UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, May 16, 2013

PARTICIPANTS:

PPAC Members:

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PAUL JACOBS

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P R O C E E D I N G S

(9:35 a.m.)

MR. FOREMAN: Well, good morning, everyone. My name is Louis Foreman, and I'd like to welcome everyone to the quarterly meeting of the Patent Public Advisory Committee, or PPAC. This is our second meeting in 2013, and due to the sequester, our first virtual meeting. So, I want to thank everyone at the USPTO who have helped manage this WebEx call, and really worked so diligently to coordinate all the details in pulling this off.

I also want to thank the public in advance for your patience, in the event we experience any technical difficulties here. Ideally, we'd all be present in Alexandria for this meeting, but we'll do the best we can given the circumstances.

As a reminder, the Patent Public Advisory Committee was established to review the policies, goals, performance, budget, and user fees of the United States Patent and Trademark Office with respect to patents, and advise the Under Secretary of Commerce for Intellectual

Property and Director of the United States Patent and Trademark Office on these matters.

The nine members of PPAC have diverse backgrounds, and come from different segments of the intellectual property community. However, when we assemble today, we are focused on providing guidance for the office and our representation of the user community.

This morning we have five of our members present in Alexandria, and six calling in on this WebEx conference call. So, if we can start by introducing each member on the phone, starting with Clinton Hallman.

MR. HALLMAN: Good morning, my name is Clinton Hallman, and I'm the chief patent counsel with Kraft Foods, joining you from outside Chicago. I would also like to pass on my thanks to the staff there at the Patent Trademark Office for pulling together all of the technology to let us have this call today.

MS. MCDEVITT: Valerie McDevitt, PPAC.

MS. SHEPPARD: Christal Sheppard, I'm faculty at the University of Nebraska, PPAC.

MR. SOBON: Wayne Sobon, PPAC.

MR. THURLOW: Peter Thurlow, PPAC.

MR. FOREMAN: And now if we can introduce those who are present in Alexandria, starting with Paul Jacobs.

MR. JACOBS: Paul Jacobs, PPAC.

MS. JENKINS: Mary Lee Jenkins, PPAC.

MR. BUDENS: Robert Budens, PPAC.

MS. KEPPLINGER: Esther Kepplinger, PPAC.

MR. FOREMAN: And finally, if we can get the names of those who are present from the USPTO, there in Alexandria.

MS. FOCARINO: Good morning, Peggy Focarino, Patents.

MS. REA: Good morning, Terry Rea, Acting Director, thank you.

MR. FOREMAN: We also have members of the public who have joined us on the conference, or in person. Just a reminder, this is a public session, and we welcome your participation. If you have any questions and are online, please e-mail those questions to PPAC@USPTO.gov, and we'll do our best to address those questions, time permitting. So, with that said, good morning,

everyone.

I now have the great honor to welcome our first speaker. Teresa Staneck Rea is the Acting Under Secretary and Acting Director of the USPTO. Thank you for making the time this morning to be with us, Director Rea.

MS. REA: Thank you so much, Louis. Your leadership with PPAC is most appreciated, and for you to actually have this very first historic moment with the PPAC meeting being webcast like this, and for your patience, your coordination, and everything you do, not just for this agency, but for the American people, is truly appreciated. Thank you, Louis.

MR. FOREMAN: Thank you.

MS. REA: I also want to thank everybody on the WebEx for tuning in. These meetings are very important for us, as well as to our user community. We do hear directly from PPAC, but the opportunity for everyone to interact, not just with the USPTO, but with our individual PPAC members, we consider that to be extremely valuable. And we encourage those interactions, so that we give you the best quality

products and services possible.

Now, since last week, I have some news, was Public Service Recognition Week, I want to thank everybody in this room for everything that you do on behalf of the U.S. Government and the American people. So, all of our PPAC members, our USPTO employees, everyone in their entirety, I want to thank everyone for everything that you do.

But in particular what I would like to announce is I would like to congratulate my esteemed colleague on my left, Peggy Focarino, the Commissioner for Patents. This is hot news to those of you who didn't pay attention last week, but she was recently named a Samuel J. Heyman Service to America Medal finalist by the nonprofit group Partnership for Public Service. And to those of us who work in the government, we call this the Sammie Awards. This is a very high award, a very big award in the U.S. Government. There will actually be a ceremony in October, where the actual finalists and the winner is announced. But just making it as a finalist is a huge honor, not just for Peggy, but for the

entire agency. And there were 31 finalists throughout the entire government who are actually identified. And so, this is actually a very big honor for us. The Sammie's award is something that we view as the highest level of public service in each and every agency. And what Peggy has done to spur our economy, encourage job growth, and strengthen the USPTO's patent operations is exemplary. So, thank you, Peggy. And we can all give her a round of applause. (Applause)

So, since PPAC last met here in March, we've been actually very busy working on a significant number of operational issues, such as continuing to lower the backlog of unexamined patent applications, developing initiatives aimed at reducing the RCE backlog, and implementing the final provisions of the America Invents Act. There's been a few other things keeping us busy as well, but those are the few that I would like to highlight today.

Now, I'd like to tell you that through various initiatives and through a lot of the vision of Director Kappos, we've actually made

very steady progress at reducing the backlog of unexamined patent applications. Now, as of today -- these numbers are hot off the press -- we are down to 597,696 applications. And I have to tell you that while Director Kappos was here, that number had gone down 20 percent, even though patent filings went up an average of 5 percent each year. So, we are doing desperately everything that we can possibly do to increase that trend and to take the backlog down further and further.

Now, as we continue to reduce that backlog, we realize that we have an RCE backlog that also should be addressed. As many of you in this room know, and our user community that you know through our Federal Register notices and our roundtables and our meetings, we're trying to reduce the RCE backlog. As of today, our RCE backlog -- once again this is a number hot off the press -- is 110,023. So, 110,023 is our current RCE backlog.

One of our big initiatives right now is not just to increase our unexamined patent application backlog, but to significantly

decrease our RCE backlog. We're still accumulating some information on how to do this at the source, the cause of the problems, but we have quite a few other initiatives ongoing right now that you will hear about later today that we're using, such as our QPIDS Pilot Program, our after final continuation practice, and there's a number of other things that we're doing to decrease the backlog, even before we actually understand the scope of the issues and everything that we can do.

As you know, what this agency tries to do if there's something we want to get done, the best way to attack it, to minimize it, to solve it, is to take a -- what I consider to be a multilateral approach. So, we try and solve a problem in a variety of ways and, therefore, we get the results that we want sooner.

Andy Faile is actually going to update you later today and give you a bit more information on the RCE backlog. But before you get that, Assistant Deputy Commissioner for Patent Operations Jim Dwyer is going to provide a detailed discussion of our patent operations,

statistics, initiatives, and results as we move into the second half of Fiscal Year 2013.

After that, we're going to hear updates on legislative outreach and issues from Dana Colarulli; patent quality from Drew Hirshfeld; budget and finances from our CFO, Tony Scardino; an update on OCIO activities from our chief information officer, John Owens; the latest on patents end-to-end from David Landrith; and discussion of our international initiatives by Bruce Kisliuk; and finally, closing remarks from the Commissioner for Patents, Peggy Focarino.

So, we look forward to your thoughts, and we welcome your comments and questions as we move through today's agenda. Now I would like to turn the discussion over to Jim for an update on our patent operations. Jim Dwyer.

MR. DWYER: Good morning. This morning I was going to go over some patent operation statistics, and try to explain a little bit as to what the trend is and why. This slide shows our total serialized and RCE filings throughout many years. To the very far right is where we are today with our filings. And the one

second to the right shows our predicted filings, those being about a 5 percent increase overall over last year, with 7 percent predicted on new serial filings, an actual slight reduction in the filings of RCEs.

This slide shows our unexamined patent application backlogs throughout the years. You can see from 2009, there's been a steady decrease from our hiring and putting our resources towards serial filing examination.

On the far right you'll see there was a little increase and then it dropped back down. That was due to the AIA filings in early March.

This slide demonstrates the difference between our actual inventory, which is in red, and our optimal inventory, which is in blue. The optimal inventory is what we would be at 10 months. So as the red disappears, and these two graphs merge, then we will be where our actual inventory reaches our optimal inventory. And that puts us at 10 months average inventory.

Likewise, showing a trend in our RCE backlog over the years, when we put our resources towards serialized filings, RCE backlog has gone

up. It's currently right around 110,000, and you can see that there's a lot of initiatives that are going on, and it's caused that to at least look like it's either capped or starting to work down. Other presenters will go over some of the things that we're doing with respect to RCE backlog and looking at how we can use our resources better towards doing RCEs.

This slide shows our total and first action pendency, the top being the total pendency. This is total pendency of applications on average from start to finish. You can see, again, it has been trending down in the last few years, close to around 31 months on total. And then on first-action pendency, again, it has been declining to the point where it's around 19 or so months to first action.

The forward-looking first-action pendency, this is pendency that's measured more in the line of when an application, if it was filed today, when we would get to it. As you can see, that has been a very steady decline. Again, that tick upward on the right, again, was due to the extra filings we had in early March.

This graph here shows -- of all our serial disposals -- whether they had an interview of record in the file. And as you can see, that has been steadily increasing. We know that interview practice is good for us and it's good for you. We put a lot of initiatives in to make it easier for examiners to do interviews and, again, from our statistics we have shown that interviews usually are more likely to proceed to an allowance at an earlier date.

MS. KEPPLINGER: Jim, you indicate they're serial disposals. How do you then -- does that not include RCEs, since that disposal would be an abandonment. But if there's an interview in an RCE, is it not captured or -- with serial disposals it just throws me off a little.

MR. DWYER: The reason we use serial disposal is if you just use pure interviews -- because we do have that record. It has to be normalized in some manner. So we chose the serial disposal to take a look at that portion of that first case to look back to see if there was an interview. So, it was basically used to

normalize the number of interviews per case.

MS. KEPPLINGER: So, if there's an interview in an RCE, is it captured or not?

MR. DWYER: It wouldn't be captured in the numerator or the denominator.

This slide shows our 12-month rolling average allowance rate per bi-week, and basically, we only do rolling averages, so we don't get the -- this kind of filters it out, and smooths the line out. Again, you can see that there's been a fairly steady uptick on allowances over the last few years, and we're currently in the 52 percent allowance rate.

This slide shows our attrition rate of the examiners, both total attrition and attrition that's less transfers and right to retirees. And highlighted on the right side is -- we do it in a shorter period of time, so that we can watch the attrition rate a little closer. As you can see, we have a very healthy attrition rate. This is one in which, I think, has helped us -- and some of those previous slides showing our backlog decreasing -- that we've been able to get examiners in and hold on to them, and get them to

the level where they're very productive and requiring less oversight.

This slide shows our Track One statistics from the start of Track One. A few things to highlight are that this year we're averaging over 500 a month, which is up from last year. Nearly half of our -- 45 percent Track One filings are from small entities, which, again, I think, is a very healthy number. Another statistic in here that we're monitoring from petition to grant, we're being on average right now at about five months, so it's clearly doing what was intended of Track One. It's getting applications through examination and, if allowed, in a quick manner.

This is the last slide, and it's our quality composite. And I know it's a very busy slide, very small. Our score did decrease in the last quarter. And looking at the statistics, there was one statistic that created this, and that was our internal survey that we had with examiners. Looking into that survey as to why that dropped, at the time the survey was being taken, we were doing some first inventor to file

training. And at that same time, we also experienced some issues with our WebEx vendor, and some of our training sessions did not go well. We kind of attributed that to that incident. So, the hope is that that will rebound back to where it was and that will cause the quality composite scores to go back to where we expect them for this year. Questions?

