisions in the America Invents Act that  
4 implicate Patent Office operations. Now, there  
5 are many others that implicate litigation related  
6 matters, but we are focused on those that  
7 implicate patent operations.

8 Of those, this is kind of my report card  
9 slide, seven of the provisions have been  
10 implemented to date, seven more will be the  
11 subject of Federal Register notices to issue in  
12 mid to late January. And then two additional ones  
13 will be the subject of Federal Register notices  
14 that will come out on a 17-month time frame. And  
15 I'll break down these notices in particular as we  
16 go on. And then lastly, three final provisions  
17 will be part of our rulemaking that spans across  
18 an 18 month time frame. Okay. So I hope -- you  
19 all have copies of the slide sets in your packet,  
20 so if you're having difficulty reading the text, I  
21 would refer to the slides that you have. Now,  
22 this slide features the seven provisions that we

1 have implemented to date. They range from the  
2 change in the standard for interparties  
3 reexamination to the institution of or maintenance  
4 of a prohibition on patenting human organisms to  
5 the 15 percent surcharge transition to prioritize  
6 the examination.

7 In the second column I provide for you  
8 an identification of the documents that we used to  
9 implement the specific provision. And all of  
10 these documents can be found on our micro site.  
11 The one person I want to call out and give you a  
12 little more details on the progress report,  
13 Commissioner Focarino referred to it, is  
14 prioritized exam.

15 So on the slide, you have the statistics  
16 for the number of prioritized examinations that we  
17 have done last fiscal year, around 550, and the  
18 number we have received to date this fiscal year,  
19 around 850, and this data is current as of the  
20 middle of November. You'll note that we have  
21 issued -- of those that were filed last fiscal  
22 year, we've issued eight patents so far.

1                   Now, implementation of the seven  
2 provisions that are on the 12 months timeline.  
3 You've previously heard me talk about these  
4 provisions as the Group 2 Bucket. They're listed  
5 on the slide. There's seven provisions here.  
6 These seven provisions are going to translate into  
7 nine Federal Register notices to come out in  
8 January. And let me explain to you how the  
9 numbers are going to check.

10                   So the first four provisions relate to  
11 Patent Office operations. And then there's oath  
12 and declaration, supplemental exam, citation of  
13 prior art in a patent application, and citation of  
14 prior art in a patent. There will be a  
15 one-for-one correspondence between the provision  
16 and a Federal Register notice. Now, for the last  
17 three, those relate to our contested case  
18 proceedings, interparties review, post grant  
19 review and a transitional program for covered  
20 business methods. Those three notices will be  
21 covered in five Federal Register notices, and  
22 here's how the breakdown will happen.

1                   There will be an umbrella notice that  
2 will cover what I liken to the rules of civil  
3 procedure for proceeding in one of these contested  
4 case proceedings, generic rules that deal with  
5 issues like how to make the filing, page  
6 limitations, font size.

7                   Then there will be three specific  
8 packages directed to the nuances of these  
9 particular procedures. So the time for post grant  
10 review, 9 months after the patent issue,  
11 interparties review, 10 months to the life of the  
12 patent. Details like that will be covered in the  
13 specific packages.

14                   And then finally there will be a fifth  
15 package that will come out devoted to the  
16 definition of technological invention. We're  
17 pulling that definition into its own package  
18 because we appreciate there is a lot of  
19 controversy over how we may define that term, so  
20 we want to isolate it in its own rule package in  
21 the event there would be a litigation challenge  
22 down the line. That aspect would not entangle our

1 procedural type processing steps.

2 Now, here is the timeline for  
3 implementation of our 12-month permission. We  
4 talked about this timeline last time I met with  
5 you, but I've broken it out on this slide, graying  
6 out the points in time where we've passed, and the  
7 line indicates where we currently sit. Now, I'm  
8 going to go over some of the steps here with you  
9 because I'll cover other timelines, and you'll see  
10 that the steps, in large part, will be the same  
11 for each of our future rulemakings.

12 So currently we are preparing our  
13 Notices of Proposed Rulemaking. That process  
14 entails the actual drafting of the notices, as  
15 well as our internal clearance of those notices.  
16 Internal clearance involves review by the business  
17 units, the law division and the director's office.

18 Once we complete our internal clearance,  
19 which will happen in mid December for these seven  
20 packages I talked about, we will move into a phase  
21 of OMB review of our packages. When we release  
22 the packages to OMB, this marks the point in time



1 we will share them with PPAC, as well as our  
2 unions formally, although the unions have been  
3 involved by having team members on each of the  
4 groups that are preparing the rule packages.

5 OMB has agreed informally that they will  
6 review our packages in one month's period of time.  
7 This is a very ambitious goal, we realize that,  
8 particularly with the holiday period coming up.  
9 Assuming we meet that goal, then our Notices of  
10 Proposed Rulemaking will publish in mid to late  
11 January. I say mid to late January to give us a  
12 little bit of wiggle room there to allow for  
13 slippage due to the holiday period and OMB review.  
14 Now, once we release the notices, we will move  
15 into a 60-day public comment period. During this  
16 period, we have planned to do road shows from east  
17 coast to west coast to talk to the public and  
18 educate you about the scope of our proposed rules.  
19 So stay tuned for more information on locations  
20 and dates for those road shows.

21 Once the comment period closes in mid to  
22 late March, the Patent Office will go into a

1 period that I like to call hibernation, where we  
2 will begin preparing our final rules, taking all  
3 of the public's comments into consideration that  
4 we've received both in written form and through  
5 our road shows.

6           And then the process will start again.  
7 We'll engage in preparation of our proposed -- our  
8 final rules, we'll clear them internally, end of  
9 June we will release them to OMB for their review,  
10 and then after OMB, again, 30-day period. In late  
11 July, our notices will publish in the Federal  
12 Register.

13           There will be roughly a six-week or so,  
14 depending on how things go timing wise, delayed  
15 effective date on our final rules. During this  
16 delayed effective date time period, we will  
17 educate the public, training our examiners on the  
18 operation of our final rules, so that on the  
19 statutorily required effective dates for group  
20 two, September 16, 2012, we will have the rules in  
21 place and ready to be operational. Now, as  
22 Director Kappos indicated, we recognize those

1 rules might not be quite perfect, so then we'll  
2 open another comment period, which I'll talk about  
3 a little later.

4 Now, if we move to the next slide, I  
5 want to talk about now implementation of what I  
6 call our 17-month timeline. The two provisions  
7 operating on this 17-month timeline are our fee  
8 setting authority and the subsidiary provision of  
9 the definition of micro entity.

10 Now, our fee setting authority became  
11 effective on September 16th. However, to exercise  
12 it, we must engage in the rulemaking process. And  
13 for the micro entity provision, the definition of  
14 the micro entity also went into effect on  
15 September 16th, but the 75 percent micro entity  
16 discount is not available until we exercise our  
17 fee setting authority. That's why I've tied these  
18 two provisions together.

19 So now if we move to the next slide,  
20 you'll see the detailed timeline for exercising  
21 our fee setting authority in rulemaking.  
22 Essentially the steps are the same that I went

1 over for a 12-month timeline with a couple of  
2 exceptions here. You'll see them, I've marked  
3 them below the timeline. The first involves the  
4 PPAC public hearing dealing with our proposed fee  
5 schedule.

6 After the President releases the  
7 President's budget at the beginning of February,  
8 the second Monday of February, we will release our  
9 fee setting information to the public. Within 30  
10 days of the release of that information under the  
11 terms of the America Invents Act, PPAC is required  
12 to hold a public hearing. So I'm placing the  
13 public hearing in late February to early March.  
14 And the second additional step is during the  
15 period for public comment, which will run after we  
16 publish our proposed rules in mid June. It will  
17 run from mid June to mid August.

18 Somewhere in the middle of there, PPAC  
19 will deliver their report on the public hearing  
20 that was held in time for the public to be able to  
21 not only comment on our proposed rules, but have  
22 the guidance of PPAC and be able to comment on the

1 PPAC report, as well.

2 Otherwise, all of the remaining steps on  
3 the timeline are identical to those steps I shared  
4 for the 12- month timeline. And in the end, we  
5 would expect to publish our final rules associated  
6 with both the fee setting, as well as the micro  
7 entity provisions at the beginning of December of  
8 2012 with a delayed effective date close to 60-day  
9 delayed.

10 Now, what are we going to do associated  
11 with the micro entity? Well, we've come to the  
12 conclusion through a lot of public dialogue that  
13 there are varying provisions related to micro  
14 entity that need much more clarification. For  
15 example, the definition of the term "applicant,"  
16 is that definition applied on an individual  
17 inventor basis or does the definition apply to an  
18 inventive entity in the aggregate? These sorts of  
19 questions will have to be sorted out, and we  
20 intend to use the rulemaking process that I show  
21 on this slide to make those distinctions.

22 MR. MATTEO: Excuse me, Janet. With

1       respect in particular to the PPAC interactions,  
2       the public hearing, the report, et cetera, it  
3       sounds like a lot of this timeline is influx and  
4       perhaps some even know the structure is influx.  
5       What can we count on from the PTO in terms of  
6       advanced notice for timing of the public hearing,  
7       for example, specificity as to what it should  
8       embrace to be appropriate, et cetera? So what  
9       kind of guidance and when would you be able to  
10      give that to us?

11               MS. GONGOLA: So the date for the PPAC  
12      public hearing is roughly set and we're going to  
13      work out next week the exact timing for all of  
14      these events. As it turns out, the road show --  
15      we're hoping to coincide several events together.  
16      The road shows that I alluded to for our proposed  
17      rules will happen right around the time of the  
18      PPAC public hearing, so we're hoping to aggregate  
19      some events as we move from east coast to west  
20      coast.

21               We had initial conversations kind of  
22      yesterday with a few folks from PPAC,

1 brainstorming ideas for how we want the public  
2 hearing to be structured, what support you would  
3 like from the Patent Office, what information we  
4 can provide to you ahead of time. So I think now  
5 is the time that we -- your visit initiated those  
6 conversations, and we will be keeping in very,  
7 very close touch over the next month to two months  
8 to figure out exactly the details for the hearing.  
9 And we welcome any suggestions of things that you  
10 would like us to do to have ready that will help  
11 and facilitate the hearing.

12           To kick it all off, yesterday we had the  
13 conversation that we will issue a federal registry  
14 notice once we settle on the dates to inform the  
15 public of the location of the public hearing and  
16 how to participate as a witness in those public  
17 hearings.

18           MR. MATTEO: Okay. So one of the issues  
19 is, the timing, at least vaguely, aligns with a  
20 PPAC meeting that's already scheduled. So if and  
21 to the extent there's going to be a conflict or if  
22 and to the extent there's some sort of synergistic

1 interest in trying to get the two aligned, that's  
2 something we'd like to have advanced notice of.

3 MS. GONGOLA: That's absolutely  
4 possible. Thank you for bringing that up.

5 MR. MATTEO: Sure.

6 MS. GONGOLA: That's great.

7 MR. MATTEO: Thank you.

8 MR. MILLER: I have another question.

9 On the micro entity, there is fee setting with the  
10 micro entity, but will those fees be set according  
11 to the top timeline or the bottom timeline?  
12 Because I would worry that there would be another  
13 hearing for the micro entity fees.

14 MS. GONGOLA: All of the fees will be  
15 set according to the top timeline. The micro  
16 entity -- the statute indicates that the fees that  
17 we set under our fee setting authority will apply  
18 for both small entities and micro entities to all  
19 fees associated with filing, searching,  
20 maintaining, appealing, there might be a couple  
21 other ones in there, a patent or a patent  
22 application.



1           So the process or the actual dollars for  
2           the fees that apply to a micro entity will be  
3           covered by the top timeline. Then the details of  
4           sorting out finite aspects of the definition  
5           itself will be under the bottom timeline.

6           However, the timelines are identical in  
7           terms of what's happening when. Notices of  
8           proposed rulemaking come out at the same time,  
9           same time for public comment, same window for PTO  
10          to work on our final rules, final rules will issue  
11          at the same point in time. The only difference  
12          is, at the top timeline, we have our PPAC hearings  
13          and PPAC report required for fee setting.

14          MR. MILLER: Yeah, my only concern was  
15          that, on the bottom timeline, it said review of  
16          fee setting for the micro entities, and I guess  
17          it's just automatic because it's 75 percent of  
18          whatever fee is set, is that right? So there  
19          isn't really a need for a PPAC hearing on micro  
20          entity fees, right?

21          MS. GONGOLA: No.

22          MR. MILLER: It's just you're making the

1 definition of who qualifies then?

2 MS. GONGOLA: That's exactly right.

3 MR. MILLER: Okay. That's the  
4 clarification I needed.

5 MS. GONGOLA: And that second box, I  
6 embarrassingly note, should say "micro entity and  
7 PRM." Thank you for catching that for me.

8 Other questions on the fee setting  
9 timeline? No, okay. Well, then let's move on to  
10 our implementation under an 18 month timeline, a  
11 first inventor to file, derivation, and then the  
12 repeal of statutory invention registration.

13 Now, notice I put in asterisks after  
14 18-month timeline. We're not going to take 18  
15 months to engage in the rulemaking process. And  
16 to be honest with you, the three provisions listed  
17 on this slide will not entail intensive  
18 rulemaking. We're not going to be issuing a huge  
19 number of rules associated with first inventor to  
20 file. For the most part, we will be addressing  
21 first inventor to file through the guidance and  
22 training that we give to our examiners. There

1 will be a few rules, but nothing heavy duty.

2           And then the derivation proceedings will  
3 borrow heavily from the contested case rules that  
4 we will be making under the 12 month timeline,  
5 meaning the general umbrella sets of rules, what I  
6 liken to the rules of civil procedure will apply  
7 to derivations. But we are building our  
8 derivation proceedings up from ground zero. We're  
9 not taking interference platform and simply  
10 imposing that structure on derivation. We're  
11 starting from ground zero and building it up in a  
12 way that we believe, through your public input,  
13 would make sense.

14           It is possible if we're able to  
15 accomplish it that we may move the derivation  
16 proceeding onto the 12-month schedule. I list it  
17 here at the 18-month because it's not required to  
18 be in effect until March 16, 2013. So this one is  
19 in a little bit of flux at the current time.

20           And then for the statutory invention  
21 registration, there will be no proposed rulemaking  
22 there. We intend to go out straight with the

1 final rule. So in the end, what we have, I call  
2 it 18 months because these provisions are due to  
3 be in effect 18 months from the date of enactment.  
4 But the timeline itself, if we go to slide 10, is  
5 actually a 14-month timeline.

6 In January, after we release the Notices  
7 of Proposed Rulemaking for provisions that are due  
8 at 12 months from the date of enactment, that's  
9 the trigger date to begin the rulemaking process  
10 for provisions that are needed 18 months from the  
11 date of enactment. All of the steps you see in  
12 that process are the same that we talked about for  
13 both the 12- month provisions, the two for the  
14 17-month, and then this timeline here. So the key  
15 dates are the boxes in orange. Early June we will  
16 issue our Notices of Proposed Rulemaking, and then  
17 mid January of 2013 we will issue our final rules  
18 with about a 60-day delayed effective date. We  
19 allot a little bit more time, 14 months instead of  
20 12, in order to give a little bit more room to OMB  
21 to do their reviews, but the steps are the same.  
22 Now we'll move on to our studies.