MR. THURLOW: Hey, Jim, this is Peter Thurlow. Can you hear me okay?

MR. DWYER: Yes.

MR. THURLOW: Okay, thank you. So, just a couple of questions. Thank you very much, the information is helpful. One of the things we've talked about with the Patent Office in the past, and you're probably aware of, is that we had some concerns with the Track One, and the use -- how certain examiners were asking for it to be used after the RCE was filed. We briefly reviewed that. We reviewed it with the Patent Office, and the numbers came back pretty low. But one of the requests that we made was with Track One, to the extent in the future when you or others report this, if you can break out how many Track

Ones that were filed after an RCE because of the problems of the RCE delay. That information may be helpful. I'm hoping it continues to remain very low, but that information may be helpful -- or will be helpful.

MR. DWYER: Sounds like a great idea.

MR. THURLOW: Just a few other points if I can. Other information that's particularly helpful -- again, a lot of this ties in with RCE practice, but one of the things that you've been very helpful on is applicants find the pre- appeal data and the appeal data very helpful, so to the extent you can include that information in this presentation and so on, as applicants get the final -- need to decide what to do, it would be helpful to know how many pre-appeal requests and appeals are made. Particularly, what's important, I believe the numbers are 30 to 40 percent of the cases are reopened after the conference. So, that information may be helpful. If you can include statistics on that, that would be great.

And then my last point is -- I'm looking at today's agenda -- something that we reviewed,

of course, and we wanted to change things up a little bit, but I did not see an update like we have received in the past based on the AIA updates. Janet Gongola's normally done that and also Chief Judge Smith. I understand that we don't have them on the agenda today, and that's perfectly fine. But for future purposes, people in the public still find the filings -- that information is very helpful as far as how many post- grant filings, pre-issuance submissions. So maybe after this meeting, we could reach out to Janet and Chief Judge Smith and ask for that information. But it's more on our PPAC side to just request that information from a patent operation's standpoint. I think that information would be helpful. That's all I have.

MS. McDEVITT: Hi, this is Valerie McDevitt. In looking at the track one statistics, what I think would also be helpful is now that we have the additional category of micro-entity, I'd be curious to add going forward how many of the micro-entity participants are using it. And then in general, I'd like to start seeing how much the micro-entity status is being

used. There's been some concern in the academic community in the way that it had been implemented, how easily it was going to be for them to take advantage of it. So, I'm curious how much, compared to what we thought it was going to be used, how much micro-entity is going to get used?

MR. DWYER: Again, sounds like a very good idea.

MR. FOREMAN: Thank you, Jim. We really appreciate that presentation. Do we have any other questions from members of PPAC on the phone or in Alexandria for Jim Dwyer?

Okay. It doesn't look like we have any questions from the public at this point. So, Jim, thank you again for your presentation.

And I don't know if Dana is available, but if we can move right into the legislative update, we can use some of the extra time for questions and answers on the legislative approach. Good morning, Dana, how are you?

MR. COLARULLI: Good morning, Louis, I'm well. I am always available.

MR. FOREMAN: Wonderful. Well, we know that you're busy these days, so we appreciate

your time this morning. And I know everyone's looking forward to this update.

MR. COLARULLI: Well, thank you very much. I'm happy to be here again. There's a number of things, clearly, that Congress is interested in at the beginning here of the 113th Congress - USPTO issues, intellectual property issues included among them. So, what I'll do today is what I've done in previous meetings, kind of give an overview of the issues that my team's looking at, some of the hearings that are coming up, some of the increasingly active discussion about patent law improvements, and what I like to call, where the AIA leaves off, and where is there maybe room to address, or at least discuss, if there are additional solutions, particularly in the litigation context.

So, with that, we'll do the slides, and then I'll open for questions. Hearings -- this is the time of year when Congress does hold a lot of hearings. A lot of lobbying is occurring on the Hill, I can report as well, as we see reports of briefings for congressional staff and receptions. But on the substantive side, on

Patent's issues, we've had two hearings on the patent litigation issues so far this year, first in March, generally on abusive patent litigation and the impact on American innovation and jobs, and potential solutions. That hearing had, as I suggest, very broadly context discussed. Some of the proposals, only two of which have been introduced into legislation -- that's fee shifting and expanding the existing transitional provision proceeding for financial business methods -- covered business methods. But it also talked about discovery costs and a number of other things. The second hearing in April focused exclusively on the ITC and structural reforms there that may also address similar patent litigation abuse as the hearing described.

A third one addressing our issues of interest occurred yesterday in front of the House Small Business Committee. The committee is very interested both in resources available to small businesses to help them transition in the post AIA world. But the discussion also went to issues of budget and sequester impact and discussed in very small part some of the litigation reform

proposals that are being discussed up on the Hill in our stakeholder community and elsewhere.

Lastly, today there's a hearing of interest on copyright issues. The chairman of the Judiciary Committee announced that he's going to initiate a series of hearings and start a comprehensive review of copyright law. He sees this as a parallel to what the Judiciary Committee had done in the patent context over the last few years. So, I think we can expect a number of hearings, this being the first, generally on copyright. Similar statements have been made by the registrar for copyrights on the need to review copyright law. And internally here at PTO, we've been working to develop a paper -- a discussion paper, a green paper on copyright that we hope will help to contribute to the discussion later this year.

Some of these issues do bleed over into the patent context, but I wanted to highlight that hearing which is happening today here. I mentioned the active discussions that we're watching on abusive litigation. Two bills have been introduced: The first -- reintroduced by

Representative Defazio, the Shield Act or saving high-tech innovators from egregious legal disputes; the second -- not listed here, but it's the PQI. Well, it is listed here, but the name is not the PQI, it's Patent Quality Improvement Act introduced by Senator Schumer. That's a very directed bill looking to expand the scope of the covered business methods program, but then also making that program permanent. It's right now an eight-year pilot. It would strike that sunset provision and make it permanent.

Other approaches that have been discussed, we started, I think, a very good discussion here at PTO about identifying the real party in interest. We did a roundtable in the January timeframe. There is considerable interest there in looking at transparency in litigation, looking at building a resource here to identify the real party. And this is where the ultimate parent entity has been discussed, in a few legislative proposals that I've seen.

Also, an active discussion on reducing discovery costs, eliminating actions against downstream users, or addressing some of the

concerns of the end user, most often defendants pulled into litigation. And then some preliminary discussions about how to encourage settlement in this area to avoid a costly, long District Court litigation.

All proposals that I expect will continue to be discussed, the judiciary committees of jurisdiction on these issues are occupied with other issues, not intellectual property issues -- certainly, immigration and guns among them -- so these issues really, I think, are still at the staff level up on the Hill under discussion. But as I said, I'm seeing a number of discussions heating up.

I've included in the slides a number of other bills that have been introduced, that we're watching, that address our issues. It includes legislation addressing plant patents. It includes enhancing tools in the trade secret area, enforcement in particular. It includes bills that we've seen in the past addressing repair parts in the auto industry, and in cyber security. A number of active bills -- unclear how fast any of these will move, but certainly

ones that we're watching and will continue to watch.

Other considerations for the 113th Congress, certainly budget and sequestration is something that we're concerned about and watch. There is a lot of discussion up on Capitol Hill about the impacts of sequestration and not a lot of focus on PTO, but a number of others that I'm sure you're all watching. So, we're certainly watching that as well. We're eager to continue discussion with our appropriators about how PTO will absorb the impacts of sequestration, and look forward to responding to questions I'm sure will come soon about our plans -- our spend plan which we will be submitting here I believe in the next week or so on behalf of the Department of Commerce.

Our satellite offices, a lot of continued interest from Capitol Hill, certainly. And we're trying to make our plans to continue not just the build out of the offices, but what we can do in terms of outreach. Certainly, that progress also could be limited, depending on budget.

And the last thing I'll just highlight as I do at this meeting, I've done in the past, outreach to Hill staff, kind of our general bread and butter of what my office does in terms of educating Hill staff on what the USPTO does, both on the patent and the trademark side, and in the international arena. We've been doing a number of briefings on international issues of late, in particular the negotiations around the WIPO discussions on the visually impaired. There's a negotiation in Marrakesh coming up here this summer. We're keeping the Hill staff up to date on what those discussions are. Again, that's another issue that there is some bleed over into patents, depending on some of the international norms that are adopted. So, we're certainly keeping folks informed there.

We're planning another day in the life for congressional staff. I know at the last meeting here, there was discussion about doing a day in the life of a congressional staff for PPAC. I'd be happy to pursue that. I think the summer is a good time to do that. We might pick a time when there is a number of folks here in town, not

just virtual to do that, and even meet with congressional staff, if that's of interest.

With that, I'll take any questions that folks have.

MR. FOREMAN: Thank you, Dana, and thank you for what you do for the office and for the user community. We have -- Peter Thurlow has a question for you, Dana.

MR. THURLOW: Hey, Dana, I hope you're doing well. Phoning in from New York. A little cloudy up here, but it's very nice.

I have a couple of questions, so maybe -- I didn't plan on asking you about sequestration, but since you mentioned it, I just have a general question. From what I read in the paper, there's a lot of issues with the air traffic controllers and the concerns -- what sequestration -- how it affected them and so on and how they were able to resolve that. Have arguments been made to Congress how USPTO's operations are -- and their fee structure is just simply much different than other organizations, how it's a self-funding organization. Initially, we thought it was going to affect our

overall budget with the sequestration, which because our fees are going to be lower, it wasn't going to have an impact. But my understanding is now the sequestration -- they took a so-called 5 percent or so of overall fees. So, you understand that's raised a lot of concerns. So my question is, have the arguments been made to Congress about what is different?

MR. COLARULLI: So, I know there's been some discussion up on Capitol Hill, but I haven't seen -- certainly, a large focus. There are a number of other agencies that are impacted by sequestration. I'm the first to say, and I've said to many folks even in this room, this is not a way to run the federal government, but many agencies are impacted. PTO is not left out of that camp.

So, the precise impacts of sequestration we're still discussing within the administration and look forward to sending up a spend plan. But as a number of our folks in the user community have understood that PTO is being impacted, I've seen some letters up to the Hill. I've seen some letters going to various folks in

the administration, trying to understand the impact. At the agency, we're focused on, you know, how are we going to continue to do the work that we're doing, and what's the best way to manage in this very, very difficult and, frankly, not-anticipated situation. We just went through a 10-year process of patent reform, and a main driver of that discussion was making sure the office had certainty in its funding stream. So, it's very troubling to us and to others, but this is an act of Congress, and it is affecting many.

The question to me is, you know, given the work that we do here, which is very important, and given the discussions about making sure that this agency can be successful, we're looking at air traffic controllers to make sure that planes don't crash. We're looking at trying to protect meat inspectors to make sure that our food safety is protected. The beginning of this week, I picked up Politico and saw a list of very valuable contributions to the federal government that are at risk and are being discussed up on Capitol Hill.

So, Peter, to answer your question, I

haven't seen a lot of discussion about the Patent Office. As I said, we're focused here in simply figuring out how to best manage in this environment. I understand that the decisions that our administration's made in attempting to be consistent, unfortunately, has an impact on the USPTO that was not anticipated, but we're going to manage to it.