1                   MR. MATTEO: Janet, just a quick  
2 calibration question. So, for example, the influx  
3 of additional work is going to be an issue for  
4 PPAC vis-à-vis some of the meetings that we need  
5 to have. Is it real to expect OMB to be able to  
6 deal with a great influx, or, on the margin, is  
7 this a great influx of additional duties for them,  
8 all these reviews?

9                   MS. GONGOLA: OMB is normally part of  
10 the rulemaking process, so they're accustomed to  
11 doing reviews. I think the largest challenge for  
12 them will be to review the ten packages we will be  
13 sending over in mid December under a 30-day  
14 timeframe that they've agreed to do. That is  
15 going to be a challenge for them.

16                   MR. MATTEO: Exactly.

17                   MS. GONGOLA: Normally there is no  
18 timeline under which OMB works. And through our  
19 general counsel, Bernie Knight, because he's  
20 explained to them that many of the provisions have  
21 certain dates by which they have to be in effect  
22 under the terms of the act, OMB has agreed to try

1 to achieve a tight timeline for us.

2 MR. MATTEO: Okay. Thank you.

3 MS. GONGOLA: Any other questions?

4 Okay. For our studies, we're required to complete  
5 seven studies as the lead agency under the terms  
6 of the act. I list those studies for you on this  
7 slide. Two of them are in progress. Now, there  
8 are two additional studies that we are required to  
9 consult on, but those studies are being  
10 administered by other agencies, so I'm not  
11 including them on our report card.

12 The first study that we have ongoing is  
13 the International Patent Protection Study. We've  
14 been asked by Congress to look at ways to help  
15 small businesses secure international patent  
16 protection for their invention. Specifically, our  
17 request is to help them figure out ways to  
18 creatively finance the filings that are needed  
19 around the globe, perhaps maybe a revolving loan  
20 program, a grant program, some type of  
21 subsidization on their filing fees.

22 We're working with several other

1 government agencies, principally the Small  
2 Business Administration on this study. What we've  
3 done so far, and this is the protocol that we will  
4 follow for all of the studies, we published a  
5 Federal Register notice on October 7 informing the  
6 public that we plan to have hearings to solicit  
7 the public's input on these studies. And then we  
8 also noticed the opportunity to provide written  
9 feedback to the agency. We held two hearings in  
10 late October, early November, a total of 12  
11 witnesses provided testimony, and then our comment  
12 period closed on November 8th, and we received 19  
13 written comments. What we're doing right now is  
14 taking all of the information that we've collected  
15 from the public and assembling the report that we  
16 must provide to Congress by January 14th.

17 We were very fortunate to have much  
18 public support for these studies and we've  
19 received a great deal of very valuable input  
20 that's going to help us complete our reports in  
21 this process.

22 Now, similar prior user rights, same

1 protocol. For this study, we've been asked to  
2 research how prior user rights operate in other  
3 countries. And we're working with several other  
4 agencies on this study, the secretary of state,  
5 trade representatives, and attorney general.

6 We, again, published a federal registry  
7 notice, conducted one public hearing where we had  
8 six witnesses give testimony, and we've collected,  
9 as of our close date of November 8th, 28 written  
10 comments. Now, again, assembling all of that  
11 information in a report due to Congress on January  
12 16th.

13 Now, an upcoming study that we're  
14 focusing on next is the genetic testing study.  
15 Congress has asked us to evaluate ways to provide  
16 a second confirmatory genetic test when there is a  
17 genetic patent -- a patent covered gene out there,  
18 along with licensing to an exclusive first type of  
19 testing. We plan to issue our Federal Register  
20 notice for this study announcing a hearing,  
21 seeking written comments late January. And then  
22 we're planning, as I alluded to earlier, to



1 combine the hearings for this study with our road  
2 shows and the PPAC fee setting hearings, now, not  
3 on the same day, but at the same block of time as  
4 we move from east coast to west coast. So we  
5 intend to have two hearings, one in Alexandria,  
6 one towards the west coast for this study, and we  
7 will be seeking comments from mid January to mid  
8 March, with the report date due in mid June to  
9 Congress -- progress reports on our program.

10 The act requires us to have four  
11 different programs running across the dates listed  
12 for you on this slide. I'd like to talk about two  
13 of those programs in particular. The pro bono  
14 program, it was required to be in effect on the  
15 date of enactment, and there is a program that we  
16 have running in the state of Minnesota by which  
17 patent attorneys are connected through a  
18 clearinghouse with under-resourced, independent  
19 inventors and small businesses to help them secure  
20 patent filings.

21 Now, we are in pursuit of programs in  
22 other cities across the country, so a task force

1 has been formed that the Patent Office is  
2 participating in. We're not leading the task  
3 force, but we are participating in the task force.  
4 And we've gotten great interest from varying  
5 cities across the country, so we're eager to have  
6 this program expanded and help independent  
7 inventors and small businesses across the country.

8 The last program I'll talk about is  
9 satellite offices. Under the terms of the America  
10 Invents Act, we must have three satellite offices  
11 in operation by 2014. So we have issued just this  
12 week a Federal Register notice seeking the  
13 public's input on where to place our satellite  
14 offices.

15 The first office is going to be located  
16 in Detroit, and we intend to have it running  
17 during Fiscal Year 2012. We have two more offices  
18 planned and that's what we want the public to help  
19 us figure out, good locations for those offices.

20 The Federal Register notice seeks the  
21 public to give us information that will help us  
22 make that determination. Considerations like

1 workforce availability, cost of living, number of  
2 patent filings coming out of a certain region of  
3 the country so we can get a sense for the  
4 utilization of the office in that area. So the  
5 public has the opportunity from now until the end  
6 of January of 2012 to give us feedback on the  
7 locations for our satellite offices.

8 I'd like to tell you a little bit about  
9 our micro site that we've talked about throughout  
10 many of our speaking engagements. This is the  
11 principal way by which we communicate with the IP  
12 community about our implementation activities. We  
13 house all of our implementation documents on this  
14 website. The slide lists for you many of the new  
15 features that we have added onto the site since we  
16 last spoke. A couple that I'd like to talk about,  
17 we write progress reports for the Department of  
18 Commerce on a monthly basis about our  
19 implementation activities. We post for you those  
20 progress reports so you can see exactly what we  
21 are telling the Department of Commerce about the  
22 scope of our implementation. And basically every

1 one of the topics we covered today, rulemaking,  
2 studies and programs we discuss in our progress  
3 reports to Commerce.

4 Second, we have all of the information  
5 from our public hearings. We have a recording of  
6 the public hearings, transcripts, all of the  
7 comments on the public hearing that we've received  
8 posted on the website for everyone to be able to  
9 view.

10 We compiled the full legislative history  
11 for the America Invents Act, every hearing  
12 document before Congress, every report, every  
13 person's witness testimony is available on the  
14 micro site.

15 Finally, we have a subscription center.  
16 This is what a report on our subscription center  
17 looks like. If you go onto the micro site, you  
18 can subscribe to receive a monthly newsletter for  
19 us to give you updates on the scope of what we've  
20 done in the last month. We issued our first  
21 report this week. We have 3,000 subscribers on  
22 our subscription center to date. So if you'd like

1 more information, join, and I'll tell you every  
2 month what we've added to the micro site so you  
3 know to go on and look for new features.

4 We've also done throughout the past two  
5 months since enactment extensive public outreach.  
6 The map shows you the dots of various cities, and  
7 sometimes there's multiple cities under these  
8 dots, they're starting to collect, of where we  
9 have traveled to give presentations about the  
10 America Invents Act.

11 As of last week, we've done 66  
12 presentations to the public. This map is on the  
13 micro site, so if you want to know exact details  
14 of where we've been, you can click on a particular  
15 region of the country and a table will come up to  
16 show you where we've been and where we have so far  
17 planned to continue to go within that region.

18 We feature that same information on our  
19 announcements and events column on a weekly basis.  
20 So if anyone wants to know or learn more about the  
21 act, they can find out where we'll be and when.

22 Now, this breaks down further what

1       you're seeing on the map in terms of percentages  
2       as to what regions of the country that we've been  
3       to. The one that I might point out to you is  
4       where I have listed all 11 percent. Those  
5       encompass webinars. I can't tell you -- let's  
6       see, 83 percent of all of the presentations we've  
7       given have been in person, and the balance have  
8       been through webinar, so that represents the  
9       webinars. And we reach from East Coast to West  
10      Coast, that's why I include it under the category  
11      "All."

12                 The last topic that I'd like to cover is  
13      our public comments. We are extremely grateful to  
14      the public for having submitted the number and  
15      quality of the comments we've received to date.  
16      There have been 163 comment submissions and they  
17      have been extensive. We received some submissions  
18      that have drafted actual proposed rules for us, 77  
19      pages of proposed rules for us. And I can tell  
20      you that we have taken all of this public feedback  
21      into heavy duty consideration.

22                 We, in fact, at one point received very

1 large submissions around the middle of November,  
2 which triggered us to have Sunday meetings to talk  
3 about the scope of those comments. And we also  
4 took our contested case provisions back into the  
5 drafting stages as a result of those comments.  
6 There are many wonderful ideas within the comments  
7 that we wanted to incorporate into our rules. So  
8 we stopped our timeline and have gone back, I  
9 don't want to say completely to the drawing board,  
10 but we've gone back in and made some major changes  
11 in response to the feedback that we've received.

12 Now, on the site, I want to tell you a  
13 little bit about the nature of the comments,  
14 because I believe everyone is probably curious,  
15 what are people saying to the agency. So the  
16 first pie chart breaks down generally the  
17 categories, broad categories for which input has  
18 been given. So 29 percent of the comments have  
19 related to the patent provisions, supplemental  
20 exams, citation or prior art in a patent  
21 application, and a patent itself, and oath and  
22 declaration.

1                   Contested cases, 37 percent of the  
2 feedback on post grant review, interparties  
3 review, the transitional business method and  
4 derivation, 14 percent on fees, and then 20  
5 percent on other. And other, if you look on the  
6 micro site, you can see the categories. But I've  
7 aggregated if we've gotten just one or two  
8 comments, too small to really categorize  
9 individually.

10                   Then the comments by organization, 47  
11 percent of the comments to date have come from  
12 individuals, 31 from practitioners, 9 percent from  
13 companies. And then the breakdowns get smaller:  
14 IP organizations, 8; academic, 1 percent; law  
15 firms, 4 percent.

16                   Now, here's a finer breakdown of the  
17 comments by specific topic areas. So we've taken  
18 the categories of patents, contested cases and  
19 fees budgetary issues and broken them down even  
20 finer for you. So, for example, third party  
21 submissions, 5 percent; first inventor to file  
22 related to prior art, 6 percent; generic first



1 inventor to file, 7 percent; transitional business  
2 method, 7 percent, post grant review, 14 percent;  
3 interparties review, 11 percent; micro entity, 5  
4 percent; and fee setting authority, generally 6  
5 percent. The other captures the remaining  
6 categories. So you can see that the feedback  
7 we've gotten has been diverse and across the  
8 board. It's kind of heavy in the first inventor  
9 to file and the contested case areas, but it has  
10 been across the board.

11           Lastly, I want to clarify the scope of  
12 the public comment window. We continue to want to  
13 receive input, however, we have to manage that  
14 input. And now that we have multiple timelines in  
15 place: The 12-month timeline, the 17- month  
16 timeline, and the 18-month timeline asterisks. I  
17 don't want there to be confusion for the public on  
18 when they have the availability to give input to  
19 the agency.

20           So for the comments in the first window  
21 of time that we're dealing with now, interparties  
22 review, the ones that will be making rules coming

1 out for mid January public release, for the most  
2 part, these provisions, before the proposed rules,  
3 are closed, response to proposed rules not  
4 applicable. Now we're at the final rule stage for  
5 interparties exam, tax strategies, et cetera.

6 So for those, if you have comments about  
7 how we've already implemented these provisions,  
8 please continue to give that feedback to us. For  
9 fee setting and micro entity, we are receiving  
10 comments about our proposals, what you'd like to  
11 see, your thoughts and ideas on how our fee  
12 structure should be set between present and mid  
13 March, and then we will engage in the comment  
14 period in response to our proposed rules from mid  
15 June through mid August, and then obviously in  
16 response to final rules not applicable.

17 And then lastly for prioritized exam,  
18 the surcharges, we have already implemented those,  
19 so nothing for proposed, nothing for response to  
20 propose. We are at the final stage, so the public  
21 is open to comment on how we have implemented  
22 those provisions.

1           For the group two, I think I misspoke  
2 earlier, so these are the ones for the January end  
3 -- it's actually group two. So before the  
4 proposed rules, that period is now closed. We're  
5 under internal review. We will soon be going into  
6 OMB review. So to the extent the public has  
7 comments on these provisions, they should submit  
8 those comments in the comment windows that open in  
9 response to our Notices of Proposed Rulemaking mid  
10 to late January to mid to late March. And then  
11 final rules not available yet.

12           Last, for group three, first inventor to  
13 file, derivation, statutory invention. We have  
14 not started yet on our rulemakings, we will be  
15 doing that in January, so the comment period is  
16 open before the proposed rules take effect until  
17 -- from now until mid March of 2012. And then in  
18 response to our proposals and final rules, not  
19 applicable. So these charts are going to be on  
20 our micro site so the public knows if they want to  
21 give us feedback, when we're taking that feedback  
22 and how to submit the feedback to the agency. So

1 that wraps up what I'd like to talk about with you  
2 today as far as our progress report.

3 Are there any questions further?

4 MR. MATTEO: Any questions? No. Well,  
5 thank you very much, Janet.

6 MS. GONGOLA: Okay. Thank you.

7 MR. MATTEO: Thank you. And what I'd  
8 like to do now is introduce Tony Scardino who will  
9 speak to us about the financial situation.

10 MR. SCARDINO: Good morning. It's a  
11 pleasure to be here. A lot has happened obviously  
12 since we met in September with the passage of AIA.  
13 In the CFO world, that means a lot of things to us  
14 like everybody else in the USPTO, but fee setting  
15 authority has brought with them many, many, many  
16 challenges, but just as much excitement. We are  
17 really happy to have the ability, of course, to  
18 match costs with revenues.

19 So before I go through some of the  
20 challenges that's bringing us in '12 and '13, I  
21 wanted to just reflect for a second on -- the last  
22 time we met, we had Bruce Kisliuk as the acting

1 deputy CFO, and since that time, we've now hired  
2 Frank Murphy, he's right -- somewhere right here  
3 as the deputy CFO. Some of you got to meet him  
4 yesterday. But I know he's looking forward to  
5 meeting the rest of you and working closely with  
6 everyone over coming months and years. But I also  
7 want to thank Bruce for all of his efforts. It  
8 was a tremendous opportunity to actually work very  
9 closely with Bruce and learn a lot from him  
10 personally, as well as I know, you know, all the  
11 folks in OCFO really appreciated having a guy who  
12 really has such a great work ethic and knows so  
13 much about our patent operations. So I have to  
14 thank Bruce publicly, as well as privately, I've  
15 done so many times.

16 So we will now go through, hopefully,  
17 here we go, kind of the usual presentation. We  
18 kind of like to go chronologically of where we  
19 ended in '11 and go through '12 and '13. I'm sure  
20 it's no surprise to anyone when you see here that  
21 2011 was a great year in the sense of we collected  
22 a lot of fees. It wasn't such a great year that

1 we couldn't use all the fees.