MR. THURLOW: Okay, thank you. I have other questions, but I don't want to monopolize your time. So, if anyone else has questions, they can chime in.

MR. FOREMAN: Why don't you go ahead, Peter? You can ask your follow-up question.

MR. THURLOW: So, my other questions are just on I watched the hearings on the so-called abusive patent litigation and patent trolls, whatever people were referring to it. I know that you've provided a helpful update on that. I guess my question is, what is, in general, our next steps for somebody that's casually or generally following this and has a great interest because of the impact on the litigation system? You know, you provided some

helpful topics for the discussion, discovery costs to limit actions against downstream users. All of them may be very good ideas. Is the approach going forward -- is any more hearings scheduled or is the approach just general lobbying and continuing to discuss the issues?

MR. COLARULLI: In terms of the activity that we're seeing up on Capitol Hill?

MR. THURLOW: Yes, specific to this topic because of the extreme interest in it.

MR. COLARULLI: Yeah, you know, I don't anticipate right now, and haven't heard that the committee is anticipating, convening any additional hearings. I do know staff is now -- based on that testimony and based on a lot of discussions I've had with a number of the user groups -- kind of putting together their rough list of what they might want to propose. We haven't seen any drafts of legislation, but certainly the discussion was started on the fee shifting. I saw a number of alternatives to the loser-pays model of the fee shifting being discussed. So, you might see some variation of that discussion circulated in a draft.

I think, certainly, I've seen a lot of interest, as I mentioned, on RPI, on the real party in interest, and the end user issues. So, I think the next steps for those interested in paying attention is watching the press. I think you'll see the committees when they're ready, here in the next few months, after some additional discussion about circulating some draft of a bill that will include -- reflect the discussions in the hearings.

I will say the administration has a large interest in this as well. We're making our list internally. This has caught the interest of the White House. So, we've been polled to have a number of discussions about what might make sense in this area, both on additional tools for the office and just reflecting additional tools for district courts and litigation, and kind of everything in between.

So, I think the next few months there'll be some very productive discussions about what could be done in this area. I don't see legislation being brought up and passed in the next two weeks. I think this is a continuing

discussion, and there is both proposals that have concerned me, and proposals that I've thought are worth looking into a little bit more, both within the administration and up on the Hill. So, Peter, my best advice is, you know, keep watching, keep listening, and weigh in, given your experience.

MR. FOREMAN: Thank you for that question, Peter. We also have a question from Wayne Sobon. Wayne is actually the subcommittee chair for legislative on PPAC. Wayne?

MR. SOBON: Thanks, Louis, and thanks, Dana, for your overview. I think one of the key questions, I think, that intersects your area with regard to sequester is the fact that -- commendably the office has just been increasing its work and attendance and participation in a number of international forums to push for better harmonization, how we can improve the international IP system, and areas of common interest, between our country and others. But I fear that some of the practical effects of sequester can prevent us from being fully at the table and a member of these discussions. I

wondered if you could comment on that for the general public?

MR. COLARULLI: Sure. You know, this happens throughout the federal government in many federal agencies. One of the first things we cut is travel, and for that part of the office, our Office of Policy and External Affairs, traveling to international forums, whether it's for representational meetings or for training, is really critical. If we're not there, it's really hard to have a substantive impact and hard to ensure that international arms that are being discussed are actually moving in the right direction. I think we've been forced to prioritize, and I think we've done a fairly good job at that. But we are dealing with limited resources. So I am concerned moving forward on having the ability to continue to be present at these forums.

You know, I raised the negotiations on the visually impaired and the negotiation coming up this June in Marrakesh. You know, that's one example where the State Department has delegated to the USPTO to be the head of the delegation

negotiating this treaty on behalf of the U.S. Government, to the extent that we are able to be at those forums. You know, it really does impact us.

I think, you know, that's an example where we're sending a couple folks that are -- our chief policy officer, Shira Perlmutter, and Justin Hughes, experts both in this field, and will do a good job. But if it's not an issue that's at that priority level, you know, I'm unsure moving forward whether we'll have the focus there based on the travel budget.

So, thank you for the question. I think we'll just have to continue to do the best job we can with the resources that we have.

MR. FOREMAN: Thank you, Dana, and please keep us posted because I think it is of concern that serious, important things can fall by the wayside or we won't get our views expressed just purely by this budget issue. So, please keep us informed.

MR. COLARULLI: Will do.

MR. FOREMAN: Thank you, Wayne. We have a question from someone there in Alexandria.

I'd like to turn the floor over to Amber.

MS. HOTTES: Hi.

MR. FOREMAN: Much better. Thank you, Amber.

MS. HOTTES: Oh, great. I was going to run as soon as I asked. Hi, my name is Amber Hottes. I am here as a member of the public. I meant to just listen. I was hoping you could tell me a little bit more about the content of the potential plant to patent legislation, and, most specifically, if they talked about removing or decreasing protection for plants.

MR. COLARULLI: So, this has been an active issue -- it has been an active week for plant patents with action in the Bowman case, which we're watching closely. The legislation on plant patents that has been introduced and discussed has been limited to the Seed Availability and Competition Act. You know, it was introduced by Representative Kaptur, and we haven't seen further action -- forward movement on it. Yet, this Congress -- it's unclear whether it would go forward. The Judiciary Committee does have jurisdiction over it and, as

I said, they have a number of other priorities that we'll keep watching, but I haven't seen further action.

MS. HOTTES: Thank you very much.

MR. COLARULLI: Sure, you're welcome. Thanks for joining.

MS. HOTTES: Thanks.

MR. FOREMAN: Thank you for that question, Amber. It's wonderful that we get public participation here. Peter Thurlow, do you have a question for Dana?

MR. THURLOW: Sure, Dana, forgive me again. I think you have the best job in Washington, or at least the one I'm most intrigued with, so forgive me, I can ask you a bunch of questions.

My question is, I didn't know about the Small Business meeting yesterday. I know when the AIA was passed, there was a lot of concern about the first inventor to file. That was my first question.

Then my second question -- just ask you two at a time -- is, as Chuck Schumer, or Senator Schumer is expanding the CBM, is there still

discussion about cleaning up all the areas of the AIA? I know there was the stockholder provisions for the PGR, the so-called second window, discussion of possibly equating them to the CBM. So, if there's any issues like that, in addition to what Senator Schumer did, I'd be interested in hearing about those discussions.

MR. COLARULLI: Thanks, Peter, and I know after -- let me respond to your question. I know we had some questions here on the floor, too, including from Robert Budens.

You know, Peter, I do have a great job. And I started my week thinking, I'm really glad I don't do government affairs at IRS or other places. (Laughter) So I'll just dig back into my substantive issues and enjoy my job and the issues that we deal with.

The Small Business hearing yesterday did -- at least a number of requests were focused on the first inventor to file and the impact on small businesses. And I think the questioning went to, you know, was it good for small businesses? That's a theme that we had seen throughout the AIA. But I'm glad to say I think

some of the answers focused on what are the resources? The sky has not fallen on small business as other applicants have begun to accommodate -- move into this first inventor to file, but the office also has a number of resources, and a pro-bono program was highlighted during the hearing, along with other things. There's actually some very good coverage today, press coverage of the issue. So, I certainly encourage you to take a look at those. And I think the office will continue to make available more resources to that community. I will tell you that an interest that I've gotten both from our judiciary context, asking what resources are available to help small businesses, but also from the appropriations context. We had a directed report in our appropriations language this year to ensure that our outreach -- our awareness campaigns on enforcement were focusing on small business. And our other educational resources on helping small businesses navigate the patent system were available.

A lot of interest in our ombudsman program that was started under the AIA. So, I

think there's much more to be discussed there, and I think we're creating a lot of resources for small businesses. I'm glad there's some attention being paid to those.

Certainly, Chuck Schumer, the father of the transitional program, I think he was very eager to introduce an expansion, and his staff reached out to us early. I think it becomes, Peter, a vehicle, both the CBM's and some of these other proposals that we're discussing, you start seeing a vehicle that's going to be created where other things would be likely added on. I know that the PGR estoppel fix has been on the list of congressional staff as something that they'd like to address. It's something that we've also voiced an interest in looking at, given the legislative history at the end of last year. So, I think certainly that issue will come up again, although, again, we haven't seen any drafts.

You will see other things as well. I think it does open up an opportunity to address some of the other issues that we've identified as the implementation process is moved forward. Folks have come to us and engaged us, whether

there'd be opportunity to change some things. So, we're evaluating a number of different proposals here. That may be much less interesting to the broader public, but certainly are issues that we could address to enhance the AIA and make it easier for applicant community to access the USPTO.

I'm thinking of one in particular on declaration and oath, but, again, there's a number of proposals out there that we're still discussing.

MR. THURLOW: Is one of those proposals our considerations to grace period, from the first inventor to file, because I know there's a lot of concern about that from the university community. Or can you say, I mean, just discussions of that? Is that even an issue?

MR. COLARULLI: I know the university community had been actively discussing that. I have not -- on behalf of the office, we haven't been engaged in any discussions of changing the -- or amending the language that creates the grace period. But I know at least from the university community, there had been significant

interest at the end of last year. That certainly may make an appearance again up on Capitol Hill, but I have not seen those discussions yet.

I think the majority of the discussions right now have been focused on the patent litigation issues as they discussed.

MR. THURLOW: All right. Thank you again. You're really great.

MR. FOREMAN: Thank you, Peter. Thank you, Dana. We have a question there in Alexandria from Marylee Jenkins, a member of PPAC. Marylee.

MS. JENKINS: Actually, Louis, Robert had his hand up first, so I'm going to defer my question for the moment to Robert, and hopefully you'll come back to me. Thank you.

MR. FOREMAN: Okay, Robert.

MR. BUDENS: Thanks, and actually the timing is probably good because mine is probably a follow on to Peter's questions about the Schumer bill.

Because I'm a little troubled, I was looking at Dennis Crouch's Patently-O blog today and he was discussing this bill. One of the

comments he makes is this expansion should be seen as the next step towards expanding post-grant review to cover all patents throughout their lifespan. That dredged up a whole lot of bad memories for me about trying to -- you know, about increasing the uncertainty in the patent system and what have you. Do you view Dennis' comments as a probably inaccurate reflection of where Senator Schumer wants to go with this bill and where the sense of Congress may be going on this topic?

MR. COLARULLI: Robert, I have the burden of a lot of history with this provision, and I think, you know, my memory of the discussion is similar to yours. There was a lot of discussion about first window, second window, whether it's important in the patent system to have a short window, where you have a more robust period, and then that cloud of uncertainty goes away to some respect, anyway.

That certainly was the discussion that formed the AIA. And the transitional program, from my memory of the history, was an add-on to that to address the specific need and a specific

area of applications.

So, you know, I read a lot of the news reports of the Schumer bill, and certainly the members' own statements. I read the bill, which I think there was a disconnect between what the statement said and what the bill actually does. It does the two things as I mentioned, expands the scope, which is to other applications, but certainly making it -- striking the sunset provision seems to repurpose the proceeding to something that -- at least the AIA discussions had not reflected. I think that -- what I know from some of the stakeholders, I think they would like to see something like that. I know there's a number of other stakeholders that would not. So, all I can say is, it's the beginning of a discussion.

I'll add that expanding the -- striking the sunset, not only, in my mind, calls into question how the other underlying proceedings interact post-grant and inter partes with this transitional program on top of that, but it also is a resource discussion that we need to have here at the PTO. Certainly, our projections for

hiring judges for managing workload at the board were premised on an eight- year program, so we'd really need to do a lot of thinking about how to accommodate that and what that would need.

So, yeah, I think it's the beginning of a discussion where I've seen more sympathy towards the first part of what Senator Schumer's bill does. I know there's a lot of questions about the second part. The administration's not taken a position yet, but it's something we've actively discussed.

I think it is a good faith attempt to address some of the concerns. But I think we need to be careful what we do in this area.

MR. BUDENS: Thanks, Dana, I look forward to some more discussions on the topic. And I'll yield the rest of my time over to the next speaker.

MS. JENKINS: Thank you, honorable sir.

MR. COLARULLI: I like how we're observing Robert rules here. This is very good.

MS. JENKINS: Exactly. We're doing this well. You know, Dana, you're so calm. I

sit here and I struggle with this sequester, and we've had discussions with different members of the office. I am chair of the subcommittee for the international committee, so I picked up on Wayne's points earlier. You know, we are so energized with the global initiatives and there are so many great things going on around the world with IP, and we need to keep that going. We need the continuity. We need to remain a leader -- the leader in IP for global initiatives. And so this sequester just comes back for that, and much discussion.

I'm also on the subcommittee for IT. Our systems are so important. There's more and more demand from the user community on our systems. And then you're getting more demand from internal issues. And, you know, when I hear IT issues, and how we struggle with that within the office, again, I go back to sequester. And I go back to sequester when you raise our user fees, and, you know -- and then on adding to all of this -- it's almost like a perfect storm -- you've got the whole implementation of the AIA, and the new initiatives and rules that

we all have to work towards.

I guess I'm much more emotional about this than you are, which I guess is maybe is a good or bad thing. But what can we do as PPAC to help the office? I sit here, and you're all so calm. I think you're handling this very, very well, in a very tough situation, but I think we can do so much more, and how can we help, so --

MR. COLARULLI: So, certainly you'll hear from Tony Scardino later today on the actual budget. You know, I can navigate the legislation. I can navigate the budget discussions and the resources the agency needs. I've been very positive and calm, I hope, but not unemotional about the tools that AIA provided. Certainly, greater financial certainty, I believe, and I still believe, than the agency had seen in the past to be able to do the work that it needs to do. And we've made tremendous progress of Peggy's team and the board and other parts of the agency.

So, I think we've been doing all the right things, but I join the rest of the community in just being concerned about the ability to

continue to perform in light of sequestration. In terms of what you can do, I think, is continuing to play your role as the advisors for the agency, but also asking -- certainly asking questions. I mean, we need you to ask questions that -- whether we're both doing the right thing substantively, and whether we're navigating the discussions to make sure that we keep the resources that we need at hand. So, I think you should simply continue doing that.

I think, certainly, the international point is not something that has not escaped us. We're concerned about that as well. You know, moving forward -- this agency has a history of facing uncertain financial times. We're going to, unfortunately, continue that. And it's not clear whether this sequester ends this year or will continue.

So, I think we'll have these discussions again next year. The question is whether we'll have a bit more certainty, whether we'll be able to use the tools that the AIA intended us to use -- the AIA reserve fund, which is, unfortunately, not being used in this

context. I don't have any specific advice right now, but I think, you know, continue to ask questions and push.

MR. FOREMAN: Thank you, Dana, we have a few minutes before our scheduled break, but I know that Christal Sheppard has been waiting patiently to ask her question. Christal.

MS. SHEPPARD: Oh, yes, thank you. Thank you, Dana, for the report, and I'm sorry you're getting all of these sequestration questions, and we're going to talk more about that later. But since you brought some of that up, I just have a question about the budget control act. And it's supposed to be, and no one's really mentioning this, over nine years. And have you heard anything on the Hill about whether this is going to be a continuing situation that the PTO's going to have to face, being that we sure didn't expect to be in this position, given that it is a user-fee funded agency -- completely user-fee funded. And the funds that are going back to the Treasury are not technically going back to decrease the deficit. But they're sitting there unexplainable by the PTO or by the government.

I have a couple of other things that came up during the discussion, which I agree with both Robert and you, about the Schumer bill. There was a compromise that was hammered out in the AIA for the sunset. And now that sunset's compromise may be undone, and part of the point of the compromise was to create certainty, and also not to overburden the office. And with the other provisions expanding the breadth of who can go into the process, in addition to expanding the duration of the program, seems to be completely contrary to AIA. But so does -- sequestration also seems to be contrary to AIA, and we'll talk more about that later.

There's a couple other things I had down, but I'll wait until the other people who are in charge of those issues come up to talk about those.

MR. COLARULLI: So I have a list of two things that you were asking about, which appear to be in conflict with the AIA. One on sequestration and the second on CBM, I think, you know -- nothing more on CBM. I mean I take your comments, and I think it's a discussion that will

be had moving forward, but the history of the AIA shows that it was intended to be a short-term solution to a particular problem. So, I think, at least from a substantive standpoint, my team starts there, but we're happy to engage in that conversation.

You know, on sequestration, as well, certainly the compromise that was had in the AIA was to create a reserve fund to deposit any fees that were collected above our given annual appropriation. In this case of sequestration, we don't have that situation, which is why the AIA reserve fund is not triggered in this case. In fact, since the AIA was enacted, we haven't collected funds above our appropriated level. In this case, the congressional mandate is a cancellation of spending authority. So, it's not a cancellation of appropriations. So, technically, it does not get triggered.

Certainly, Tony and his team have been looking at the statute as well, and, again, can talk a little bit more of that. You'll have to defer all questions to him. But that's why the provision that was adopted in the compromise is

not being triggered in this case. There certainly were other proposals out there, and, you know, we may have fared better under those, but this is the language that we have and the way that we're interpreting it.

In terms of the discussion on the Hill, over the next nine years -- our sequestration of nine years -- according to the Budget Control Act, you know, I'm a professional predictor of what Congress does, but in this case I cannot predict. I haven't seen a movement towards ending sequestration this year, although that was certainly the administration's and the number of members in the Senate's hope and desire. To the extent it impacts the USPTO in future years, it's unclear. In many cases, the remaining time affects the allocations that the appropriations committees have to play with. If that's the case, and if they simply appropriate USPTO less than it's going to take in, well, we're in a very different situation. The AIA reserve fund then gets triggered, and that's certainly one of the possibilities. But it's -- the better solution is to, I think, is to come to resolution on

sequestration and end it. I think that probably will help not only PTO, but the rest of the federal government.

So, I don't see those discussions moving, frankly, in a forward and a positive way right now, but I'm hopeful. As Tony has said frequently, hope is not a strategy, so PTO will continue to try to manage with the budget that we have.

MR. FOREMAN: Well, Dana, thank you for that presentation, and also for the candid feedback to all the questions from our panelists and from the public. We are now up at 10:40, and we've got a scheduled 15-minute break. What I would ask all the panelists is do not disconnect your phone. If you could just put your phone on mute and we will pick this discussion back up at 10:55, when we will be discussing RCEs, and we'll have Andy Faile making that presentation. So, thank you, everyone. So far, a wonderful discussion. Technology is keeping up, and we will hear more at 10:55. Thank you.

(Recess)

MR. FOREMAN: We'd like to welcome

everyone back to our quarterly PPAC meeting. Thank you for your participation so far this morning. And we are going to pick back up where we left off.

This morning we are joined by Andy Faile, Deputy Commissioner for Patent Operations. And Andy, if you could take us through a discussion on RCE outreach, we would appreciate it. Good morning, Andy.

MR. FAILE: Thank you, Louis, good morning. Good morning, everyone. I have with me, also, the team that's working in the PTO: To my right, Kathy Matecki, and Remy Yucel to my left.

First of all, I'd like to send out my thanks again, once again, to PPAC, who really have been involved very specifically in this issue to the point of even going to the roundtables we did throughout the country. We had a PPAC member at each one of those roundtables helping us. That was very helpful. And, again, another special thanks to Esther and Wayne for helping organize the entire effort, basically from the ground floor up.

We're kind of in the middle of this whole effort. So what we wanted to do today is give everyone kind of a status update of some of the initiatives that are currently in place, and then spend the balance of the time talking about our first wave of data mining from the roundtables and from the results from the Federal Register notice, as we attempt to kind of organize that information and kind of pull out actionable items for the Office to pursue.

The latter part of the conversation today, I would invite PPAC in looking at this, to help give us some direction on areas that we should be focusing on. Potentially, areas that may not be as fruitful, to give the office some direction as we kind of run through -- crunch through the data, and come up with different programs and different actionable items therein.

Also, for a quick review, what we have kind of as initiatives that are underway now -- I'll just catalogue a few of these, and then we'll go into the data phase of the outreach effort.

Our Quick Path IDS Program, or QPIDS,

was recently extended to run in its current form, current parameters, until the end of the fiscal year. That's September 30 for us. We'll be looking at data, continue to pull data from that, and then we have a decision point at the end of the fiscal year for that particular program.

Another program that we've worked on in conjunction with PPAC is our After Final Consideration Program. That program was extended until May 18th, and we have a couple of iterations, kind of a new After File Consideration Program starting on the 19th. The Federal Register notice announcing these changes will be out tomorrow, Friday. It's currently in the reading room for those to look at. And there's just a couple iterations there -- or a couple changes there that we think are going to be helpful in moving that program in its next phase.

The first will be an actual Opt in part of the program, where we know exactly which applicants with which cases are actually in the program. That'll help us from a data perspective to know exactly how many cases are in the program

and what the disposition of those cases are.

The second part is we're layering in an interview after final. One of the provisions would be, when the examiner is working on the after final and in claiming a time for that, there's the option for the applicant to come in with an interview. We're kind of basing this on our general observations and general data. The interviews are very helpful, a lot more prevalent today, and they seem to be able to move cases towards final conclusion quicker. So, we're layering in an interview portion of this, too.

Those are the two changes you'll see in the Federal Register notice coming out tomorrow on the new After Final Program.

A couple other things we're doing in the RCE realm, that are in place now, we are constantly looking from the presentation that Jim Dwyer did earlier, we're constantly looking at both the volume of RCEs, and the age of the RCE inventory. So we have two initiatives currently ongoing, looking at the inventory from that perspective.

In one we have a temporary increase in

the credit value for examiners for RCEs, until the end of the fiscal year, September 30, which brings the RCE count values up to the new case count values. There's an incentive there for examiners to work on more RCEs, and they anticipate a jump in the number of RCEs worked on, and, consequently, a lowering of that backlog by the end of our fiscal year.

The second kind of has to do with the age of that inventory. We are looking at the category in which RCEs are worked according to the examiner's work-flow plan, and we've re-ordered that category by effective filing date. The RCEs were previously ordered by the filing date of the RCEs. This will result in a lot of the older RCEs coming up to the top of that category stack to be worked on. So, we anticipate getting a number of the older RCEs moving at a quicker pace. This provision's only been in play for a month or so now, so we're just starting to see those older RCEs coming up to the top and starting to be worked on.

There's also, in our docket management system -- our workflow system for

examiners -- there's also an increased emphasis on RCEs and how the examiner's scores are calculated. That will also put a little bit more of an emphasis on RCEs to move those RCEs through the system a little bit quicker.

So, those are kind of a quick overview of some of the current initiatives that we have going on. Kind of the second phase, the large part of this discussion, is looking at the data and the observations that we got from the various roundtables, and the response to the Federal Register notice.