2           The challenge there, of course, is --  
3 it's always difficult in the beginning of the year  
4 to estimate how many fees you're going to collect.  
5 I think we did a pretty good job of it actually,  
6 and we were proceeding at pace; our estimates were  
7 right on the money until enactment of AIA.

8           And we had predicted ahead of time that  
9 there would be a lot of patent holders that would  
10 take advantage, let's say, a little bit of the  
11 fact that 10 days after enactment, our fees were  
12 going up with the 15 percent surcharge. So we  
13 experienced what we call a bubble of -- we had  
14 really, really high fees from September 16th, high  
15 fee collections coming from September 16th to  
16 September 26th. So that helped contribute to,  
17 you'll see, \$208.9 million worth of collections in  
18 excess of our appropriation. That money was  
19 unavailable to spend. So, you know, our total  
20 spending was lower than we would have probably  
21 liked. But the real challenge was brought forth  
22 for 2012. A lot of those fees that were collected

1 at the end of '11 will not be collected in 2012.  
2 We're calling it a "trough." So our estimates  
3 have now gone down for 2012 in terms of fees we're  
4 going to collect. But Congress was very supportive  
5 of the President's 2012 budget request, and they  
6 appropriated \$2.706 billion, or \$2,706 million, as  
7 the chart says.

8 We worked with Congress and updated them  
9 on our fee estimates. And as they noted in the  
10 conference report, they recognized that, but they  
11 also still wanted to give the USPTO the full  
12 advantage of the President's budget request, and  
13 if fees do come in at that level, we'll get to  
14 spend them to that level. So we got great support  
15 up on the Hill, but the challenge is, we are not  
16 going to collect fees to that level, at least  
17 that's our belief right now.

18 Our current estimate actually is closer  
19 to somewhere between 2.45- and \$2.5 billion.  
20 And a lot of that is due to folks paying at the  
21 end of last year, as well as some other  
22 administrative operations that we were going to

1 change a bit to raise some fees when we first made  
2 our estimate to get to \$2.7 billion. So our  
3 challenge now is working with all business units  
4 and Director Kappos and Deputy Rea; just how do we  
5 actually in an environment where we have many  
6 things we need to get done, such as hiring and IT  
7 upgrades, to meet our patent pendency and backlog  
8 goals how do we get there knowing we've got less  
9 money than we thought we would have this year.

10 I don't want to give anyone the wrong  
11 impression. This is a really good story for  
12 USPTO. Our budget is going up tremendously from  
13 '11 to '12, so we're very excited and very  
14 thankful. Having said that, our budget is  
15 supposed to be such that it's requirements based.

16 We knew what our requirements were to  
17 get to patent pendency and backlog by 2014 and  
18 '15, and we're not going to be able to hire as  
19 many people as quickly as we wanted to. We're not  
20 going to be able to do some of the IT upgrades as  
21 fast as we wanted to because we are going to have  
22 less money than we thought we would have. But



1 again, our budget is growing tremendously from 2011.

2 MR. MATTEO: So, Tony, can you put some  
3 specificity around this? So that sort of marginal  
4 swing intended to anticipation of the increase,  
5 vis-à-vis the 15 percent, year over year, what  
6 does that represent in terms of --

7 MR. SCARDINO: The 15 percent surcharge  
8 probably equates to about \$250 million.

9 MR. MATTEO: No, I'm sorry, I'm actually  
10 asking a different question. It seemed you were  
11 intimating that there was some front end loading  
12 time shifting of applications and that was going  
13 to create --

14 MR. SCARDINO: Or maintenance fees.

15 MR. MATTEO: I'm sorry, yes.

16 MR. SCARDINO: More likely.

17 MR. MATTEO: Fees in general, I  
18 misspoke.

19 MR. SCARDINO: Yeah.

20 MR. MATTEO: Fees in general. So can  
21 you give me or help quantify how much that is  
22 versus the trough that you think you're going to

1 anticipate in 2012?

2 MR. SCARDINO: It's probably between  
3 \$110 and \$130 million is that folks paid in  
4 advance at the end of last year.

5 MR. MATTEO: So you think it's about --  
6 on the order of 100?

7 MR. SCARDINO: At least \$100 million,  
8 yes.

9 MR. MATTEO: At least \$100 million,  
10 okay.

11 MR. SCARDINO: So --

12 MR. MATTEO: That's helpful. Thank you.

13 MR. SCARDINO: Yeah.

14 MR. MATTEO: Oh, sorry, Wayne.

15 MR. SOBON: So to help me understand  
16 this, so there was the carryover from last year of  
17 now 177 million?

18 MR. SCARDINO: Correct.

19 MR. SOBON: And you're estimating actual  
20 new fees of around 2.5 billion. Are you allowed  
21 to use that carryover to the full appropriated  
22 amount of 2.7?

1 MR. SCARDINO: Absolutely.

2 MR. SOBON: So you can add the past from  
3 last year?

4 MR. SCARDINO: Right. That money is  
5 already appropriated, already available, so this  
6 year's 2.7 billion isn't affected by that at all.  
7 We can spend 2.7 plus that carryover.

8 MR. SOBON: Oh, I see, okay.

9 MR. SCARDINO: We just won't collect  
10 that much.

11 MR. SOBON: Right. So you're roughly  
12 assuming you'll collect probably something like  
13 2.7 billion?

14 MR. SCARDINO: No, collect will be --

15 MR. SOBON: Well, plus the carryover.

16 MR. SCARDINO: Plus the carryover, so  
17 we'll have --

18 MR. SOBON: The carryover plus the new  
19 collection?

20 MR. SCARDINO: -- right, in terms of  
21 cash on hand, almost --

22 MR. SOBON: Cash in hand.

1 MR. SCARDINO: -- 2.7 billion.

2 MR. SOBON: Okay.

3 MR. SCARDINO: Now, there are many  
4 reasons why we don't spend all of our carryover,  
5 and, you know, but through fee setting, you'll  
6 help us work through that to a greater degree, but  
7 we need an operating reserve for a variety of  
8 reasons. So we can go through that in a little  
9 more detail later. So right now our challenge, as  
10 I said, for 2012, is, we are working on developing  
11 a spend plan which will go to Congress, and, you  
12 know, lay out roughly how we're going to spend our  
13 money for 2012, understanding that Director Kappos  
14 is a strong believer that we do need an operating  
15 reserve, so we're trying to maintain something  
16 similar to what we brought into this year to go  
17 into next year, this being 2013.

18 So how do we have a spend plan where we  
19 roughly spend 2.45-, \$2.5 billion instead of our  
20 anticipated spend level that was closer to 2.6 billion  
21 this year, so that's kind of where we are in terms  
22 of internally. We're trying to find -- I won't

1 even call them cuts, because our budget grew  
2 tremendously from 2011, they're just reductions  
3 from our proposed spending level for 2012.

4           And in the midst of all that fun, we are  
5 actually still working with the Office of  
6 Management and Budget on our 2013 budget. OMB  
7 just passed back, it's an annual process where  
8 they pass back to all agencies, just on Tuesday,  
9 what you're going to get for 2013, i.e., what each  
10 agency will be funded at as part of the  
11 President's budget request the first Monday in  
12 February. I'm not allowed to publicly share the  
13 details of that pass back other than to say that  
14 we've received a tremendous amount of support  
15 within the administration, it was a very positive  
16 pass back, we're not appealing it, which is very  
17 odd, most organizations it's part of the process,  
18 you appeal the pass back, so we are working  
19 closely with OMB to develop the President's budget  
20 request for USPTO, and you'll all get a copy of  
21 that in January to review. I think that's it.

22           Any questions, thoughts?

1 MR. MATTEO: Questions from the members?

2 No. Tony, thank you very much.

3 MR. SCARDINO: Sure. Thank you.

4 MR. MATTEO: So with that, I'd like to  
5 adjourn. We'll take a brief break and return here  
6 at 9:30 East Coast time.

7 (Recess)

8 MR. MATTEO: Welcome back, everybody.

9 We're about to resume the Patent Public Advisory  
10 public session. And what I'd like to do now is  
11 introduce Dana Colarulli, who will give us a  
12 legislative update. Dana, if you would, please.

13 MR. COLARULLI: Good morning, Damon.  
14 Thank you very much. Good morning, members of the  
15 Committee. I'm here to give our regular  
16 legislative update. And I'm happy to report very  
17 good things. For the last two years, I've come in  
18 front of this Committee and reported on the  
19 progress of patent reform and some of the  
20 challenges that we're still to overcome. You  
21 know, we now have a bill in place that's, as you  
22 all know, extremely significant to the agency,

1 changing operations. Peggy and her team have a  
2 number of challenges ahead of her. And I know you  
3 heard from Janet Gongola this morning on all of  
4 the things that the patent reform implementation  
5 team are doing.

6 Well, none of that can happen without  
7 solid funding, but I'm happy to report we have  
8 good news in that realm, as well. And I know Tony  
9 Scardino reported this morning where we think that  
10 fee projections are trending. It's a very  
11 different conversation than we were able to have  
12 really any time in recent years. And I think -- I  
13 hope I'm reiterating some of the things that Tony  
14 had said.

15 I think we're in a better financial  
16 position than we really have been in terms of  
17 being able to plan on a multiyear basis than  
18 almost any time during the history of being a fee  
19 funded organization. So things are very, very  
20 bright.

21 We have our full-year appropriations  
22 this year. We are appropriated at a number

1 significantly higher, as Tony reported, than our  
2 expected collections, trending now likely slightly  
3 under 2.5. The Committee report that appropriate  
4 us noted that we had expected to collect around  
5 that number.

6 That higher appropriations level will  
7 protect us going into the next fiscal year,  
8 especially in the case of a continuing resolution.  
9 Our spend rate will be at a higher rate. So all  
10 of the things that we know we need to get done in  
11 the next year, as Janet reported this morning,  
12 even beyond. We can start in earnest making plans  
13 and not holding back on some of the things that we  
14 know we need to do, some of the things we know we  
15 should do to be able to implement the plan well.

16 So from the legislative perspective, we  
17 have -- it's all good news on patent reform and  
18 implementing the new authorities that the recent  
19 legislation brought. So, you know, from that,  
20 I'll -- I won't go through this slide too much.  
21 This is some of the things in terms of  
22 implementation, because I know that Janet Gongola



1       went through in more detail the status of a lot of  
2       these moving balls.

3                       There's a last bullet on there I'll  
4       note, not directly related to implementation of  
5       patent reform, but related. In the minibus, in  
6       the conference report, there is a number of  
7       additional requirements for PTO to comply with.  
8       Among that were to look at issues that the  
9       chairman of our subcommittee has had an enduring  
10      interest in and has raised with us a number of  
11      times. We've been trying to be helpful  
12      facilitating a discussion over both national  
13      security issues. And he's raised the issue of  
14      economic security, should there be some type of  
15      filter to recognize economic security.

16                      I think you'll see us coming forward at  
17      some point soon potentially seeking public comment  
18      even on these questions to try to further the  
19      dialogue. The national security issues, I think  
20      what we've committed to doing is working with our  
21      colleagues throughout the government to look at  
22      whether the standards are appropriate that the

1 defense agencies give us to determine whether  
2 things should not be published, should be placed  
3 under secrecy order. So that was specific and  
4 made me curious to some members of the committee  
5 part of our committee report, among others. So  
6 we'll be, along with all of the reports required  
7 under the AIA, in parallel, we'll be looking at  
8 the reports required by our appropriations  
9 committee and moving forward with those throughout  
10 this year, and you'll hear reports from me on  
11 progress there.

12           So I wanted to highlight a few pieces of  
13 active legislation unrelated to patent reform, but  
14 certainly things that we're keeping an eye on and  
15 will impact the IP system. The first of which  
16 I'll highlight is the so-called SOPA Act, the Stop  
17 Online Piracy. This bill is, on some provisions,  
18 parallel to legislation we've seen in the Senate  
19 addressing online piracy and essentially trying to  
20 provide additional tools to combat online piracy.

21           The Senate bill, the Protect IP Act,  
22 which I actually think is on the next page, was

1 introduced earlier this year, actually  
2 reintroduced after a few Congresses and refined.  
3 That addressed just the online piracy issue. The  
4 House took a different approach. They wanted to  
5 take a more comprehensive bill. So in addition to  
6 those issues that they address in a slightly  
7 different way, they also try to introduce  
8 provisions to improve our current IP attaché  
9 program. We think the IP attaché program as it  
10 currently exists at the PTO that we administer is  
11 fairly robust. We've had a significant effect in  
12 working with companies attempting to market their  
13 products overseas, particularly the China market,  
14 but throughout the world.

15           This bill tries to increase that  
16 program. We're still looking at that language and  
17 somewhat concerned with ensuring that this program  
18 can continue to grow, receive direction from the  
19 Patent and Trademark Office, and actually serve  
20 two different functions, one being the development  
21 of reasonable and reliable IP infrastructure in  
22 those countries, the statutory structure, and we

1 are playing a role in supporting many other  
2 overseas assets of the U.S. Government addressing  
3 IP violations. And we're one player among a  
4 number on those issues, so we're still looking at  
5 that.

6 In addition, the House bill incorporates  
7 a number of changes that the intellectual property  
8 enforcement coordinator sent up to the Hill  
9 earlier this year, particularly on an issue of  
10 drug counterfeiting, increasing penalties in areas  
11 of streaming, and sentencing in other areas, so  
12 really trying to put more meat on the current  
13 statutory structure for addressing online piracy.  
14 That's one that my staff is spending quite a bit  
15 of time on and our External Affairs team here at  
16 PTO. Other bills, just for interest, the Sunshine  
17 Litigation Act, that's been a bill that's been  
18 around for a few years here and reintroduced. And  
19 some of our stakeholders have expressed concern  
20 about the impact of that bill on protective  
21 orders, and frankly, providing -- allowing too  
22 much intellectual property and certainly trade

1 secret information into the discovery process. So  
2 I know that's one that we're also watching. And  
3 then there's a series of bills continuing to look  
4 at the ability of generics to come to market to  
5 provide competitive pricing for popular drugs.

6 The last bill I'll highlight here, I  
7 think I've actually hit now all of them, the  
8 American Innovation Act was one that was  
9 interesting to us that I just included there,  
10 combating military counterfeits. That actually  
11 was also an issue incorporated into the House  
12 counterfeiting bill, so again, another bill that  
13 we're watching.

14 You know, I mentioned our funding  
15 situation at a high level at the beginning of my  
16 remarks. I wanted to summarize it here. Again, I  
17 think, arguably, we really have the best outlook  
18 here for PTO since 1991, and a good outlook both  
19 for this year and the next year.

20 What the higher level of appropriations,  
21 the 2.7, way above our fee collections means for  
22 PTO is that we won't use the provision in the AIA

1 that accounted for any excess fees above our  
2 appropriation, we won't collect fees above that  
3 amount. But certainly in our appropriations  
4 language included the ability for us to access  
5 that in those years that it occurs. We expect  
6 that language to be carried forward. So the  
7 agreement that the House leadership, the Judiciary  
8 Committee and the appropriators came out to in  
9 addressing our funding, it seems they've come  
10 through with that agreement, they've included all  
11 that language. We'll test our that mechanism  
12 surely in coming years, but certainly not in FY  
13 '12, maybe in FY '13, most likely in FY '14. I  
14 think that's all I'll say on that.