I'm going to turn it over to Kathy Matecki, our group director here in TC3600, to kind of walk through the first phase of this, set up some background information where we can have an open discussion about some of the things that we've seen, and get some input and direction from PPAC and the public on where we should spend our resources and effort in looking through potential solutions. So, Kathy.

MS. MATECKI: Thank you, Andy. Okay, so, just to move through the slides that we have here and review how we collected all this data,

we had a variety of sources. Of course, we had the roundtables, presentations, discussions. We had focus groups, where we had -- we went to five different locations across the country. Got a lot of really good discussions and feedback on RCEs, just all kinds of opinions.

We also had a Federal Register notice, which generated e-mail responses, as well as written responses. We had a blog that went out internally and externally, and got a lot of written responses.

We also had a software called Idea Scale, which was a sort of crowd-sourcing thing, which allowed people to post comments about RCEs, look at other people's comments, and respond.

So from all of that, we got about 1,100 responses. Those have been entered into a database, and they're now being catalogued, and will be one source of ideas for us to take actions to move forward.

As a basis for all of these sources of data, we had 11 questions which were attached to the Federal Register notice, but not every respondent responded to every question. They

were directed to different phases of outside and inside practice. And we'll go through those in more detail in a moment. They are listed on the next page. I'm not going to read all of them because they're small. But we will see some data from them.

Demographically, we had attending our focus sessions -- we had, you know, a variety of organizations, including AIPLA, IPO, et cetera. Attending we had a variety of corporate attorneys, academics -- we did hold these at different law schools across the country, so we had them attending -- pro se's, and just a whole variety of some participants, we weren't quite sure what their affiliation was. Because of the nature of how we collected the data, it's important to remember that this is anecdotal informational. It's not a statistical, you know, rigorous analysis of the general population. But it is a lot of interesting information.

Going on now to the actual questions, one of the things we found, and this first slide is a good example, we had a question about whether

technology affected your RCE filings, and what we found was, basically, it's split. Some said yes; some said no. That's going to be sort of a theme throughout these questions, was that opinions are -- and different practices are not -- there's not a lot of standouts, as far as what we heard. There's a lot of variation.

The next question was an open-ended question about USPTO procedures that would help reduce the need to file RCEs. And this was the question that we got the largest number of responses to. It was open-ended. The focuses were different between our internal and external stakeholders. And this is going to be -- more information about this particular question will be provided down the line in this discussion, and be the focus, we hope, of your comments.

As I said, the remaining questions have the same sort of split. Again, does interview practice help reduce RCEs or not? We saw sort of a 50/50 split that some said it did, and some said it didn't. We got a lot of comments about what could make interviews better or not -- you know, more useful or less useful. And that again comes

out in those 459 comments of question 2.

Just going quickly through the slides -- again, on those questions where -- you know, when is an interview most effective? The split is kind of even. There's not a real, real outstanding recommendation.

So, I'm not -- you can go through these slides, the remaining six questions, and see if there's anything that jumps out to you in the course of our discussion. But I think the most important thing to note is to go to the last slide, which is after question 11, and this gives a breakdown of the 459 responses to question 2, and how we've categorized them demographically and into specific categories. And that's what these top areas are, and I'm going to turn it over to Remy, to talk more about how we have categorized these.

MS. YUCEL: Thank you, Kathy. As you can see, with the rather open-ended question that question 2 was, we got, I think, the most variety of different comments, as well as concrete suggestions on particular changes that we might consider making.

If you'll look at these -- this list, it's pretty extensive and it's rather broad. We went further and we tried to group certain like things together, and that resulted in six areas of top concentration, where these kind of cluster into, and they are in no particular order: After final practice, the docket management system, first office action on the merits and general equality, final rejection practice, IDS practice, and the production system. So, if we were to take these and group these into like buckets, those would be the top six areas of concentration. And it really is a pretty good representation of where all of the comments, not just for question 2, but all the other answers that we got for the rest of the questions are.

So, we'd like to take this time to start getting everybody's input as to where we ought to be putting our efforts in terms of concentrating our efforts. There's areas that will probably yield more return on investment. Right now, we have a limited number of resources, especially now, in the last half of this fiscal year. We really do want to start making strong inroads.

And we also recognize that this is going to be the -- the solution will have several different parts to it, but there will be initial things that we can do right away. There are things that will have a moderate lift to them, and there are things that will be a heavier lift, that may involve statute changes, and/or rules and regs changes.

So there's a whole spectrum of -- I imagine that what comes out of these in terms of the do-over rules, it will fall into that spectrum, and so we would like to start being able to prioritize, recognizing that we should really be concentrating, and not scattering our efforts. And I think that you all are in a really good position to provide that kind of guidance. So, I open the floor to the discussion.

MR. FOREMAN: Great, thank you for that presentation. Esther, would you like to start off?

MS. KEPPLINGER: Yes, thank you. I wanted to thank the team, the RCE team in particular, starting with Peggy, who has obviously endorsed this whole process. And

Andy, who has really embraced it. As he mentioned, Wayne Sobon and I have been working very cooperatively with him and his team for the last couple of years, and we really appreciate the openness that you all have shown in trying to make changes to address this issue.

With respect to the RCE team, Remy and Kathy Matecki have been very exceptional. What I witnessed, at least in the process here, was they were very open, non- defensive, good listening skills, and taking a very positive approach towards listening to everyone and trying to address the issues.

So, I hope today will be an interactive discussion with people chiming in on the direction that we might go. I think right now the office and the PPAC are in the process of evaluating these comments and figuring out which things could be done in the short term, the long term, considering the bang for the buck, as Remy indicated, because some things are easier and some things are harder.

So, I do have a couple of comments in terms of direction that I think the office could

go. One of the things that jumps to mind right away is, and it should be relatively straightforward to adopt, and that is that as you're working on the backlog, looking at adopting a goal for how long RCEs should sit on the shelf. One of the major comments that was mentioned in response to the questions was put the RCEs back on the amended docket, because from many practitioners' view that is what has created the backlog of RCEs. Now, that may or may not be achievable; however, I think the public may be willing to accept a four-month period of time in which the RCEs get done. And that period of time has also the advantage of comporting to the statutory requirements that Congress set for the USPTO, which is the 14-4-4-4-36 timeframes, because RCEs are an amended case, so they should be done within four months of receipt of the filing of the RCE.

So, I would suggest that the office put in place a goal to reach and maintain four months for RCEs, recognizing, of course, that with the current backlog that's going to take some time. We didn't get here overnight to having 110,000,

so I don't think we're going to get to a 4- month turnaround, but that should be the goal, and set some timeframes for reaching that goal.

Another thing that came up was with respect to first-action finals and RCEs, and that similarly should be relatively easy to adopt, that we don't have any first- action finals in RCEs. I applaud you for the changes in the after final consideration pilot providing for an interview and for opting in the program, because I think that's a fruitful area for eliminating the need for RCEs. I think there are a couple of things, first addressing -- we're trying to address the backlog, but then there are more difficult issues of addressing practices on both sides to reduce the need for RCEs. And being able to have more fruitful discussions after final, I think, would help us to reduce the number of RCEs. Some simple things like putting -- including two independent claims into a dependent claim after final, seems like that should be something that's readily considered by an examiner. But at least currently, it doesn't seem to be, because there was never any exact claim like that. So, that's

typically -- the box is checked and it isn't entered. But it seems reasonable that that should have been considered in the original search.

Some of the longer term things, one of the overriding comments was with respect to overall quality of the product and overall examiner quality. I think, for that, what applicants hope to see is a complete first-action search of everything that's claimed and that which could reasonably be expected to be claimed with citation of all the art that is found in that line.

The EPO, unfortunately -- often very many practitioners think that the EPO search is superior. And I think they provide more citations around the subject matter, and that's something I think we should strive for. And also, a willingness of the examiners along the way to consider a revised record and a willingness to change position. With compact prosecution, another key feature, I think there is a difference of opinion between what the office perceives as compact prosecution and what practitioners on the

outside hope compact prosecution would be. And from the outside perspective, it is addressing all issues in the first-office action, identifying all art that reasonably could be applied against those claims, so that when you get to a final rejection, you're not faced with new art and a new rejection. And I think that's another thing that really pushes RCEs. Because when you find yourself in that position with art that could have been applied in the first office action, but wasn't, you have little opportunity -- little option, but to file an RCE.

So, I'll let others speak up. I have a few more points, but I'll let others chime in now, and we can keep addressing this.

MR. FOREMAN: Great, thank you, Esther. Thank you for your feedback. Peter Thurlow, do you have a question for Andy?

MR. THURLOW: I actually just want to echo all of Esther's comments. I agree with them all, and especially want to thank Andy and Remy and Kathy and the whole team on this. I think the approach in what the PTO is doing, especially with the after-final pilots, is really great, and I

hope it's something that we could get the information out through this and other ways to the stakeholder community to benefit.

One of the last points that Esther mentioned -- and I know our time's limited today, but I think it's a key point -- what I hear most often is that we're simply getting to after-final too quickly. And the scenario that all of us know is that we get the first-office action, we either amend the claims for priority purposes or Section 112 purposes, and then the examiner issues a follow-up action with some new art after that.

It seems to me that's one of the key -- whether it's issuing two non-finals, or however you want to make it, it seems to me one of the key issues or key steps that can be made to address it. So, I know Robert is at the table and maybe has some ideas. I know you have to work with the union on the count system and how that works, but to the extent we can just focus on one area that we think would be positive, Andy, I think that would be something that would be very helpful.

MR. FOREMAN: Thank you, Peter. Wayne

Sobon, would you like to ask a question of Andy or the panel?

MR. SOBON: Yeah, I echo everything that Esther and Peter both said. It's been very, very gratifying to be working with the team over the last year or two on these issues, because I think they are key and keen in the minds of a number of the stakeholders. If you look at the charts we went over this morning, while overall pendency has gone down, you have a concomitant increase, a monotonic increase in backlog on the RCEs, and it's becoming, obviously, increasingly concerning. We talked a lot about the -- sort of at the back end, at post final, and during -- later in the processing.

Last quarterly meeting we also talked at some length about the possibility of expanding, opening up, adjusting first -- even before search -- interviews with examiners on maybe as a pilot project to get faster to the gist of the application, and allow a much more compact and focused search and remaining examination. I wondered if any work and progress has been made on that. If you could comment on that, as of yet,

because I know that was something that was taken up to be further looked at.

MR. FAILE: Sure. Thanks, Wayne. We haven't done anything very substantively; I'm looking at pre-search interviews. We anticipate that it is a comment that we've seen in the data, and per your comment, too, that is something we have teed up for a discussion. It can be here or in a subsequent discussion. One of the things I would ask PPAC a little guidance on the pre-search interview, is kind of the expansive nature of that. Do you see this as an option that applicants would opt in to? Do you think it's relevant to a lot of technologies? Is there certain areas that you think it would be more helpful in than other areas? A little more guidance to the extent you guys can on that would be helpful in trying to figure out, you know, find a way to frame a pilot that we could test some of these different ideas.

So, I'd encourage that level of discussion to the extent you have anything to add on that.

MR. SOBON: Sure. We're happy to have

further conversations with you about that. I think that sounds -- I'm very keen on this. I think it can help quite a bit for relatively low cost. And I think probably one of the best ways to handle that is to investigate, and maybe put, like you've done, some other key programs, do a pilot project, see how well it works. And if it does, then look at expanding.

MR. FOREMAN: Thank you, Wayne and Andy. We at PPAC want to be a resource for you, so anything that we can do to help move this discussion and help pilot or devise what that pilot would look like, we are definitely willing to assist. Esther is our subcommittee chair for RCE. Esther, do you have a question for Andy?

MS. KEPPLINGER: I see Robert wishes to speak, too, I think about this. I'll let him go first and then I'll follow up.

MR. FOREMAN: Okay, Robert.

MR. BUDENS: Thanks, Esther. I know this topic has been going around for quite a while. My comments have been a matter of record for a while on interviews before first action. I think that Wayne's comment about low cost -- I

think low cost is relative. It'll be interesting to see just how much the applicant user community and stuff would be willing to pay for the additional, you know, time that it would take for examiners to be doing this search. I find it -- you know, frankly, from my own experience, I think the experience of most examiners, I don't think any of us view it as something that would be of great help when we're doing something before the search.

And so I think, you know, because no matter what happens, if you're going to sit down and you want to have an interview with me, I'm going to have to start -- take the time to be preparing for the case, which means I really want and need to be able to have time to look at the specifications, look at the claims, figure out, you know, what I think the invention is, and then you can come in and talk to me. And if I'm way off base, well, maybe we've been productive, but I think that's going to be not a very frequent occurrence where the examiner is that far off base. And I know that's a source of disagreement to some extent. But I think this is also a pilot

that would end up being very expensive, and I'm not sure would be all that, you know, well received by the examiners that much.

We already have the first-action interview pilot that has been in place now for a number of years and still doesn't, you know, garner a tremendous amount of usage, which would give applicants, you know, somewhat of an opportunity to have an interview before prosecution gets too in depth. And it still boggles my mind that we're having these conversations when we haven't really used that program, you know, very far, also. I'll leave my comments there for the time being.

MS. KEPPLINGER: Well, I think actually the First Action Pilot Program, a pre-first office action pilot -- or maybe it's not a pilot anymore, but in any case, a lot of practitioners have had very positive things to say about it and endorse it quite a bit. I don't know exactly what the frequency of use is. My own personal experience with it was that some of the rules were rather rigid and actually didn't make for as flexible an interaction with the examiner

as my otherwise -- and which actually has occurred in my practice, where examiners have afforded me a pre-first office action interview.

Personally, I think they are useful, and many of the -- pretty much most of the examiners have indicated that. Now, I absolutely -- Robert, different examiners may or may not be a little bit or a lot off base or completely on target, but I still think that that discussion in advance focuses the search a bit more effectively and provides some advantages on both sides and, hopefully, reduces the time -- the number of actions for disposal in that case. So, I think it is a positive -- a really positive approach, and I think that you could merely change slightly the existing program to provide a little more flexibility and you might get more usage.

But then you make an excellent point, Robert. If that one doesn't work, then there's nothing more to really talk about. But Wayne's idea was that it was a pre- orientation, that it gives the examiner a better idea of the landscape and the claims and what is actually being claimed.

So, hopefully, that's helpful. And I

personally think it is.

MR. BUDENS: I understand and, you know, obviously we've had these discussions back and forth before and we'll continue to have them and we'll discuss it further.

Another thought that comes to my mind that I get a little concerned about with the idea of having these things before first action. We're obligated to look at an invention -- not the invention, the claims, in the broadest reasonable interpretation. And one of the things I would also be a little concerned about with a pre-search and pre- first action, you know, interviews, was whether that, you know, we would have to be careful that it doesn't skew the examiners', you know, views of what the claims are really saying and cause them to, you know, inadvertently narrow what would be applicable prior art to the claims as written.

MR. FOREMAN: Thank you, Robert. This is very -- oh, go ahead, Esther.

MS. KEPPLINGER: Sorry, Louis. That's a very good point, but my personal experience has been that it provides a fruitful

discussion because the examiner often points out an interpretation of the claim that might not have been understood by some of the practitioners. And it provides an opportunity to narrow the claims and avoid rejections that would otherwise have occurred. So, it short circuits some of that and gets the claims into a better scope even before the initial search.

MR. FOREMAN: Thank you, Esther and Robert. That's very constructive. Peter Thurlow.

MR. THURLOW: Andy, who gets to follow up on -- we had the discussion yesterday about -- there was a change to the IT system that was made at the PTO, to be basically -- have RCEs come up on the examiner's docket at the same time as continuation in the visuals. I look at that as a positive step. I don't -- I think you may -- we don't have enough time in a day for you to explain the different docket systems, and how the examiners pick up their cases from the different dockets and so on. But it's just something we want to highlight.

And then my other point is from earlier

conversation, is getting to final too early, and the whole issue with the two non-finals, or how that approach -- your thoughts on that, and so on.

MR. FAILE: Okay. Thank you, Peter. Peter actually brings up an interesting kind of theme that we heard in a number of the roundtables. And it's, for lack of a better phrase, it's kind of the education of internal USPTO processes and systems. We heard a lot about the production system. We heard a fair amount of do you have a production system? Or, oh, you have a production system.

It's the same way with our workflow systems, our document-management systems, and just general information about the variety of programs. We do have a lot of different programs at the office -- FAI, QPIDS, After Final -- there's a number of different programs. So, one of the takeaways that we have started working on -- Remi and Kathy and their teams -- is trying to kind of do a catalogue of some of the basic information about the operation of the production system, our workflow management system, the programs that are available, and at

what point in the prosecution pipeline a particular program may be of interest to an applicant. So, we're busy putting that information together. We think that is going to not only inform the external stakeholders of our processes, but will give them more of a background and a platform to give us some more specific information. The more they know about the production system or the workflow system, we'll get a little bit of a richer input from both PPAC and the public on that.

So, one of the initial takeaways, based on a comment that Peter had made, would be our kind of going back and systematically cataloguing a number of the operations we have, and providing some level of information about how these particular systems work. That was a pretty big theme that cut through a number of the different roundtables, either the not knowing of those systems or the request for a little bit more of a definition of how things work. So, thanks for that, Peter.

MR. FOREMAN: And I'd like to recognize a member of the public, who is there in

Alexandria. We have Kelly in the audience, who's got a question.

MS. HYNDMAN: Hi, my name is Kelly Hyndman. I'm a partner with the firm Sughrue Mion, and I've been in the field only since '95, which is a lot shorter than I think a number of the people around the table, so I hope you'll pardon any youthful enthusiasm that I may have about the matter here. The amendment docket that Ms. Kepplinger mentioned, I think that's a fabulous idea to keep RCEs on the amendment docket, because we, the end users, see these cases as being an active prosecution, and we see amendment -- okay, a final amendment, okay, an RCE, they're all the same from the end user's perspective. They have no expectation that filing an RCE might result in a long delay in the continued prosecution of the case.

As to no first-action finals, I think it's a mixed bag. I understand that a first-action final, after an RCE is a bitter pill to swallow, but in some cases I think it's appropriate, if applicant's not moving the ball, not moving the ball more than a little bit, I think that's an appropriate remedy to keep in the

bag of tools. Although I think it should be rare. As to the pre-search interviews, this is my personal viewpoint, I think it should be kind of a self- nomination process, and it should be easy to recommend your case to participate in the program. Maybe a check box on the ADS that says we are amenable to an examiner reaching out to us to ask any questions or seek help in understanding what we're trying to claim, or the technology of the invention. I don't think it's appropriate to necessarily burden applicant with having to respond to some questions from the examiner before they're ready. Not that it would be a tremendous burden. We want to help the examiner give us the best possible prosecution of a case, but I think some cases are more amenable to it than others. In particular, cases originating from your own firm, where you've written the specification or where you have the client nearby. Those are very good cases, because we're totally familiar with those.

A lot of the cases filed in the U.S., however, are from outside the country, and they're based on a foreign priority document and they can't change a lot, between when they are originally filed,

translated, and then filed in the U.S. So, we don't always necessarily know much about those cases. And it may be a lot more of a burden in those situations on the applicant to provide a contact with the inventor, who's somewhere out in far Asia or some other part of the world. So, I would recommend a self-nomination kind of approach to a first-interview program, and make it an easy one. In addition, I think the self-nomination -- I'm sorry, I think the pre-search interview is appropriate in a number of cases. We don't think the examiners lack understanding, but sometimes it's hard to interpret what the case says, because it did originate in another country, was translated by someone using their best efforts, but doesn't always make a lot of sense. And sometimes the awkward language of such cases make it so that the examiner needs a little bit of help. And in cases where the applicant has said we're open to participate in a pre-search interview program, I think the examiner should be allowed to reach out, and, you know, given whatever appropriate time makes sense, to see, you know, what insights can applicant share with us as to the meaning of the English language that's in here.

Since we don't really know, what does the original foreign language application say? So that's one situation.

Another situation is where the technology is rapidly evolving. It's something brand new, or it's so cutting-edge that, you know, it's not really being discussed yet in the, you know, the forums and symposiums where people who operate in these technical fields attend. It's still under the wraps, but it's groundbreaking.

So, even though it may not be something that we want to do in every case, it should be an option available to the examiner for cases where applicant has said they would support that. Just my thoughts.

MR. FOREMAN: Thank you. Thank you for sharing that with us, Kelly. Andy, do you have any comments to Kelly's remarks?

MR. FAILE: Not specifically, just kind of a general overall comment. Thank you very much, Kelly. Many of the remarks are remarks that we heard throughout the roundtable sessions.

One of the larger themes that Kelly brings out that we've heard over and over again,

that we're kind of using as one of our principles in guiding our look through the data, is the idea of as early as possible in the prosecution, matching up examiners and applicants by any mechanism to make sure everyone's on the same page earlier. We've heard this theme over and over again. There seems to be the need for RCEs, in many respondents' view, are there because at that point in the prosecution there starts to be the connections made between the examiner and the practitioner or the applicant. And to the extent we can build in that level of input earlier in the process, we would just short circuit the need for RCEs or, frankly, any of the back-end prosecution to the extent possible.

So the larger theme that we're working with and looking through the different suggestions would be is there a way to get examiners and applicants on the same page earlier in the prosecution? And to the extent we can, what are different mechanisms or ways to do that in order to short circuit the back-end of the prosecution? Thanks for those comments.

MR. FOREMAN: Well, this has been a

very spirited discussion. We've got still about five minutes left, and so what I'd like to do is open the floor up to Peter Thurlow. Peter, do you have additional comments or questions?

MR. THURLOW: I actually don't. I think just reiterate some early points. I think the PTO team and everyone has done really a great job. And we look forward to -- all these ideas are great and, hopefully, we can put these good ideas into play, and have them affect the RCEs. Because we see, based on numbers given this morning by Jim Dwyer, I think from our last meeting the numbers continue to go up, so we need to put these good ideas to work, and we'll start decreasing the RCE numbers.

MR. FOREMAN: Thank you, Peter. And Marylee, my apologies, I skipped over you there. Marylee Jenkins.

MS. JENKINS: No apologies. It's okay. I'm waving frantically. Only kidding. It's a pleasure being a new member of the committee and seeing how well the subcommittee and RCE is doing and just how you're working together with the office. It's a good example

for me, and I'm working on the international subcommittee, so we'll strive to do as well as they are.

Just a couple quick points. Esther, I love the idea of keeping RCE more on track and doing the four-month or something, some sort of deadline. And it's not just because Robert's sitting next to me. I do think there needs to be an incentive for the examiners to also not only appreciate the deadline, but have value. And, you know, whether that's incentive as a point or some other kind of incentive we can come up with, I think that only helps everyone and keeps everything moving forward, which I think is the key thing. And with the RCE fees going up, that only makes more sense in my mind.