15 The last is an update on legislation  
16 that passed now more -- just over a year ago to  
17 increase our flexibility on telework. Our team  
18 here worked very hard to develop both a program,  
19 to develop cost benefits, so that we're actually  
20 incorporating our telework flexibility into our  
21 business plan.

22 We sent that over to GSA. We're

1       awaiting their approval of that program. Once  
2       they indicate to Congress that we've developed a  
3       solid program, which we know they will, 30 days  
4       after that we can implement. So we're in a  
5       holding pattern right now waiting on GSA. We  
6       expect them to act somewhat quickly.

7               And with that, I'll end. And I'm happy  
8       to take any other questions.

9               MR. MATTEO: Questions from the members?  
10       Well, thank you very much, Dana, I appreciate it.

11              Okay. Next up we have a patent  
12       operations update from Bruce Kisliuk, assistant  
13       deputy commissioner for patents. Bruce, please.

14              MR. KISLIUK: Thank you, Damon. Good  
15       morning, everyone. Okay. I'm going to go ahead  
16       and do the patent operations update this morning.  
17       I'm going to cover some data from Fiscal Year '11,  
18       kind of an update of where we were, give a quality  
19       update, some of our new measures, talk through  
20       those, and then touch on a few of the initiatives.  
21       Peggy had mentioned the COPA one, I'll show you  
22       some more numbers on that.

1           You already heard some numbers on Track  
2       1. Some of our Patent Examiner Training Program,  
3       which has been very effective, First Action  
4       Interview Pilot Program, our Green Tech Program,  
5       and the E-Petitions Program.

6           So this is kind of a summary of the  
7       highlights of '11 in terms of some of the filing  
8       numbers. So we finished with about 507,000  
9       filings in '11. That was roughly a 5.3 percent  
10      increase over the prior year.

11          We did, like Peggy mentioned, our  
12      backlog was reduced significantly and I'll show  
13      you some more slides. It's a little bit more  
14      dramatic if you see it visually. Total  
15      applications in process, that number in the 1.2  
16      million includes those applications that are still  
17      pending, that haven't been disposed, not just those  
18      newly unexamined, as well. Our patent production  
19      rate remains high, that's good news. Again, the  
20      slides will be a little more descriptive visually  
21      of the pendency, but our first action pendency is  
22      at 28 months, total pendency is at 33.7. Our



1 allowance rate, again, I have a slide on that,  
2 continues to increase, it's up to 48 percent. And  
3 our electronic filing rate continues to grow, it's  
4 up to 93.1 percent. So those are all relatively  
5 good news slides.

6 This is our filing slide. This shows  
7 filings from Fiscal Year 2011. The last bar on the  
8 far right is actually a projection, that's not an  
9 actual data bar, that's for FY '12, our projections.

10 The top half of each of the bars shows  
11 our regular filings. The blue section  
12 underneath there are RCEs. So I think if there's  
13 any takeaway as one, if you do see in the column  
14 for 2009 a little bit of a filing blip, that was,  
15 you know, kind of the impact of the economy, we  
16 talked about that for the last couple of years.

17 Since then, it seems that we're back on  
18 a relatively consistent growth pattern in the 4 to  
19 5 percent range. And in other -- what I believe  
20 is a good news story is, if you look at both FY  
21 2010 column and FY 2011, if you focus on the RCEs,  
22 although the bar doesn't show it very well, we, in

1 fact, dropped in absolute RCE filings and RCEs as  
2 a percent of our total filings. So we believe  
3 that's a result of a number of initiatives, and I  
4 know that we -- that Andy Faile has been working  
5 with a number of the members of PPAC on some  
6 additional initiatives to try to reduce the need  
7 for RCE's when applicants aren't interested and  
8 we'll continue to pursue those.

9 This is a slide that shows our regular  
10 application filings that are awaiting action. We  
11 often call this the backlog. I'd like to just  
12 clarify, we use the term "backlog" and I just  
13 wanted to make sure people understand that the  
14 total number, while it's a backlog, there still  
15 needs to be a working inventory.

16 So we think that when we get to a steady  
17 state, when we get to our ten month pendency, we  
18 think our working inventory is going to be in like  
19 the 300,000 to 400,000 range based on the volume of  
20 examiners that we all have. So while the number  
21 in the backlog still is relatively large, in the  
22 600,000 range, not all of that is something that

1 necessarily will be worked off even when we get to  
2 ten month pendency.

3           So this shows -- goes back for three  
4 fiscal years. And there's slight -- you'll see on  
5 the bottom scale, there's some hash marks just to  
6 denote where the fiscal years are. So you can see  
7 there's a pretty repeatable pattern, it's a  
8 seasonal pattern over a fiscal year. And we have  
9 been consistently coming down and the low points  
10 have been at the end of the fiscal year. This  
11 year, to the far right, not only did the pattern  
12 repeat, but it came down slightly quicker at a  
13 little bit faster rate, and even the first data  
14 point of the next fiscal year, as you can see the  
15 farthest data point, did not go up as quickly or  
16 as steeply as some of the other prior years. So  
17 we think that's just a continuing trend on all the  
18 initiatives we have to reduce the backlog,  
19 including the COPA effort, and I'll talk about  
20 that a little bit more, as well.

21           MR. MATTEO: Excuse me, Bruce.

22           MR. KISLIUK: Yes.

1           MR. MATTEO: Maybe that month is missing  
2           from this. I can't read it. How do you reconcile  
3           that with, for example, Tony's notion that there  
4           was a large uptick in applications received, which  
5           I assume would be counted here?

6           MR. KISLIUK: Right. Tony's mention of  
7           the bubble was a fee bubble, that was mostly  
8           directed to maintenance fees, not to application  
9           filings.

10          MR. MATTEO: Okay.

11          MR. KISLIUK: And consistent with the  
12          prior slide, which was our regular cases awaiting  
13          first action, this is our RCE backlog, and this is  
14          also -- these numbers are also shown on our  
15          dashboard, our public dashboard, as well. So this  
16          number, again, continues to grow a little bit. It  
17          also seems to have a seasonal effect at the end of  
18          the fiscal years. There's, again, hash marks on  
19          the bottom, you can see that. It does seem to  
20          come down a little bit, but seems to still show a  
21          pattern of continuing decline, so again, we're  
22          working with other PPAC members looking at ways to

1       reduce the RCE need. This is our pendency slide.  
2       This shows two sets of information. The top part  
3       is our total pendency. Again, this is showing the  
4       past three fiscal years worth of data. The top is  
5       our total pendency, and the bottom one is our  
6       first action pendency.

7                 There are some dotted lines that show  
8       relative targets for fiscal year '12, where we expect to  
9       be in '12. I will note a couple of things that  
10      you may be questioning. One is, if you look at  
11      our first action pendency, which are the green  
12      triangles to the right, you'll see that  
13      increasing.

14                It increased this fiscal year as a  
15      direct result of our COPA effort. So as we work  
16      on the older cases, those cases have older  
17      pendency. So that number went up. And what we do  
18      expect also in the next 8 to 10 months, to see a  
19      commensurate increase in our total pendency,  
20      because when those cases become disposed, then  
21      we'll go into our total pendency number.

22                So we see it as a necessary path to go

1 through before we can get to our 10-month  
2 pendency. So it's going to go up as you clear out  
3 the older, and then we should see it start coming  
4 down.

5 Now, this is a look at our quality  
6 metrics. We have our new quality composite index  
7 and it's made up of seven measures. So this is  
8 kind of a walk through of what those measures are.  
9 The first two of the seven are what we call our  
10 existing measures. One is our final disposition  
11 compliance rate and we finished at 95.4 percent.  
12 The other one is our in-process compliance rate  
13 and we finished at 95.2. The other five measures  
14 are relatively new measures. And they go through  
15 various aspects, one is the first action on the  
16 merits review, the complete first action on the  
17 merits review, and these are another look at our  
18 actions, our first actions, how well we're doing  
19 up-front.

20 These are more of a -- kind of a grade,  
21 it's like an A, B, C, D, how good the first action is, relative  
22 to our existing measures which are more like a pass or

1 fail. So if you have an error, it's a fail; if  
2 you don't have an error, it's a pass. The other  
3 new measures are more on a scale of is it good,  
4 how good is it. It gives us a little more rich  
5 data on how we're doing.

6 We also have amongst these seven  
7 composites an actual composite of composites. So  
8 the QIR Index Report is actually a statistical  
9 representation of a number of other measures  
10 within it. Yes, Esther.

11 MS. KEPPLINGER: I have one question  
12 about the statistics. I think when you do these  
13 quality numbers, you're only looking at the cases  
14 that you've reviewed in a certain program. But  
15 you have all the data from the pre-appeal brief  
16 conference, which are at least, from what I've  
17 seen of the statistics, at odds with 95 percent.  
18 Would it be appropriate to add that in somehow?  
19 Because I think there are a significant number of  
20 those which would be whether or not the final was  
21 correct, and a lot of those are reopened or  
22 something else happens, they don't continue on, so

1 that has to say that the final rejection was not  
2 appropriate.

3 MR. KISLIUK: I'll make a note of that.  
4 So as I said before, these seven measures all go  
5 into our new composite index. And before I show  
6 you the full composite index, that index also has  
7 a score, and so I want to put that score in  
8 context before I show you the full sheet.

9 So this is the way it has been designed.  
10 The way the index is measured is it's kind of  
11 gauging our achievement of what our targets are on  
12 our strategic plan, which go out to FY '15. So if  
13 we were 100 percent successful, we would achieve  
14 that 100 percent out in '15. Since we are in the  
15 first of four years of that metric, then -- this  
16 year we would expect to be in the 35 to 43 range  
17 as we move up, so it's a progression  
18 towards on an annual basis.

19 This year's result was 30.7. And again,  
20 the rest of the text just describes what goes into  
21 that measure. And this is -- the next slide is  
22 kind of a pulling those first two slides together,



1 and I know it's slightly eligible, but it shows  
2 the seven metrics. It kind of shows the quarterly  
3 number, so you can see a trend of those, and then  
4 you can see also all the way to the far right is  
5 this composite score. And then, like I said, I  
6 know that it is relatively eligible, but there are  
7 definitions underneath that describe both what  
8 these measures represent and how they work  
9 together in the scheme.

10 MR. MATTEO: So, Bruce, if I may --

11 MR. KISLIUK: Yeah.

12 MR. MATTEO: -- this is all laudable  
13 work, but are you also going to touch upon the  
14 feedback mechanisms and how this is cycled back  
15 into the system for constant improvement, as well?

16 MR. KISLIUK: Well, I can say it is. We  
17 look at all of our data and we look at it on more  
18 than an annual basis. Some of these measures, for  
19 example, are taken at relatively long periods of  
20 time. For example, the external surveys and the  
21 internal surveys are a much wider period of time.  
22 So every time we do those surveys, we look at what

1 were the results, how did they compare to previous  
2 numbers, and what does it mean for our operations.

3 Most of the other numbers we look at  
4 actually -- at a much closer window of time. For  
5 example, our QIR data, which is a much more  
6 refined look at data, we look at that almost on a  
7 daily basis depending upon the issues, the  
8 technology center, so it's data that we can drill  
9 down all the way to an examiner level. So it is  
10 data we use routinely daily to look at  
11 improvements in both the systems and our  
12 employees. So I think the safe thing to say is  
13 there's two things that this type of composite  
14 helps us do. One is it rolls up a number of items  
15 from different perspectives to give us an overall  
16 quality trend, are we trending in the right  
17 direction from a lot of perspectives. And each  
18 one of them, I would say particularly our  
19 historical final disposition and in process are  
20 ones that we look at very closely on a regular  
21 basis at the TC level all the way down to the  
22 Art Unit level and the QIR data, as well. So we

1 are using them on a routine daily basis to make  
2 improvements in the technology center.

3 MR. MATTEO: So I think it would be  
4 useful and informative at perhaps the next meeting  
5 or in the interim you were able to respond more  
6 fully to the question about the feedback loops and  
7 how that works, please.

8 And we have another question, Wayne.

9 MR. SOBON: Yeah, Bruce, in particular,  
10 it's kind of market the -- well, how it was two  
11 years ago, the external quality survey was in the  
12 ones and now it's in the threes. I wondered if  
13 there was any key outcomes from that or key  
14 drivers that you could glean from why the external  
15 user community has seen? It's not perfect by any  
16 means in your scale, but a significant  
17 improvement, what were the key drivers of that?

18 MR. KISLIUK: Yeah, I think there's a  
19 number of things. I think it's kind of the -- if  
20 you look at all of the initiatives we've done that  
21 have centered around compact prosecution, I think  
22 if you look at the trends of the survey, it goes

1 to a reduced number of actions per disposal, more  
2 outreach in interview practice, all of the  
3 initiatives that we've done to focus on compact  
4 prosecution, reaching out to applicants early.

5 The survey seems to hit on the things  
6 that we've done and the trends we see in our  
7 numerical statistics have been reflected in the  
8 external survey, as well. What's interesting to  
9 see is when will we might plateau in terms of this  
10 increase? And you're right, the scale has gone up  
11 pretty dramatically. So that's what -- kind of  
12 the answers to the questions seem to show us.

13 MR. MATTEO: So is there some sort of  
14 normalization that needs to be done, i.e., for  
15 example, was the basis of all of the questions and  
16 the metrics the same, as well, so are we comparing  
17 apples to apples?

18 MR. KISLIUK: Yes.

19 MR. MATTEO: Okay.

20 MR. KISLIUK: Yes, for this measure, it  
21 was.

22 MR. MATTEO: So that makes it even more

1 telling.

2 MR. KISLIUK: Uh-huh.

3 MR. BORSON: Bruce, I had a question  
4 relating to the differences between the external  
5 quality of surveys and the internals. Why do you  
6 think there is a higher index for the internal  
7 quality?

8 MR. KISLIUK: I couldn't tell you, Ben.  
9 I don't -- I haven't looked at these in detail  
10 that much, so I can't answer that. But we will  
11 look at it and I'll try to get back to you if  
12 there is anything to glean from that.

13 MR. BORSON: Well, just as a thought, it  
14 may go to the inherent, you know, predisposition  
15 of the people that are being asked these questions  
16 are given the surveys.

17 MR. KISLIUK: Which is why we try to do  
18 it from multiple angles.

19 MR. BORSON: Right.

20 MR. KISLIUK: This is an overview of  
21 some of the initiatives. Peggy had mentioned  
22 COPA, and she had mentioned it was extremely

1       successful. So at least last year we completed  
2       almost 260,000 first actions in this, which was  
3       20,000 over our goal. I have a slide that I'll  
4       show you a little bit more.

5               I think Janet already touched a little  
6       bit on track one. The numbers you see on this  
7       slide are already outdated. That 1,286 number is  
8       already up to about 1,500. And I just got an  
9       e-mail this morning that we have allowed nine  
10      applications under Track 1, but I don't think of  
11      the nine in that program have granted a patent.

12             Our patent examiner technical training  
13      program is one which we've updated our  
14      website and our outreach, where we have technical  
15      experts volunteer to come to the PTO. And while  
16      we had done that relatively informally over the  
17      years, this program, the way we develop the  
18      outreach and website, have been very successful.  
19      And we've got a lot of good training programs, at  
20      least 30 have participated so far, over 14,000  
21      hours of technical training. It's a very robust  
22      system and working very well.

1                   MR. BORSON: Bruce, I had a question  
2 about that. Is that 14 hours of examiner hour --  
3 14,000 examiner hours or --

4                   MR. KISLIUK: Yes. Yeah, those are --  
5 that's equivalent to examiners, not doing  
6 production, they're in those training sessions.

7                   MR. BORSON: I see, okay. Thank you.

8                   MR. KISLIUK: And our first action  
9 interview program, this is a program, we ran a  
10 pilot for a number of years at a relatively low  
11 scale. We had just a few either art units or work  
12 groups identified in each TC. And in April of  
13 this year, we expanded that program to all  
14 applications in all TCs at least for one more  
15 year, so it's still a pilot. I think it runs  
16 through May of next year, so it has been growing.

17                   Looking at the activity in that program,  
18 I think the agency -- we could probably do a  
19 little better job advertising. We'll be looking  
20 for ways to get the word out. I think that's a  
21 program that, when people started using it,  
22 because it was so limited, it wasn't available in many areas.

1 And I think that we could make it more known. And  
2 I think it has been very good results, and we  
3 worked well with the union to get that expanded,  
4 so we're looking forward to expanding that even  
5 further.

6 Our interviews, I'll show you some  
7 statistics from the interviews. Those hours  
8 continue to show good growth. Our Green Tech  
9 program, which as of the last notice, would be  
10 ending in December of this year. It was 3,000  
11 applications or December 31st. We will be  
12 extending that until March 31st of next year and  
13 adding another 500, so the cap will be 3,500. But  
14 we do not intend after that point to further  
15 extend that program.

16 In our E-Petition Program, and there's  
17 eight new web-based E-Petitions, we launched this  
18 in March, and I'll show you a little bit more of  
19 that, as well.

20 MR. BORSON: Excuse me, Bruce, there's  
21 one thing here that I'd like to follow up on from  
22 a prior meeting. Peggy mentioned at a prior



1 meeting this year about management training for  
2 SPEs, and I just wanted to ask what the status is  
3 of that program?

4 MS. FOCARINO: I think we chatted  
5 yesterday a little bit about this, Ben, but  
6 basically, in addition to our new SPE development  
7 program, we have now an Experienced Patent  
8 Manager's Program. So we have a series of  
9 classroom modules on topics ranging everywhere  
10 from coaching and mentoring for SPEs to search  
11 strategy, leading a high-performing team, and also  
12 employee relations, labor relations, that type of  
13 thing. So while we've always had a new supervisor  
14 or a pretty robust training program, now we've got  
15 an experienced training program and we continue to  
16 evaluate it and ask more experienced SPEs what is  
17 it that you would like to have refresh your  
18 training on, what can we offer you? So it's been  
19 really successful and we hope to continue to  
20 refine it.

21 MR. BORSON: Well, it seems that there  
22 might be a metric that might shed some light on

1       that at some point, and that is the degree to  
2       which applicants seem to be able to break through  
3       some of the barriers between a primary and a SPE,  
4       you know, as we may have experienced in individual  
5       cases. Once an examiner takes a hard and fast  
6       position with an application, the SPE tends to  
7       follow along, and so the question is whether or  
8       not there is a way to track or provide a metric  
9       for the evaluation of this management training  
10      effort that you're undertaking.

11               MS. FOCARINO: I'm sure we can, you  
12      know, we can look at different things. I think  
13      some that Bruce mentioned, our quality index,  
14      we've got some data points in there that also can  
15      focus us in on some of the behaviors and the  
16      change and we can recognize that, but that's a  
17      good point. I think we'll look a little closer at  
18      doing that.

19               MS. LEE: Bruce, just following up on  
20      Ben's point on the Patent Examiner Technical  
21      Training Program, I'm sure you've got a lot of  
22      programs going on training your examiners. I

1 think, perhaps for me anyway, the more useful  
2 statistics is not how many examination hours were  
3 spent, which is depending upon the number of  
4 attendees, the number of sort of teaching hour  
5 programs, I think that would be an interesting  
6 statistic, and I'm sure you have it. Is that  
7 correct?

8 MR. KISLIUK: I will check, I'm sure we  
9 do.

10 MS. LEE: Okay, right. That would be  
11 helpful. Thank you.

12 MS. KEPPLINGER: One of the things,  
13 following up on Ben's comment, and that is, with  
14 respect to improving the quality and reducing the  
15 need for RCEs, I think one of the biggest things  
16 is ensuring that the examiners, as they're coming  
17 up, get adequate feedback. I think that's one of  
18 the things that is maybe missing, that a lot of  
19 examiners don't get any feedback from their  
20 supervisor about whether they're doing things  
21 right or wrong.

22 And I can tell you that just

1       anecdotally, a number of junior examiners have  
2       mentioned to me just in passing that they don't  
3       have anybody to ask questions of, that a lot of  
4       the senior people are gone, working, you know,  
5       they're hoteling, and that they don't get enough  
6       input from various people. So if you can provide  
7       some additional training to the managers about how  
8       to -- that it is really is part of their job to  
9       give this feedback so that they're learning how to  
10      do it the right way and don't have to be corrected  
11      later in their career.

12               MR. KISLIUK: Okay. Moving on to the  
13      COPA slide, I think you've seen this one before.  
14      This is kind of a visual of how we finished the  
15      COPA program for FY '11. And I know it's kind of  
16      a busy slide, but I think the takeaway is, if you  
17      look at the bars, those are -- the total top of  
18      the bar, yellow, was the total volume of cases and  
19      the age, so the scale on the bottom is the months,  
20      how old they were, and the scale on the left side  
21      were the number of applications. And the markings  
22      in red are what was completed.

1                   So based on the total volume of this  
2 older work, we did a great effort, in fact, in a  
3 lot of ways a surprising effort even to ourselves  
4 to beat what our target was. And we are still in  
  
5 the process of analyzing, you know, what went so  
6 well and why and putting our plans together for  
7 '12. Peggy said we have a target of another  
8 260,000 of the older cases for FY' 12. So we're kind of moving  
step  
9 by step, the oldest every year, take the next  
10 oldest, and as we hopefully get to the point where  
11 the cliff falls off in that ten month first action  
12 range.

13                   We probably don't need to go through  
14 this much again. This is the Track 1, you've seen  
15 the numbers already, but again, it seems to be  
16 working well. I think the cap is still set at  
17 10,000 per year. Our intent is to just  
18 monitor that closely. If we, you know, I think if  
19 we get close to that cap, there will be  
20 considerations of further revisiting that, but  
21 right now I don't think we're close, so it's an  
22 open program, plenty of slots, and looking for

1 people to take advantage of that.

2           This is a visual of our interview time.  
3 It shows four lines, they get kind of  
4 crammed up at the top, but it's basically the  
5 increasing number of examining, I'm sorry,  
6 interview hours through the year. So this is in  
7 October, the scale on the bottom is October  
8 through September, those are our fiscal years.

9 And the bottom line is '08, so it's '08/'09 and it  
10 kind of moves up.

11           And we kind of -- it seems that we've  
12 sort of plateaued a little bit from -- in '10 and  
13 '11. So we will continue to look at ways to  
14 encourage our examiners to reach out. And this  
15 number includes both applicant initiated and  
16 examiner initiated interviews.

17           MR. BORSON: Bruce, I have a question  
18 about clarification of this.

19           MR. KISLIUK: Yes, uh-huh.

20           MR. BORSON: This looks like total  
21 number of examiner hours. How does this track to  
22 the hours per examiner?

1                   MR. KISLIUK:  These are -- I don't think  
2                   I can answer that question.  I don't think it does  
3                   track.  These are total -- these are hours  
4                   examiners -- these are basically number of  
5                   interviews.

6                   MR. BORSON:  I appreciate that.  And it  
7                   clearly shows that there is a trend increasing.  
8                   But it would be interesting to know whether or not  
9                   examiners are providing more interviews on an  
10                  individual basis, that is, if the number of  
11                  examiners have stayed constant throughout these  
12                  periods, then these numbers --

13                  MR. KISLIUK:  Oh, so you're looking --  
14                  interviews like -- almost on an examiner --  
15                  interview per examiner?

16                  MR. BORSON:  Well, yeah, I mean, if  
17                  instead of plotting the total number of  
18                  interviews, you would divide that number by the  
19                  number of examiners that were doing the  
20                  interviews, then that would result in a number  
21                  that is the number of interviews that an average  
22                  examiner is giving.  And that would be useful,

1 that would be helpful to us to see whether or not  
2 examiners like the idea of giving interviews and  
3 whether they're receptive to it.

4 In contrast, it may be that as the  
5 examining corps changes, maybe the numbers of  
6 examiners are increasing, and that accounts for  
7 the number of increases in interviews given.

8 MR. KISLIUK: Good comment, thank you.

9 MR. MILLER: I'd add to that, have you  
10 looked at the number and the time to grant in the  
11 cases that have these interviews, especially the  
12 first interviews?

13 MR. KISLIUK: Yeah, the answer is yes.  
14 In fact, one of the reasons that we put such a  
15 strong effort in the last couple of years is that  
16 we found statistically that when there is an  
17 interview, it not only gets -- the percentage of  
18 allowances are extremely higher, I think almost  
19 double, actions for disposal are cut in half. So  
20 we know that when there are interviews, that's why  
21 we started the initiatives to --

22 MR. MILLER: Can you publish those



1 results? Because I think that would be helpful to  
2 get not only examiners, but practitioners  
3 interested in working within the program.

4 MR. KISLIUK: Yeah, thank you. Good  
5 comment.

6 MS. FOCARINO: And just to follow up on  
7 Ben's suggestion, we are -- I've got some people  
8 looking more granularly at this interview data by  
9 art unit and area and that kind of thing, and  
10 we've held some focus sessions with some SPEs in  
11 areas that seem to have high usage versus those  
12 that aren't so high to determine why they're  
13 either encouraging or not encouraging use of  
14 interview time.

15 And we hope to, in the very near future,  
16 as Bruce said, this represents hours, total number  
17 of interview hours, but we would like to track the  
18 number of interviews and normalize that against  
19 the number of examiners. But there are definite  
20 trends in certain areas, and, you know, it differs  
21 by technology. Also you'll see some difference  
22 in, you know, interview time, which doesn't

1 necessarily mean there's a problem, but we're  
2 definitely looking at some more granular data that  
3 I think will help us focus in on areas that we can  
4 really, with a little bit of effort, see a lot of  
5 improvement.

6 MR. MATTEO: If I may, just a  
7 generalized comment. So that speaks to some of  
8 the things I was talking about in terms of how the  
9 metrics are used and fed back into the system. I  
10 think it might be useful for PPAC and perhaps the  
11 public at large, maybe at our next meeting or at a  
12 different session, if we could take maybe two of  
13 these pilot programs, one fairly mature and one in  
14 the early stages.

15 So in the early stages, for example, we  
16 could look at process program design, give you  
17 some guidance and feedback on that. And then with  
18 the more mature program, you could sort of give us  
19 a history of how it unfolded, some learning, et  
20 cetera, that you could share with the public and  
21 with PPAC, and we could perhaps help you  
22 facilitate some of that feedback mechanism to

1 basically feed the constant process improvement  
2 and efficacy that I think we're all looking for.  
3 So why don't we table that for our next meeting?  
4 We'll have one of each. Wayne.

5 MR. SOBON: Yeah, one thing that strikes  
6 me, and a question just in terms of training, what  
7 training do you do or have you thought about  
8 training for examiners about how to get better  
9 results in interviews? It's the sort of thing  
10 that, you know, akin to negotiation training, but  
11 training around how to listen, how to engage, how  
12 to -- and something also that could be actually  
13 used for the user community, as well, to  
14 understand what is most effective to actually get  
15 to better results in those interactions.

16 MR. KISLIUK: I think the answer is yes.  
17 We actually went through training, I want to say  
18 it was almost two years ago, we started our first  
19 module, and I believe we actually worked with one  
20 of the bar groups and posted that on our website,  
21 as well.

22 MS. FOCARINO: We have a joint paper

1 with AIPLA on effective interview practices, but  
2 we also have our own training that we've given  
3 examiners, it started about two years ago. As  
4 Bruce said, I think you can find that material on  
5 our website.

6 We also have a new very more in-depth  
7 package on negotiation training and how to get the  
8 most out of an interview that we've had a couple  
9 of group directors work on, and it's geared  
10 towards -- everyone will get it, but it's  
11 particularly geared right now to the examiners as  
12 they approach the grade level where they're  
13 granted negotiation authority. So it really  
14 emphasizes what the responsibility of the examiner  
15 is with that authority in an interview. So I  
16 think we're really looking for some good results  
17 from that.

18 MS. KEPPLINGER: One of the things --  
19 SPECOC had a session where some of -- I and some  
20 other people came in to talk to the managers about  
21 interview practice, and they were -- the SPEs were  
22 quite surprised at the amount of time, at the

1 cost, the preparation that goes into interviews,  
2 the amount of time and money that gets spent. And  
3 something like that, getting some of that across  
4 to the examiners might be something that's useful,  
5 too, because I don't think, in general, the office  
6 appreciates how important it is to the applicants  
7 and how costly it is for them to do these kinds of  
8 things.

9 MS. FOCARINO: That's a great point. I  
10 know that was a very successful session, and  
11 perhaps we could work in some of that data and  
12 information into the training to people -- it's a  
13 lot of preparation on both sides to be really  
14 successful -- that's what you need to do.

15 MR. MATTEO: So, Bruce, we're actually  
16 running a little bit behind. If you could move  
17 through the balance of the slides a little more  
18 quickly, I'd appreciate it. Thank you.

19 MR. KISLIUK: Okay. The next slide I  
20 don't have to touch more on. This is the Green  
21 Tech pilot. The only thing worth noting, like I  
22 said before, is we will be extending it until

1 March of next year at another 500. And the last  
2 slide is just another bullet point on the eight  
3 new web-based E-Petitions, and that's it.

4 MR. MATTEO: Great. Thank you very  
5 much. Any further questions from the members?  
6 Perfect. Thank you very much, Bruce, I appreciate  
7 it, and we'll be following up about several of  
8 those action items.

9 Okay. We're scheduled for a quick  
10 break. Why don't we take something on the order  
11 of a five-minute break and reconvene at 10:30  
12 here?

13 (Recess)

14 MR. MATTEO: Okay, everybody, can I ask  
15 you to return to the table and we'll resume?  
16 Okay. I appreciate everybody's patience. What  
17 we'd like to do now is begin the report from the  
18 OCIO, and leading that will be John Owens, OCIO.  
19 Thank you very much, John.

20 MR. OWENS: Thank you, Damon. Good  
21 morning, everybody. So it's nice to brief you all  
22 yet again. So let's start with our universal

1 laptop program. This has been one of the  
2 successes of last year. We had a stretch goal to  
3 deliver by the end of the fiscal year 4,500 units,  
4 which is approximately half of our core set of  
5 employees. We exceeded that. By the end of  
6 October, we delivered 6,180, and by this morning,  
7 it was over 7,000 units.