One of the things I think, doing a pilot program for interviews at the beginning, I think is a great idea. One area you might want to consider is the accelerated examination or the first -- I like to call it fast track. Because you're paying that additional money, you can incorporate it in and you want to get it done faster, so it might make sense to do it for that

grouping. And then it might be more manageable to get something like that done and see whether it's receptive or not.

I think really key for the user community is outreach. To be perfectly frank, I don't read the Federal Register on a regular basis, but I do read the e-mails from -- yes, I'll acknowledge that. I do go and read it, but it's not like I go and read that every day. But if I get something from the Patent Office, as far as an e-mail, I read that immediately. And so, I think you always have to think about you do all these great things, and the user community is very focused and often doesn't always see all the efforts that are done and don't always see what is the new implementation. So, just look for other means, do a tweet, I don't know. But think about it that way.

MR. FOREMAN: Robert.

MR. BUDENS: Just responding to one of the things Marylee just said. I liked her thoughts about the incentive stuff, and I wanted to make sure everybody understood that we have been working with the agency together in order to

do precisely those kinds of things. In essence -- I hesitate to call it a pilot, but, in essence, it probably is the same kind of thing. With changes that we've made recently in the RCE handling and processing by examiners, we've changed the priorities of RCEs on the examiners' dockets to make them equal with continuations and divisionals. So they'll come up in the regular course of action much faster than they have in the past. And we've also included incentives in the docket management program that will incentivize the examiners, I think, to be moving even additional RCEs, because they now get additional credit towards docket- management awards and stuff that they didn't get before with the system.

And finally, I think most importantly, probably the most examiners is -- we put the time, the work credit, put the work credit of RCEs back up to the same level as the other new cases. And I think we need to watch very carefully what happens over the course of the remainder of this fiscal year to see where those incentives take us in turning around the backlog. I think we've already seen, you know, the little bit of -- it's

a little early to call that a cap or a change in the slope of the curve, but I suspect that's exactly what it's going to end up being.

MR. FOREMAN: Great. Thank you, Robert. And we have a question from Wayne Sobon on the phone.

MR. SOBON: Oh, no, no, I have nothing. I think it was an errant hand movement.

MR. FOREMAN: You weren't frantically jumping up and down to ask a question?

MR. SOBON: No, I wasn't, sorry.

MR. FOREMAN: And Clinton, do you have anything to share?

MR. HALLMAN: Yes, I do. Can you hear me?

MR. FOREMAN: We can hear you, Clinton.

MR. HALLMAN: Excellent. I just have a couple of short comments. The first one is that having attended one of the outreach sessions, the one here in Chicago, and just talking to practitioners, I can tell you that in the community there is a great deal of passion around this particular topic. And I think there is also a great deal of frustration. And I think that all

the people who have spoken before me have laid out what I think are some really, really good ideas for dealing with this.

And I wanted to recommend that, you know, Andy has asked for, you know, some feedback on PPAC about things to be done. It seems like a theme I've heard more than once is that there are some programs that perhaps have been out there for a while that are under-utilized or maybe under- advertised. And I wanted to recommend that the Patent Office consider working with some of the large organizations, like AIPLA and the like, to maybe put together a continuing legal education program that could be presented in conjunction with some of the AIPLA or maybe some of the larger, regional patent organizations to -- maybe call it five things you can do to further your patent practice that you may not have heard of or may not have thought about using.

I think that, number one, everybody always needs CLE credit each year, and if you put it in the form of a CLE, you might have a greater likelihood that people would show up and listen to it and maybe actually start to use the

programs. Because it does seem that advertising and trying to get people's attention to these kinds of things, which it sounds like do help, the Patent Office, I think, has a difficult time competing for all the other information that people are bombarded with every day.

So, I just wanted to make the recommendation put together a CLE somewhere around something like practice tips and advertise that CLE with an established organization, and then go out and put it on.

MR. FOREMAN: Great. Thank you, Clinton, for that feedback. And we're coming up to the end of this discussion, but I want to recognize Esther Kepplinger one last time. Esther, closing remarks?

MS. KEPPLINGER: Well, I had one more comment or suggestion, and that's with respect to oversight supervision and potential mediation. I think that sometimes the applications get stuck with an examiner taking a position and not seeing the bigger picture or the legally correct picture. And so there is an opportunity for providing for interviews that include three

people -- the examiner, the supervisor, and a third person -- because that can break the logjam. And I think that sometimes, in my experience both inside and outside, is that often supervisors are reluctant to go against examiners, particularly primary examiners, so that third person offers another view. And I think that could be at the pre-appeal brief conference. You could have an opportunity to actually participate in an interview at that stage.

And I think there's also an opportunity with the appeals to have some sort of mediation or discussion, which could prevent the cases from actually going to the board and reduce the backlog that exists there. If you had maybe some people that come back from the board, or people that in the corps that are trained by the board to look at it and make earlier decisions, and try to mediate some kind of an agreement between the office and the applicant, and I think that would help reduce backlogs in both areas.

MR. FOREMAN: Thank you, Esther. Thank you, Andy, and thank you, everyone there in Alexandria, who has participated in the first

half of this discussion. We're now at 11:45, and we've got a scheduled one-hour lunch break. We will begin again at 12:45, where we will have Drew Hirshfeld, Deputy Commissioner for Patent Examination Policy, talking about patent quality. So, if I could just remind all PPAC panelists, do not hang up. Please just leave your phone on mute. Have a great lunch and we will see everyone back in one hour at 12:45 eastern time. Thank you for your participation.

(Whereupon, at 11:45 a.m., a luncheon recess was taken.)

A F T E R N O O N S E S S I O N

(12:47 p.m.)

MR. FOREMAN: I'd like to welcome everyone back to the second half of the Patent Public Advisory Committee Meeting. We've had a great discussion so far, and I don't expect anything less in the second half of this discussion. So, I'd like to turn the floor over to Drew Hirshfeld, Deputy Commissioner for Patent Examination Policy, to lead us in a discussion on patent quality. Good afternoon, Drew.

MR. HIRSHFELD: Good afternoon. Thank you, Louis. I would like to take a quick 30-second detour from quality, and there's a question about some of the AIA stats earlier today. So, if you don't mind, I can give everybody an update on some of the number of filings that came in. So, for inter partes reviews, there's 231 inter partes reviews that have been filed. Third party submissions, there's 634 submissions that have been made. There are 18 supplemental examinations, and that's the numbers that I have. I have, also, there have been thousands of calls to our -- I have

over 11,000 calls to our application assistance unit. In any case, I just thought that people might want the update on the statistics of the AIA. While we're on AIA, because I know Janet could not make it today -- she's actually creating some AIA training -- on our website -- on the AIA microsite, we have all of the examiner training materials posted for those who haven't seen it. The training program is, as we've mentioned before, is a phased approach that will go all the way through the summer. So, there's still more materials to be created and posted. But right now there are the initial CBTs, the initial slides that have been used for the training if anybody would like to see them.

So, with that being said, I'll turn now to quality. I know we have about a half an hour scheduled. I was planning on focusing on the two notices that we spoke about in this forum before. Those notices both came out in January. One of those is on the enhancement of the quality of software-related patents, and the other was the notice on the comments for preparation of patent applications.

I'll first talk about the software notice. As I mentioned, that notice, as did both of them, came out in January with a comment period that went to April 15 for both of the notices. There were, of course, with the roundtables -- just as a recap, there were two roundtables that were held: One in New York City, one in Silicon Valley. As I said, the comment period closed on April 15, after an extension that was requested by many from the public. So, for the software partnership, we have received 98 comments total. I think it's very clear that there's a lot of interest in this issue. Obviously, with the CLS bank decision coming out recently, I think that interest will continue, of course. Most of those comments you can see on the slide where they came from. The majority of those comments were from individual practitioners, or individuals, rather than companies and law firms. But there certainly were comments made by a variety of people. And the team right now is still going through the comments and trying to determine next steps. And I'll get to that shortly.

But there were a number of themes that came up through the comments that were received. Those themes were not a surprise, because during the roundtables themselves, the same themes came up. So, one of the themes that arose was a desire, for the most part, that the office have a more robust treatment of issues under 35 U.S.C. 112. And we're not just talking any particular portion of 112. I think the comments were generally that the paragraphs of 112 should be used more frequently and together. They each are different tools, of course, so there were comments about 112(a), (b), and (f), all being used more robustly. Now, when I say "robustly," I'm being careful about a word. I'm not saying you used more or changing the law, but just used more effectively, perhaps more clearly, and that is something we are still looking into about some next steps.

There certainly was a theme about the clarity of the record, and we had some discussions this morning about the clarity of the record, and it was, in my opinion, that was the most prevalent theme throughout, was the office can and should

be taking more steps to make sure that examiners' positions are clear, clearly defined on the record, the scope of the claims are clear. And the examiners should do what we can at the office, of course, to make sure that records are very clear.

Of course, there was a focus on general quality and consistency of office actions. And there was something that did not come up too much in the verbal comments at the roundtables, but did show up in the written responses, was more access to prior art resources. And a further discussion on making available what examiners have access to and increasing the access that they have to better prior art.

And then the last theme I have down there was one that I've heard many times since we started the roundtables, is the general theme of please no software-specific rules. That was, for the most part, universal, although there were some people that they verged from that.

So, those are the general themes throughout the comments. I will get to some next steps very shortly.

Turning now to the second notice that I mentioned earlier, that's the application preparation notice, and we had, of course, the request for comments, as I mentioned. Here we had significantly less comments. There were 28 comments that were received from the public. And I'll go over some common themes as well that came through these notices. And I have it broken down by advantages and disadvantages.

On the advantages side, of course, people are recognizing that there is a shared responsibility, I believe, for clarifying the record. So people definitely pointed out that advantage. And then, of course, they're clarifying the scope and the meaning of claim language and claim terms was certainly recognized by people as the advantages.

Turning to the disadvantages, there were a number of disadvantages that people had raised. The idea that these were burdensome and costly. I won't go over what was in the notice, of course, but there were basically many steps that applicants could take on their part when drafting applications to facilitate

examinations. So, there were many that thought that additional changes would be burdensome, costly, there would be a negative impact on claim scope. And then many people mentioned the lack of harmonization with global patent practice. And I think it's very fair to say that the comments were much more weighed towards the disadvantage side, and that the comments were generally not very favorable about many of the topics proposed in that notice for discussion.

So, as I mentioned, we have an internal team looking at the comments and going through them and determining next steps. I've been asked very often, what's going to happen next? And I think the simple answer is, I don't know. I think that the comments themselves need to help us define what is next. There certainly will be, as far as the software partnership goes, there will be at least a follow-up, there will be many follow-ups. We plan on this being an ongoing discussion and dialogue. As for what will be discussed, and when that meeting will be, we're still working that out. We want to be very thoughtful in how we go through the comments and

be measured in our approach, and so we're taking our care to take the right steps, and we'll figure out an action plan. And we'll, of course, let the public know about that.

I've mentioned before in this forum that one next step I do know will take place will be training on 112(f), specifically examiners reinforcing their tools and what's been trained on, clarifying -- I mean on identifying 112(f), and then we will also discuss steps that examiners can take to clarify the record that is in the works.

As for other steps, many people are asking me again for what's going to happen, and we're getting closer to figuring out what those next steps are, but need some more time to go through those comments.