8           Unfortunately, we hit the end of the  
9 year quiet time for patents. It's suspended  
10 starting today and will resume in January, because  
11 we don't want to disrupt any of the production at  
12 the end of the year. But we're doing 260 a week,  
13 and don't forget, that's actually customized per  
14 each individual. We go to their desk, we guide  
15 them through it, we move all their files, et  
16 cetera. We have completed a good portion of the  
17 organization. The only lagging organization right  
18 now due to a complication with some of their  
19 software is trademarks. But particularly for  
20 patents, we've cleared many TC's and will finish  
21 up the rest early next year. So this is going  
22 along splendidly.

1           The only current risk to this is a  
2 little bit of flooding in Thailand, which has  
3 caused some delays in hard drive manufacturing  
4 around the globe, because we don't buy commercial  
5 machines, which kind of get spun up at the end of  
6 the year for Christmas and the holidays, we buy  
7 business class machines. They generally decrease  
8 in production rate.

9           We have had some near shortages because  
10 we're ordering them just in time. I don't want  
11 them sitting around and losing their warranty. So  
12 luckily the suspension also helps us out with  
13 that. So as long as we have no other inclement  
14 weather or natural disasters that cause production  
15 delays, we're good to go, we're still on track for  
16 being ahead of schedule, which is always a nice  
17 thing for me to be able to say.

18           MR. MATTEO: Excuse me, John.

19           MR. OWENS: Yes.

20           MR. MATTEO: A question from --

21           MR. SOBON: Yeah, John, one question I  
22 have is, are there measures of satisfaction by the



1       examiner corps on the new platform and how are  
2       those showing? Obviously, there's initial ramp-up  
3       issues and things that will happen, but is there  
4       any measures you're taking in terms of  
5       satisfaction with the new platform?

6                 MR. OWENS: We do have -- we haven't --  
7       we do a survey, and the survey comes at the very  
8       beginning when you get the unit. It also comes a  
9       little bit later as you use it. We do see, and we  
10      discussed this last time, I spike in calls.  
11      People are like, oh, I'm not familiar with our new  
12      environment, we've changed Windows to Window 7, we  
13      have the new, latest Microsoft. So some folks,  
14      more than others, are a little disoriented, but  
15      they quickly acclimatize.

16                The environment, I have been told, both  
17      anecdotally and by the e-mails that I receive --  
18      because I'm a pretty open CIO, I get e-mails from  
19      the corps all the time -- that they are extremely  
20      satisfied, if nothing else because the core  
21      software packages, the OAKS and the EDAN and the  
22      other products that we built, fundamentally did

1 not change as much, other than becoming compatible  
2 with Windows 7. They haven't seen huge  
3 improvements, but compared to the processor speed  
4 and the memory that was on the later box, they  
5 certainly run better, and we know that they do, so  
6 it's a much more stable environment.

7           When one application crashes just  
8 because of the advent of Windows 7, not everything  
9 else does, and that does save some time and  
10 alleviates some frustration. So generally, and  
11 I'm happy to provide the information separately,  
12 because we work very closely with OPIM and the  
13 former SIRA and patents to conduct those surveys,  
14 I'm more than happy to share that information, but  
15 I would say that it's overall extremely positive.

16           Certainly we could ask the union what  
17 they've heard, but I believe that all the data  
18 I've received, it's been very welcome as one of  
19 the biggest changes they've seen in quite some  
20 time, along with the new telephone.

21           MR. SOBON: A follow-up to that is, I  
22 remember one of the things that David Kappos was

1       touting a year or two ago about the new platform  
2       also was integrated video and the ability to, you  
3       know, implement and enable, especially for  
4       teleworking and other venues, interactive  
5       videoconferencing, especially with the user  
6       communities for more impromptu, you know, examiner  
7       interviews. How is that progressing or what are  
8       the plans? That may bleed over into process of  
9       reengineering, but I'd be very curious about that.

10               MR. OWENS: So there is a new package on  
11       the laptop based on the Cisco products, and that's  
12       the WebEx Communications Suite, which has instant  
13       messaging. It integrates with the Microsoft  
14       products like Outlook for scheduling. It has  
15       videoconferencing. In fact, today this telecast  
16       is being done via WebEx and not our old Adobe  
17       system. In fact, it's been that way for quite  
18       some time, and it has been incredibly stable.  
19       This combined with the brand new network we have,  
20       which alleviated all of the network constraints  
21       that we were experiencing some years ago, allows  
22       an examiner to use those tools to collaborate at

1 will. There is no constraint at this time. So  
2 that is deployed.

3           Is it integrated like we'd like to see  
4 it with the patent's end-to-end product? No,  
5 because the patent's end-to-end product is not  
6 done. But we do see that integration eventually  
7 happening. And you all have talked to or heard  
8 from Marty Hurst in the past, who is helping us  
9 lead that process of reengineering of the visual  
10 interaction effort, and we will integrate those  
11 tools.

12           But the Cisco suite of collaboration  
13 tools brought a new evolution to what was  
14 available here, which was pretty much the first  
15 generation, from the phone, to the instant  
16 messaging, to the collaboration suite, the video  
17 conferencing, being able to have multiple  
18 participants and use it from home, that's all  
19 capable of being done today for those folks with  
20 the laptop.

21           For the folks without the laptop,  
22 however, they have to wait a little bit until we

1 get them one. Their current desktops are not as  
2 compatible. They could watch today's telecast,  
3 but they are not going to be able to participate  
4 in some of those things that require more heavy  
5 processing power, like multiple video  
6 teleconferences or what we call the Hollywood  
7 Squares effect, where'd you have pictures of nine  
8 people and you're the tenth participant or the  
9 like.

10 MR. SOBON: So if I have an examiner on  
11 a case, and like, for instance, I'm enabled on  
12 WebEx internally for my company, if I set up a  
13 WebEx meeting and invited them, is that possible  
14 for us to have an impromptu WebEx session created  
15 like that?

16 MR. OWENS: For those examiners with the  
17 universal laptop, I would ask that you follow the  
18 process in patents to set up the appointment, and  
19 that the examiner actually host it on our system  
20 due to security concerns. Not every  
21 teleconferencing system is supported here at the  
22 USPTO. We make special exceptions. When, for

1       example, Peggy needs to give or Bob needs to give  
2       a presentation using someone else's, we will  
3       temporarily make a security exception, put them in  
4       a room with a special laptop that has special  
5       protections.

6                 But if the conversation is scheduled  
7       with our equipment, then we are assured that it  
8       meets our security requirement. Not all products  
9       meet that requirement. Some of them actually are  
10      quite dangerous to allow into your environment  
11      because it would allow individuals to, in the  
12      background, take every item off your desktop or  
13      off your computer and copy it, which is something  
14      we'd like to avoid given the confidential nature  
15      of the work we do. So I would ask to follow the  
16      normal procedures that patent sets up and have the  
17      examiner themselves schedule the meeting on our  
18      WebEx, and we are happy to host it for you.

19                Examiner count update, you know, this  
20      was one of the largest changes to examination  
21      since IFW. It affected what's known as the Palm  
22      system. Now, last year we had a bunch of things

1 going on in our environment which created actually  
2 quite a contention for resources, and I think I'd  
3 take a moment to talk about them.

4 Palm in itself is the hub, it sits at  
5 the center of all patent processing. It not only  
6 tracks what an examiner does, it tells them, you  
7 know, what they have earned as far as their counts  
8 and so on.

9 At the same time this was happening over  
10 the last few years, we have built an increasing  
11 number of employees, as you all know. And if you  
12 remember the road map, and if anyone here is too  
13 new to have a copy of the road map which was  
14 developed at the end of 2008 and started  
15 implementation in 2009, my office warned, I,  
16 myself, warned against the increasing usage and  
17 increased hiring because of the load on systems.

18 And I was very worried that that load  
19 would overtake our ability to replace some of  
20 these systems which involve rewriting millions of  
21 lines of code on legacy platforms that no longer  
22 exist, such as the one Palm runs on, and moving

1       them to a more standard platform running LINE-X in  
2       a much more generic environment. So we had a rise  
3       in employees, and, of course, the older the  
4       employee gets here at the USPTO, the better they  
5       are at doing their job and the more output they  
6       have, which is good, we want that.

7                 At the same time we were changing the  
8       examiner count system significantly. In fact, the  
9       count system today takes six times more processing  
10      power to accomplish than the one a year ago,  
11      because so many more computations are done online  
12      and auto count takes a lot of processing.

13                So though it was a big benefit, the rise  
14      in production, which we were happy to see with the  
15      reduction of the backlog and so on, the increasing  
16      capabilities of the examiner and the increased  
17      load based on changing this production system for  
18      a short period -- I wouldn't say short; for six  
19      months out of the middle of the year, on occasion  
20      -- overtook our ability to finish the projects of  
21      rewriting quick enough to overcome that load.

22                So what we had wasn't crashes, they were



1 -- in fact, the system never crashed, it just  
2 slowed down so much it was unusable, which is  
3 different, because back in the 2008/2009  
4 timeframe, it did crash, I mean hard crash, and it  
5 took a long time to recover. Neither one is a  
6 good position, however. I am happy to report now  
7 that we have replaced all but one server in that  
8 environment for Palm, and we are actively working  
9 to replace that server. Along the way, we have  
10 rewritten a significant amount of this product and  
11 are prepared to migrate it into patents and over  
12 the coming year, which I don't know if Mr.  
13 Landrith is going to talk about, but that's a  
14 great piece of news for us.

15           But the better news is that it really  
16 changed the way examiners dealt with their counts  
17 and basically eliminates the need for 650 SPEs to  
18 manually review all examiner work every pay  
19 period, which was a huge load and created quite a  
20 bottleneck with the auto count system.

21           There are some criticisms, however, and  
22 we're going to talk a little bit about those. The

1 database communication and now reporting server  
2 downs and crashes, which I previously discussed.  
3 The new system is very complex, which is making it  
4 difficult for many of the people to understand it.  
5 The automatic counting -- automatic computations  
6 sometimes seem confusing to folks even though the  
7 mathematics hasn't significantly changed over what  
8 it was manually. In fact, it hasn't really  
9 changed at all other than it's now being done  
10 automatically.

11           The high volume of data corrections, if  
12 someone has an issue, something wasn't counted  
13 appropriately, does create a volume of data we  
14 have to deal with and the product actually is --  
15 it's involved quite a bit of debate on whether or  
16 not that mathematics we have been using, which we  
17 have been using for years, is actually the right  
18 set of math to actually implement. I can tell you  
19 that the office, my office did implement it  
20 exactly as designed and the mathematics is correct  
21 based on that design. I think overall, the  
22 question is, is that the right set of mathematics?

1 And this is what we've heard from examiner  
2 feedback.

3 We are working very hard, by the way, to  
4 listen to the examiner in all aspects of what we  
5 do, just like with patents, and to fold that back  
6 into whatever process or engineering effort we  
7 have going forward. And, of course, the key point  
8 to that conversation is OPIM under Fred Schmidt in  
9 patents, being the representative to patents on  
10 that type of feedback. Anyone have any question  
11 about Palm workflow? Okay.

12 Let's talk a little bit about PATI.  
13 This was a fantastic success at the end of the  
14 year. This was the product that we produced based  
15 on some legacy applications that we had where we  
16 integrated text that we OCR'ed ourselves into the  
17 examination environment, because we really didn't  
18 know how people were going to react to text. They  
19 have never had the text before, they had pictures  
20 and only pictures.

21 So we took a couple of products, we made  
22 them compliant. We gave it to 300 examiners in TC

1 2440 and TC 2460, and we provided them with 60,000  
2 in-house OCR'ed -- Optical Character Recognition  
3 -- taking the picture, turning it at the text  
4 applications. Eighty percent reported they are  
5 having text of claims, spec and abstract in their  
6 examination. They intuitively liked how we  
7 engineered the system to use text. Seventy-two  
8 percent, which overall isn't bad, saying they  
9 directly took text, copied it into their office  
10 action instead of having to retype it, which was  
11 always a problem. Seventy-eight percent said that  
12 the OCR level that we had, which wasn't anywhere  
13 near where we want it to be, but it was good  
14 enough to use, which was quite an accomplishment.  
15 Today we pay quite a bit of money to have it  
16 OCR'ed outside the agency via contract.

17           Eighty-eight percent said that they had  
18 everything that they needed and would give it to  
19 every other examiner. And, of course, the  
20 searching the applications and the documents for  
21 specific language was useful.

22           Now, we are delving into -- one would

1 always say, if you're a half cup full or half cup  
2 empty type, a person would say what about the  
3 other 20 percent? We are delving into why it's  
4 only 80 percent, 76 percent, and so on and so  
5 forth. But these numbers are highly encouraging  
6 considering this is the first time an examiner has  
7 ever had these tools modified nor text to use  
8 ever.

9           Obviously, many people do resist change,  
10 but for those that were willing to use it, this  
11 was much higher and much better feedback than we  
12 could have expected in the past, so I consider  
13 that a win. Any questions on PATI? So there is a  
14 little bit of a reengineering effort going with  
15 the USPTO home page. Obviously, the home page  
16 today was relatively new, but it really didn't  
17 have a good pop, splash, good feel to it. It  
18 didn't look very modern, though it was  
19 reorganized. And this change is a result of the  
20 previous change.

21           The goal is to increase graphically to  
22 make it more appealing, reduce the number of links

1 that a user has to choose from and organize the  
2 front page a little better. It will only affect  
3 the home page, it will not affect the subsequent  
4 pages. And the new home page and the old home  
5 page will run in parallel for a while for people  
6 to get used to it.

7 This effort is being designed and led by  
8 Peter Pappas' organization and the communications  
9 group using our new web publishing system that we  
10 instituted a few years ago. But you'll be seeing  
11 this improvement coming along here shortly.

12 Any questions? Well, if there -- I'll  
13 take questions from myself before I hand it over  
14 to David Landrith, the patent end-to-end portfolio  
15 manager.

16 MR. MATTEO: We actually did have one  
17 question.

18 MR. OWENS: Yes.

19 MS. KEPPLINGER: John, I know you said  
20 here that you got input from internal and  
21 external, and I think I was in at least one of  
22 those focus sessions. But the last iteration of

1 the home page, when it was modified, was very  
2 difficult to use. So have you done any beta  
3 testing or anything, you know, giving some people  
4 sort of access to it to figure out whether this is  
5 going in the right direction?

6 MR. OWENS: Actually I'm not the right  
7 person to ask that question anymore, which is  
8 probably a good thing. I don't like to admit it,  
9 but my office had a lot to do with the last home  
10 page redesign, and I learned something from that.  
11 We're engineers, we're not visual application  
12 people. So the responsibility was split.

13 I maintain the hardware, the hosting,  
14 the back end, the templates, the design, you know,  
15 the design CSS style sheets and all of that, but I  
16 no longer handle the design, the communication or  
17 the feedback. That's all handled out of our  
18 communications group, formerly under Mr. Pappas,  
19 who is now part of the -- directly under the under  
20 secretary's office and is being controlled under  
21 Mr. Kappos.

22 So I don't design it anymore. I don't

1       communicate it. I just implement it, which, trust  
2       me, given the last one, it's probably a good thing  
3       for you all, because I don't do publication, I'm  
4       getting out of that business. You should never  
5       have the CIO do your publication, it's a bad idea.  
6       I'll ask Peter to get back to you.

7               MS. KEPPLINGER: It wasn't necessarily  
8       the look, it was the ability to get to various  
9       places, you know, places you could go in one  
10      click, you had to go through. It was hard to find  
11      things and you had to -- those were the  
12      criticisms.

13             MR. OWENS: Yeah. Today the process has  
14      changed so much that that organization does --  
15      they tell me what they want implemented and we  
16      just implement and that's it. But I'm sure I'll  
17      get back to Peter and answer that question for  
18      you. Mr. Landrith.

19             MR. MATTEO: David, if you would, just  
20      in the interest of time, can you keep your  
21      presentation to about 10 minutes?

22             MR. LANDRITH: Yes.



1 MR. MATTEO: Great, thank you.

2 MR. LANDRITH: I'm going to start out by  
3 going over the Fiscal Year '11 successes. We set  
4 new standards for user involvement, the quality of  
5 our development approach, the quality of the  
6 technology, and the key value that we provided the  
7 examiners in Fiscal Year '11 is text-centric  
8 functionality. I'm going to be diving into each  
9 one of these deeper.

10 With user involvement, we've utilized an  
11 unprecedented level of examiner and executive  
12 involvement which has given us a vastly superior  
13 ability to gather requirements and a broad buy-in  
14 from executive management. We started with the  
15 user interface prototypes that received input from  
16 more than 2,000 examiners. That defined the high  
17 priority functionality. In fact, PPAC has seen  
18 parts of those prototypes on multiple occasions  
19 because we used screenshots from those to define  
20 the initial functionality. We also had back-end  
21 prototypes. Those drove the technology selection  
22 and they informed how we went about creating and

1 implementing the high priority items.

2           As we go forward with the applicant  
3 tools projects, you'll see the same commitment  
4 level of involvement of the applicant community.  
5 With our development approach, we have  
6 substantially improved development methodologies.  
7 One of these is agile development. That  
8 represents a sea change in the way the federal  
9 government and this agency develops software  
10 applications. It's a mature industry-proven  
11 process that has been urged by the federal CIO and  
12 is part of the 25 point plan for reforming the IT  
13 that was put forth by the administration. In  
14 fact, Patents End-to-End is one of the six  
15 flagship projects mentioned in that plan.

16           We've been criticized for our lack of  
17 top down planning on some fronts. It's a common  
18 view of Agile for people coming to Agile from an  
19 outside environment or from an older, less  
20 effective methodology. But the thing with Agile  
21 is defining the right planning at the right time.  
22 With older methodologies, you'll frequently define

1 features years in advance and scope years in  
2 advance. By their very nature, such plans are  
3 speculative. The ultimate success criteria  
4 becomes whether you completed your plan and is not  
5 -- frequently not related to the quality. It  
6 would be like baking something in the kitchen and  
7 the success of that product would be whether you  
8 followed the recipe, not whether people liked it.

9           So the Agile approach allows you to  
10 define an overarching vision, core needs, and then  
11 small pieces of functionality that can be  
12 developed to validate the plans and get feedback  
13 to feed future plans. We also have been utilizing  
14 user-centric design and will be going into the  
15 user involvement further.

16           We've introduced and deployed  
17 industry-leading technologies. This is important  
18 because we don't want to be backed in a corner  
19 once we've released this in terms of vendor  
20 support. We also need to be capable of meeting  
21 the growing needs of a geographically dispersed  
22 workforce and the expansion that we see on the

1 horizon.

2           John touched on this a little bit with  
3 the text- centric functionality in PATI. We  
4 developed two user environments: The Patents  
5 End-to-End uses a complete XML version of case  
6 data that's being released to the central  
7 reexamination unit, then we have the XML  
8 application data and the legacy interface to the  
9 core. Both systems assist examiners in doing  
10 their jobs. As you've seen from the survey on  
11 PATI, it's been found to be highly effective, with  
12 more than 60,000 applications and text and more  
13 than 200 examiners using it. So the deployment  
14 status for Patents End-to-End 1.0 is we  
15 deploy the application into production servers in  
16 Fiscal Year '11, introduced it to the CRU shortly  
17 thereafter. We had some outstanding complexities  
18 to resolve in the full case conversion, XML, we  
19 resolved those in late November. The application  
20 optimization continued while that was in process,  
21 so we didn't lose any time improving our work there.

22           We plan the rollout to individuals with

1 individual training scheduled in December, there's  
2 unintentional ambiguity there. What I mean to say  
3 is, we hope to, in December, work with examiners  
4 to put training on their calendars  
5 , that calendar date may end up being in  
6 January because of the holidays and the quiet  
7 time.

8           So we completed this on time and under  
9 budget. Not everything went perfectly smooth and  
10 we overcame many significant obstacles completing  
11 this. We had a very short development timeframe,  
12 and historic budgetary constraints. We had a lot of  
13 challenges fitting Agile methodologies into the  
14 oversight and budgeting process. We had some  
15 obstacles posed by procurement protests, and we  
16 were standing up an entire software platform and  
17 infrastructure set.

18           The user involvement strategy that we  
19 adhered to in Fiscal Year '11 and will be  
20 using going forward is to adhere to best processes  
21 of user -- best practices of user center design,  
22 conducting weekly focus groups with the audience to

1 review incremental improvements. We complete  
2 design sprints, for instance, every two or three weeks.  
3 So "Sprint" is a software development term for iteration or  
4 effort. What this means is that we're releasing  
5 new front-end designs every few weeks and running  
6 them by users. And we have a major holistic design  
7 for user evaluation every six weeks where we go  
8 over the accumulated changes.

9 We have regular updates to the Usability  
10 Council. We keep POPA and PPAC fully informed,  
11 and we address critical feedback and ongoing  
12 Sprints.

13 So these are the major development  
14 projects for Fiscal Year '11. The first two are  
15 the prototype phases; the second two are the  
16 patents projects. We'll release PE2E to the  
17 central reexamination unit and the last is the  
18 PATI release to two art groups -- two tech centers.

19 Now, Fiscal Year '12 plans. We plan to  
20 vastly increase the scale of development, with quarterly  
21 releases of new functionality to maintain the  
22 rigor of our agile processes, prepare for a

1 gradual rollout to the examiner corps in Fiscal  
2 Year '13, and prepare a rollout for text-based  
3 application tools or applicant tools in Fiscal  
4 Year '13.

5 I apologize that this is a little small.  
6 I'm working on breaking it up but wasn't able to  
7 get that done in time for this presentation. The  
8 four most important projects here are the E-Grant,  
9 which will allow for the USPTO to grant patents  
10 electronically in advance of their being printed  
11 and mailed; the applicant to office interface,  
12 the office action interface, and PATI 1.1,  
13 which will expand the availability of text within  
14 the legacy systems.

15 Our Fiscal Year '13 road map, we have  
16 architecture and infrastructure there, which is  
17 continuing to work on examiner tools. The  
18 conversion of legacy data involves improving the  
19 capture and conversion of text.

20 The Agile activities for high-value  
21 targets includes the business process  
22 reengineering changes and also the additional work

1 on applicant tools. They also have Agile  
2 activities for high-value targets for search, to  
3 continue our work on search, and building a cloud  
4 environment.

5 And sometimes when people use the word  
6 "cloud," they think of online storage. But what  
7 we're talking about in a cloud framework is  
8 deploying hardware in a way where it can be  
9 reallocated as needed to more efficiently utilize  
10 the infrastructure here at the USPTO.

11 The current risks and issues that we  
12 have are the availability of USPTO human  
13 resources, making sure that we can staff all of  
14 the projects that we have slated. We have an  
15 ambitious scope of features, and if we've bitten  
16 off more than we can chew, the biggest risk isn't  
17 that we will have the extra projects fail, but  
18 that everything will fail, and so we don't want to  
19 spread ourselves too thin. Scaling and improving  
20 the image text and all transformation process,  
21 funding constraints due to continuing resolutions,  
22 and contractor support for software development.



1                   MR. BORSON: David, I just have a  
2 question about the OCR project. You're  
3 outsourcing all of that at this point? And, you  
4 know, John, feel free to comment. Is there a  
5 thought to bring that internally?

6                   MR. LANDRITH: Yeah, we are outsourcing  
7 that. There are multiple phases involved in the  
8 conversion process. One is the actual OCR, the  
9 conversion of the image to raw text, and then a  
10 second is the logical structuring of it. So the  
11 conversion of an image to text is actually a  
12 commodity product that is available quite cheaply  
13 in the marketplace. We're outsourcing that right  
14 now for patents end-to-end, and for PATI, we have been doing  
15 that internally. But as we expand the scope,  
16 we're looking for vendor-based solutions to drive  
17 that commodity aspect.

18                   The tagging is more complicated. PATI  
19 uses an automatic tagging algorithm and that  
20 occurs internally. Patents End-to-End uses a  
21 human-reviewed patent tagging set that we rely on  
22 a vendor for. So does that answer your question?

1 MR. BORSON: Yes, it does. Thank you.

2 MR. LANDRITH: Thank you, Ben.

3 MR. MATTEO: We had one more question.  
4 Wayne.

5 MR. OWENS: I think the important thing  
6 to note is we're using the appropriate mix for the  
7 appropriate part, but this is the first time  
8 you've seen the CIO shop at the USPTO actively go  
9 out and attempt to do something on their own  
10 without just running to a contractor to get it  
11 done. If we can get it done internally cheaper  
12 and better, we will use our internal resources for  
13 that part. But human intervention for complex XML  
14 tagging is highly likely given the nature of the  
15 tagging we want to do to meet the XML for IP or SD  
16 96 standard, and we will likely use a vendor for  
17 that part.

18 MR. MATTEO: Wayne, one more question.

19 MR. SOBON: Sure. Yeah, but you note  
20 funding constraints as a risk, but we heard  
21 earlier about the minibus and the favorable  
22 conditions for next year's budget. Can you

1 comment perhaps on how things look now in terms of  
2 risk for at least the next year for funding and  
3 for implementation of the E-to-E and CIO's  
4 projects?

5 MR. OWENS: Sure. I'm gong to handle  
6 this one, Dave. I believe you already heard from  
7 Tony. Certainly we've had a lot of successes, but  
8 last year at the very end of the year, with the  
9 passage of AIA, we had a little bit of a bubble  
10 where a lot of folks ran in before the surcharge  
11 and tried to pay us. That ended up diverting a  
12 number, I don't know what Tony shared, but a  
13 significant amount of money that we expected to  
14 collect this year. Because many of the projects  
15 in OCIO have been pushed off year to year to year  
16 to year, things have been building up. So I had  
17 fully allocated to spend my budget. But because  
18 that money did not get collected this year, and,  
19 therefore, we cannot spend it, even though there  
20 is an omnibus, we are looking to reduce again this  
21 year to make up for that lost revenue. Does that  
22 make sense to you?

1           MR. SOBON: Sort of. But we actually  
2 got a guy -- maybe we should have a clarification  
3 of this, that actually -- that you will now be  
4 allowed to spend not only that money that was, you  
5 know, put into the reserve fund, but also the  
6 expected collections up to the \$2.7 billion new  
7 appropriated amount. So I guess I'd be confused  
8 about what -- where the gap would be then if  
9 that's true.

10           MR. OWENS: We are allowed to spend it  
11 if we collect it. We now believe we are not going  
12 to collect it because people prepaid at the end of  
13 last year, and that money they prepaid is not part  
14 of our internal revenue stream. So internally we  
15 are looking at reductions in programs to make up  
16 that funding. I don't want to speak on behalf of  
17 the CFO, but that is what is happening, and I  
18 don't believe it conflicts with what he said  
19 earlier.

20           MR. SOBON: Okay.

21           MR. OWENS: So there are limited places  
22 in the budget to get that amount of money from,

1       because the bulk of our budget pays for staff, and  
2       I am one of those places. And I have, for years,  
3       been building up a backlog of products. I know  
4       Peggy has wanted to get done, I have wanted to get  
5       done, that some of those will now have to be  
6       defunded and moved until next year.

7                 Because Patents End-to-End is such a  
8       large project and such a large amount of money has  
9       been set aside for it, I do expect to have impacts  
10      to this program. Will they be catastrophic? I do  
11      not know at this time, but I would not expect them  
12      to be because this program is so important for the  
13      agency. So as I determine what the recommendation  
14      will be and Mr. Kappos makes the final decision, I  
15      am more than happy to tell you, I just don't have  
16      clarity at this point in time.

17                MR. SOBON: They're probably really  
18      timely then at our next scheduled hearing to come  
19      back and you can talk about any of the actual  
20      impacts that you now thought, you know, worked  
21      through.

22                MR. OWENS: I'll be more than happy to

1 share at that time what has been put off.

2 MR. SOBON: That would be useful, yeah,  
3 great.

4 MR. MATTEO: Yeah, actually in the  
5 spirit of that, though, what I would prefer, and I  
6 think this is what Wayne was suggesting is, you  
7 know, in the past for their annual reports, what  
8 I've been asking for is funding impact, project  
9 impact and then material impact, you know, what  
10 kind of functionality, what kind of service, et  
11 cetera, have we foregone. It's interesting to  
12 hear that project A and B were stalled, but it's  
13 even more so important to understand the material  
14 impact to the examination corps and the applicant  
15 community. So we'd be very interested in hearing  
16 all three layers of that.

17 MR. OWENS: I will work to make that  
18 much clearer than in the past. Thank you.

19 MR. MATTEO: Okay. So thank you very  
20 much, gentlemen, I appreciate your feedback.

21 MR. OWENS: Thank you.

22 MR. MATTEO: And our final presenter for

1 the afternoon will be James Smith, chief judge of  
2 the Board of Patent Appeals and Interferences.  
3 And he's -- oh, he's moved, there we go. Thank  
4 you, James.

5 MR. SMITH: Thank you for allowing me to  
6 give you an update on the board and for your  
7 interest in it. Let me just mention briefly the  
8 areas that I'd like to cover in the short time we  
9 have: Hiring, how we're approaching it and what  
10 our success seems to be so far; the extent and  
11 growth of the backlog of cases at the board; our  
12 considerations about having per curiam decisions  
13 included in the manner of rendering decisions from  
14 the board; some considerations with regard to  
15 additional incentives to judges for higher levels  
16 of output; collaboration we have ongoing or are  
17 considering with the Patent Examining Corps, also  
18 for purposes of helping us reduce the case  
19 backlog; and we'd like to touch briefly on the  
20 work of the Rules Committee of the board with  
21 regard to the new AIA proceedings that will be  
22 coming to the board in September of 2012.

1           Let me start with the hiring. As you  
2           may know, the board is authorized to hire before  
3           the end of 2012, the fiscal year, and certainly  
4           not later than early in Fiscal Year 2013 an  
5           additional 100 judges beyond the number currently  
6           at the board. I think our current number as of  
7           today is 98.

8           And when I say "hire judges," that's not  
9           an entirely correct term, or at least it's not  
10          robust enough to describe what happens, because,  
11          of course, the appointments to the board are made  
12          by the secretary of commerce, so our vetting  
13          process includes first deciding candidates we put  
14          before the undersecretary for his approval.  
15          Actually it requires the approval of the  
16          undersecretary, the deputy undersecretary, the  
17          general counsel, a number of people first have to  
18          approve each of the selections we make before  
19          those nominees are then put to the secretary of  
20          commerce for final approval.

21                 Final itself is a -- I use guardedly  
22                 because after the nominations are accepted by the



1 secretary, they come back to us for the normal  
2 hiring process where we extend offers to the judge  
3 candidates. But we have in an entirely unique way  
4 in the 150-year history of the board the  
5 opportunity to double the size of it to a historic  
6 level of about 200 judges by the end of the next  
7 fiscal year. So the question naturally arises,  
8 how are we doing against that very lofty target?

9           We are achieving some success. Just  
10 last week the secretary approved the first four  
11 names that we have put forward for selection to  
12 the board, and we are absolutely elated as to the  
13 quality of those four new judges. Two of them may  
14 start as early as next Monday if we can clear all  
15 the hurdles, and we hope to have all four of them  
16 in place and working by the end of December.

17           Unfortunately, I cannot yet tell you  
18 their names and a little more about their  
19 backgrounds, but we have no doubt that when you  
20 hear of their accomplishments and their decision  
21 to join us at the board, you will be as happy as  
22 we are about that.

1           We have another three candidates who  
2       have made it most of the way through the process,  
3       have not yet gotten the nod from Secretary Bryson,  
4       but we hope that will happen within the course of  
5       the next week or two and that we will be able to  
6       have them fully through the process and all but  
7       started, if not already started, by the end of  
8       December, as well. Certainly by the middle of  
9       January we hope to have those three with us, also.  
10      We've also, in an effort to increase the size of  
11      the board and certainly to address the need for  
12      increased output by the board, reached to former  
13      judges, and we have three of them who we believe  
14      will be able to rejoin the board on a part-time  
15      basis also before the end of December and in any event  
16      no later than January.

17           We're particularly happy about their  
18      participation with the board, because, of course,  
19      their ramp-up time to get into the job will be  
20      substantially less than anyone else we can find  
21      anywhere because they will already have been --  
22      become in their lengthy careers very familiar with

1       how the board operates.

2                   Altogether, looking at those three  
3 groups, we have candidates, and, in fact, near  
4 selections who we believe will be with us soon and  
5 will help us substantially get into our mission.

6                   With regard to the 90 more we have to  
7 find, we have, in fact, had tremendous response to  
8 the requests for applications, hundreds of  
9 applications. Last week -- Well, I'm not sure we  
10 had any interviews last week; it was Thanksgiving.  
11 This week we're seeing some 20 candidates. By the  
12 end of the first week in January, that number will  
13 be at about 40.

14                   And we are very pleased with those  
15 people who we have -- with the records of those  
16 people we've asked to come to see us for the  
17 interviews. If they are as good in the flesh as  
18 they are on paper, we will be able to make  
19 substantial progress towards the hiring even as  
20 early as January or February of next year.

21                   To the subject of the backlog to which  
22 the hiring is largely directed, the backlog

1 continues to grow. And let me say that I view as  
2 one of our major missions at the board, and I know  
3 it is certainly the view of the director and the  
4 deputy director, as well, that one of our major  
5 missions and first missions even before that of  
6 reducing the backlog - is to reach a point where  
7 the backlog no longer is growing. That's entirely  
8 logical. Before you can reduce it in size, you  
9 have to at least prevent it from growing in size.

10 This is not a small mission. And to  
11 give you some concrete numbers to demonstrate just  
12 how challenging that mission is, what we started  
13 doing in recent times is looking every 7 days or  
14 so at a 30-day window, the most recent 30 days  
15 with regard to how many new cases are coming into  
16 the board and how many are being decided. Again,  
17 that's not rocket science to figure out that one  
18 would want to look at those numbers.

19 The change, however, in how we're  
20 looking at it is that we're just taking it at a  
21 much more granular and real-time level so that we  
22 can explore, even on a day-to-day basis

1 practically, how the problem is manifesting itself  
2 and how we might address it.

3 Of course, traditionally we've always  
4 looked at yearly numbers and calendar month  
5 numbers as to how many cases are coming in and how  
6 many are being decided. In a period ending a week  
7 and a half ago, and looking back 30 days, the  
8 board had 1,480 new cases brought to it. Now, if  
9 you do the math, that equates to somewhere  
10 between, and I'll give these in broad numbers  
11 because at a point, one doesn't need to be too  
12 specific about the numbers, somewhere between  
13 16,000 and 18,000 new cases in a year.

14 MR. MATTEO: Excuse me, Jim, if I may  
15 just use that as a jumping-off place. So there  
16 are a number of approaches to reducing the  
17 backlog, to oversimplify the whole supply and  
18 demand notion. If you increase the number of  
19 judges, clearly that will help address the  
20 backlog. I think what I'd also like to hear is  
21 how you plan to address the demand on a couple of  
22 levels.

1           So, for example, I don't want to let you  
2       escape. I mean everybody who's been talking, I've  
3       always asked about, you know, what are the  
4       feedback mechanisms constant process improvement.  
5       So rather than -- it's not the same situation as a  
6       new applicant, a backlog for your board. I mean  
7       it's core, it's a necessary and valuable process,  
8       so it is at its core corrective or oversight  
9       process. So I think even more so that makes it a  
10      more keen interest on trying to feed back the  
11      things that your group has been learning back to  
12      the community to help reduce the backlog from a  
13      demand perspective in addition to a supply  
14      perspective. Is that something you can speak to,  
15      please?

16           MR. SMITH: Sure, let me speak to that.  
17      Let me just finish up in the briefest way a  
18      portion of the numbers. That 1,480 cases I  
19      mentioned coming in newly to the board was  
20      parallel to an outgoing number of under 700 cases,  
21      so the backlog grew in that 30-day period by  
22      another 800 cases. So you can just extrapolate

1 out, if we have an 800 per month increase in the  
2 backlog, how long it takes before the backlog is  
3 even more substantial than it is now.

4 And clearly the solution is not merely  
5 how do we deal with the cases coming in, but how  
6 we look at -- whether all the cases that we have  
7 before us should be before us and whether the  
8 service that the board provides is being utilized  
9 correctly or whether it is, in fact, being over  
10 utilized.

11 And this actually gets to the heart of  
12 the other main thing I wanted to address, which is  
13 efforts with the patent corps, Patent Examining  
14 Corps, to look at whether cases really are -- have  
15 properly matured for consideration by the board.

16 One of the things we have been  
17 discussing with soon- to-be Commissioner Focarino  
18 is -- and others of the leadership in the Patent  
19 Examining Corps -- today is December 1. Are you  
20 -- no, okay. January? Okay. I just wanted to  
21 get that right. Is how we might look, for  
22 example, at the number of instances in which there

1 have not been interviews with the examiners in  
2 cases, either early stage or late stage  
3 interviews, and how conducting those might well  
4 reduce the instances in which an appeal is  
5 necessary or desirable. Of course, if the  
6 interview results in the issuing of an  
7 application, and you heard earlier from the deputy  
8 commissioner that the number of issuances  
9 following interviews is substantially higher, of  
10 course, there's no right to appeal if you have an  
11 issuance, it's only in the face of a rejection. So  
12 that could potentially substantially impact the  
13 number of cases which are mature for consideration  
14 or even eligible for consideration by the board.

15           And, of course, where the interview does  
16 not result in an issuance, that may well put the  
17 case in a different light anyway. It may provide  
18 more motivation for the applicant to seek a  
19 continuing examination or may result in  
20 abandonment or it may just change the claims which  
21 come to be issued and the ones which receive a  
22 rejection after an interview. The applicant may



1 not choose to appeal.

2           We're not sure exactly what impact it  
3 would have or exactly how we would structure  
4 taking cases which are already part of the  
5 inventory at the board, what route we would  
6 construct to allow applicants an interview  
7 opportunity, we are working on that. We do know,  
8 looking at the cases before the board now, that 75  
9 percent of the pending cases at the board have not  
10 previously been the subject of an interview. So  
11 there is certainly an opportunity, a nontrivial  
12 opportunity to consider how we might take  
13 advantage of that to reduce both the inflow of  
14 cases and even the inventory at the board as it  
15 currently exists. Another thing sort of in the  
16 same vein that we have been giving attention to is  
17 the number of cases in which there are amendments  
18 not entered, amendments after final, which might  
19 impact how the case would come to be considered  
20 and might result in the need for no appeal.

21           It is often the case in the appeal  
22 briefs that the parties make reference to what

1       they think could happen in the case if the  
2       amendment made after final were to be considered.  
3       Of course, at the appeal stage, there's not much  
4       we can do with that because we are fundamentally a  
5       tribunal of error looking at a record that is  
6       extea as of the time of the filing. So we can't  
7       look at an amendment; after-final that was not  
8       entered and was not the subject of prosecution.  
9       Due process rights are necessarily impacted by the  
10      failure for -- by the absence of there having yet  
11      been a consideration of the case with that  
12      amendment.

13                    But the thought would be that of looking  
14      at the amendment-after-final and seeing whether  
15      there's some way to prompt the discussion or  
16      further prosecution between the examining corps  
17      and the applicant in a way that would obviate the  
18      need for the appeal. So those are some of the  
19      things we're looking at that would reduce the  
20      number of cases both coming in and reduce the  
21      inventory quite apart from how do we deal with the  
22      backlog as it exists, i.e., the reduced demand.

1 MR. MATTEO: Michelle.

2 MS. LEE: Yeah, James, thank you very  
3 much, that was helpful. You had mentioned an  
4 interesting statistic which is that 75 percent of  
5 the cases before the board were not interviewed.  
6 What do you know, or maybe other folks around this  
7 table know, what is the percentage of cases at the  
8 PTO that is interviewed? Do you know? Is it --

9 MR. SMITH: I don't know the answer to  
10 that.

11 MS. LEE: I think that would be an  
12 interesting comparison given the board's  
13 statistic.

14 MR. SMITH: One thing we do know, and  
15 I'm not sure we have concrete numbers on this, is  
16 that -- I heard this from the deputy commissioner  
17 earlier today -- the number of interviews is  
18 increasing. And we certainly have -- our  
19 assumption, looking at our numbers, is that the  
20 number of cases -- the number of appeals where  
21 there has not been an interview is higher for  
22 older cases and that, therefore, if we approach

1       that area, we have more to gain looking at the  
2       older cases than we do the newer cases, which is  
3       fine because, in fact, in a COPA like way, the  
4       cases we'd want to address first are the ones  
5       where the parties have -- the applicants have been  
6       waiting the longest for a resolution.

7                 MR. MATTEO:  And actually, James, I'm  
8       sorry, in the interest of time, since we do  
9       actually have to leave the room, if you could just  
10      provide some summary comments.

11                MR. SMITH:  Certainly.  One summary  
12      comment, and again, it goes to backlog and board  
13      operation overall, we are interested to know the  
14      public reaction to a greater attempt on the part  
15      of the board to make its decisions even more  
16      concise, utilizing from time to time per curiam  
17      decisions where in the record, either by way of  
18      the examiner's comments or the applicant's brief,  
19      the correct resolution of the case seems to be  
20      already presented in writing to the board.

21                Lastly, I would touch on another thing  
22      which, in fact, also impacts backlog and is

1 related to our hiring effort. While we're very  
2 pleased that we will soon have 10 new judges, this  
3 will allow us essentially merely to hold our  
4 ground, because, in fact, the great work put to us  
5 by the AIA, including participation in the  
6 drafting of rules, means that we have about that  
7 number of judges who are diverted from their  
8 normal work merely to help with the vetting of  
9 public comments on what the rules should be and  
10 drafting rules for consideration by the director  
11 and other parts of the agency.

12 But the folks we have working on the  
13 rules we think are giving themselves fully to it,  
14 trying to be as attuned as they possibly can be to  
15 the comments coming in through the micro site, and  
16 trying as best as possible to balance the various  
17 interests that play out with whatever those rules  
18 are going to be.

19 MR. MATTEO: So I can promise you we  
20 have a great measure of empathy for you with  
21 respect to new duties layered upon you by the  
22 America Invents Act. We're struggling with some

1 of the same issues ourselves. But I do want to  
2 thank you very much. Do we have any quick  
3 questions from the membership?

4 MR. MEYERS: James, I know that you had  
5 a large number of patent attorneys I think that  
6 were hired on as judges, selected as judges. Is  
7 there any plan to backfill some of those positions  
8 to also help with the backlog?

9 MR. SMITH: We might at some point  
10 develop such a plan or certainly some plan that  
11 involves support of the judges in whatever way we  
12 can support them. Currently, however, we are not  
13 prioritizing that effort largely because the  
14 mission of finding 90 more judges is fairly  
15 consuming.

16 MR. MATTEO: Okay. Well, thank you very  
17 much.

18 MS. FAINT: I just have one question. I  
19 was wondering also what the attrition rate is for  
20 judges. Is it in line with the core overall or is  
21 it higher or lower?

22 MR. SMITH: I don't know the numbers

1       comparatively. I would say this, though, that our  
2       attrition rate is very, very low. The judges like  
3       their jobs and we -- I should say we like our  
4       jobs, and we -- just yesterday we had an award  
5       ceremony for the board with judges and support  
6       staff, and the number of people to whom  
7       commendations were given for 10, 20 and even 30  
8       years of service is just astounding to me; low  
9       attrition.

10               MR. MATTEO: Great. And with that,  
11       we'll wrap up. James, if I may make a suggestion  
12       for our next meeting, we'd like to have you speak  
13       again, several things. If you could provide your  
14       comments via slides, as well, that would be very  
15       helpful, not just to facilitate understanding here  
16       at the table, but for the public, as well. These  
17       are all made available on the website and by  
18       webcast, so I think that would be very helpful.

19               And in addition, if you would spend some  
20       time returning to that whole supply-demand side  
21       and the learnings and the feedback mechanisms, if  
22       you could spend a bit of time on that, I'll be

1 happy to work with you in the background to try  
2 and develop more fully what we would like to see.  
3 And I think that would be very helpful for the  
4 membership here, as well as the public. Thank you  
5 very much. Okay.

6 So just a few housekeeping issues to  
7 wrap up, unless we had any additional comments  
8 from the membership. Okay. So I did want to make  
9 everybody aware that the PPAC has just recently  
10 completed its annual report which is distributed  
11 to the President and to key members of Congress.  
12 That report is available for everybody to download  
13 on the PPAC section of the PTO website in PDF  
14 form. We have also made available all of the  
15 presentation materials from today. Those will  
16 also be up on the PTO website for those of you who  
17 are interested.

18 And just to circle back on the questions  
19 from the public, there were none, so we won't be  
20 addressing those. However, having said that, if  
21 and to the extent anyone has questions, don't feel  
22 this is a speak now or forever hold your peace



1 moment. You can send them to that e-mail address.  
2 They will come to me and we'll find a way to get  
3 your answers out to you.

4 Okay. And with that, I'd like to thank  
5 all of the members of the PTO for their great  
6 presentations and all of the incredible work that  
7 is behind them. And thank you also to the PPAC  
8 membership for your thoughtful questions and  
9 participation. And with that, I will formally  
10 adjourn the public session of the Patent Public  
11 Advisory Committee. Thank you.

12 (Whereupon, at 11:35 a.m., the  
13 PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

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Notary Public, in and for the Commonwealth of  
Virginia  
My Commission Expires: July 31, 2015  
Notary Public Number 258192