So, that's essentially all I had for the slides. I know there's a -- we're planning on a discussion. I did want to say that all of the comments to both notices -- all of the comments to all notices are public on our website, so you can go, and if anybody would like to take a look at those comments, you can see them all. That

being said, I'm happy to take any questions anybody has.

MR. THURLOW: Drew, this is Peter Thurlow. So, I have one quick question and then some more general comments. You mentioned the CLS bank decision that came down Friday from the Federal Circuit. Is the PTO working on guidance? I know it's a difficult case. I think it was 135 pages. Is the PTO working on some guidance for examiners that it could share?

MR. HIRSHFELD: Yes, it's 135 pages, 6 opinions, and obviously very split court. So, the case came out last Friday, as we all know, and on Monday there was a one-page memo that was sent from me to the corps addressing the case, giving a very quick summary, and then basically saying that at present there are no changes being made to examination practice based on the case itself and that we are continuing to evaluate next steps. That memo is, as of today, is now linked from the front page of our website. So, if you go to USPTO.gov, on the left side of the webpage, there's a number of icons. One of those icons is now Examiner Guidance, and that links you

directly to that one-pager.

MR. THURLOW: Okay, my more general comment is, first, thank you for the update on the AIA. That information is always helpful.

Secondly, all the things that you mentioned, and we discussed yesterday about, I think you're healthy use of the word "robust" was appropriate for Section 112 and it's (inaudible) on 112(f), I think those themes we agree with. I also think that the Federal Register notices going back several months ago, about requesting comments on the preparation of the patent applications and kind of asking the public for advice, I know that got a lot of negative feedback, but I think it was good to reach out and ask for their feedback and to kind of do what the PTO does in trying to get them involved.

The points that I continue to come back to, and what -- obviously, we had a subcommittee meeting yesterday. We discussed these issues in PPAC. We had a quite lively discussion yesterday, and whenever patent quality issues come up, it's quite lively. So, in general, I agree with all your themes, the clarity of the

records has been -- when people talk to me about patent quality, that seems to be what I follow with, clarity of records. To me, that means not just the clarity itself, but also not needing an exhaustive amount of time to search through a patent to find out what something means or to file a history. Consistency across the group art units makes sense, no software-specific rules makes sense, and, of course, the examiners having the resources to do their work makes sense.

I'll note on one of the statistics updates that you gave, the pre-issuance submissions, the 634, I haven't seen the timeline with them, but it seems to be a significant jump. So, to the extent people are using that program, I believe that's going to only enhance the quality of patents to the extent examiners get prior art before them that otherwise was not before the examiner either by the search results or by submissions to the Patent Office.

So, my general comment, and then I'll open it up for others to provide their feedback, is you heard me this morning ask a lot of questions to Dana about what's going on up on the Hill. As

I watched debates up there about a decent litigation practice, it always comes back to so- called patent quality, and there's a perception, true or false, that the patent quality is poor. We all see plenty of articles that say that. So, as we at PPAC try to work with the PTO and make recommendations, some of the discussions that we were having -- some steps that we've been having, may make sense to further consider. I'm not sure if that's the right approach, but I think it's worthy of further discussion to see if it makes sense.

The thing I continue to harp on is examiners, after they review an application and get ready to issue it, if they were to provide a reason for allowance in the case, I think that would be helpful. That's subject to debate and discussion, but I think it's helpful. As I mentioned, the Section 112 issues, I think are helpful. From my standpoint of not needing to search the whole patent for what the reference number was, you know, there's been discussions on including a list of reference memos before the claims, and some discussion about CRP, describing

in the CRP what the so-called new subject matter is.

I know a lot of these issues are controversial, but from a systems standpoint it may make sense. Other issues that we previously discussed as far as examiners using requests for information and including reference numerals in the claims after discussion, I think we've learned that they are too controversial, too burdensome, or there is concerns with limiting the scope of the claims. So, those, for the most part, have been dropped. I think as my request is as the PTO reviews these issues, if they can keep PPAC involved, and as we can discuss these other issues, the clarity of the record, reasons for allowance, and so on, I think it's worthwhile that we at least discuss them. How it turns out and what the PTO decides to do is obviously a different issue. So, I open it up for others to provide comments.

MR. HIRSHFELD: Yeah, if I can interject at this point, right before we might go to comments, about the interaction and the public interaction. I definitely would like to address

that because I can tell you that for Peggy, Andy, Bruce, and myself, we have many, many conversations and constant discussion about the need to have a very good public dialogue. And we certainly intend with quality and many other things, as I hope everybody is seeing, to continue that public dialogue and to continue the public discussions. We all think that's absolutely critical.

This ties in to another note I made as you were speaking. You had mentioned some negative feedback about the notices. I wanted to clarify that. Certainly, the software roundtable and the notice that accompanied that or announced at roundtable was extremely -- there was extremely positive feedback about that. It was very well received. The roundtables --

MR. THURLOW: I agree.

MR. HIRSHFELD: -- were very successful. The other notice on the preparation of patent applications, I certainly did receive a lot of negative feedback and concern about that as soon as that was made public. I'd like to reiterate that I think a lot of that negative

concern was the fear that PTO was mandating and going to mandate everything in that notice. And the intent of that notice was to start the discussion. Now, as I mentioned to you, the next steps have not been determined. So I can't tell you if PTO will decide that anything should be, you know, as a best practices, which is the most likely approach that will be taken, or if there's any other steps, if we say this is something that we think all applicants should be doing.

I don't know what the next steps will be, but really the intent was to start the discussion and have the discussion, so that together with PPAC and the public that we can come up with what is the most measured and careful, thoughtful approach to improving quality, which I think there should always be an ongoing attempt to improve quality.

MR. FOREMAN: Great. Thank you, Drew. Paul Jacobs, do you have a question for the panel?

MR. JACOBS: Yeah, I have -- thank you, Louis. I have two questions. First of all, I work in the software area. I actually have two software patents dating back I think to 1991, if

I can remember. So, I've been in that area for a while, and I also work closely with litigators, so I have a lot of experience now in seeing what happens when these patents get difficult. And with respect to your slide 4 on Section 112, I want to underscore the rigorous enforcement of enablement and written description, particularly in the software area, because I think this was a theme that came out of these discussions. It really needs to be attended to. There's a perception that may well be valid, that broad claims sometimes slip through, and that these are the ones that are most dangerous in litigation, because it may be that the claims used terms that weren't well defined and it may be that the examiner's interpretation of the claims when they were allowed was different from the way they're sorted and construed and marked. There are many, many reasons why these claims perhaps should be narrowed. They certainly should be documented and, in some cases, should be rejected under 112.

So, I guess my question is, do you agree? And I can go on to the second question.

MR. HIRSHFELD: So, you know, I do

think that, you know, 112(a) in the software area needs to be -- there needs to be training on that, and improvement to the way the office is handling written description and enablement issues.

I certainly agree with 112(f), that we can do more in terms of clarifying the record and making our position set forth clearly. Now, with those two in mind, when I started to look at -- when we started to plan out the roundtable and the next steps, there was things that we could do now and start, and we started the 112(f) clarifying the record training well before even the roundtables, because it was something that, you know, we're not changing interpretation, we're not changing what examiners should be doing. We're asking them to -- you know, we're reinforcing what they know and then asking them to clarify their position. And so, that was sort of the low-hanging fruit that we felt -- it's hard to argue with clarifying the record, and we felt everybody would support that, as we're mostly -- you know, it's very universal. So, we are proceeding with that.

While I personally do believe that

112(a) is another viable avenue, we still are going through the comments, and I do expect there to be a training reinforcement on, you know, 112(a) areas. The form of that, I don't know yet, but I certainly think there will be some steps taken to that as we go through the comments. That's something that me and the rest of the PTO team felt we needed to wait and see the comments and get them back. What you just said is very consistent with other comments that we've seen, and most of them. Thank you.

MR. JACOBS: Louis, can I ask another?

MR. FOREMAN: Yes. Please do, Paul.

MR. JACOBS: So, this is a more general question. It really ties into what Jim Dwyer presented earlier, that if you looked at the numbers through FY 2012, there were some awesome periods. There were increases in applications. There was an increase in the percentage of patents that were allowed, and at the same time the composite quality score was going up. And that is just awesome, right, because we're being more productive, we're handling all these applications, and we're doing a better job,

presumably the percentage of potentially invalid patents that might slip through the system is decreasing.

But, as you know, at the end of the calendar year -- so the beginning of this fiscal year and early in calendar 2013, we sort of plateaued on the quality metric, and the percentage allowance continued to increase. So, is this a reason for concern, that we might be, as a result of this, letting through more invalid patents or is there a better explanation for that data?

MR. HIRSHFELD: No, I'm not concerned that the change in the quality metric is indicative of us letting through patents that are not valid. The change in the metric was due to the internal quality survey, which showed a lower response -- I mean a less positive response rate than previously, which we believe was tied to some technical issues with training that was being rolled out; that one of the questions in that internal survey is examiners' access to training. And we were in the midst of rolling out a lot of the first inventor to file training, and there

were some technical problems with the training in terms of access and WebEx, et cetera. So, we believe that the internal survey went down, and that's what's caused the overall decrease in the quality metric, but certainly not on the validity of patents.

I would also like to add, though, that where we were with the internal quality survey, and the external quality survey, also, were very much higher than we anticipated we would be. So, even with that decrease, and I'm not saying we're happy with the decrease -- we, of course, want to make it as high as possible -- but even with that decrease, it's still a very healthy number as compared to what was in the past, but it is just lower than it had been.

MR. FOREMAN: Thank you, Drew. Thank you, Paul. Christal Sheppard has a question.

MS. SHEPPARD: Oh, yes, thank you for your efforts and your openness to hear from the public. And I'm encouraged by the 11,000 calls that you mentioned to the application assistance on the hotline. You've been talking about quality and the composite quality score and other

quality metrics.

I had the opportunity -- two of my students needed to call in and ask questions to the PTO and ended up getting not the best responses. So, I was just wondering how do you evaluate the 11,000 calls that are coming in, whether or not the people are having good customer satisfaction from that, and/or for people calling in from the public to some of the other hotlines?

MR. HIRSHFELD: So, I have to confess that I don't know how we go over each call individually, right, and how we determine whether it was a quality answer or not. But we have multiple call centers with different tiers, and we have, you know, our tier one, which will take the first calls. We'll know what questions they can answer, and if it goes beyond what they can answer, they will then move it to a different tier, experts, if needed, in those particular areas. And they could be -- if it's a board question of the board, if it's a patent question, it could be, you know, in the legal, administration, or elsewhere.

So, I think I would need -- it's a very

large process. I probably would need more information from you about those specifics to look into it.

MS. SHEPPARD: Oh, of course. I don't mean just specifically for my situation. I just mean that if you're fielding 11,000 calls, what methods are you coming out with that say whether those people are satisfied callers? Perhaps there are none so far.

MR. HIRSHFELD: No, I won't say there are none. I would just -- I don't know those metrics offhand of how we're monitoring the quality of those particular calls.

MR. FOREMAN: Perhaps this is something that we re-address at our next meeting or the next presentation. Thank you, Drew.

MR. HIRSHFELD: Yeah, you're welcome. I'd be very happy to address that, and, you know, my comments shouldn't be taken as -- we don't monitor callers. We certainly do. I know we do. I just don't have the background to give you the most educated response on that one. So, we will certainly look into that one.

MR. FOREMAN: Christal, do you have any

more comments or questions for Drew?

MS. SHEPPARD: No, thank you.

MR. FOREMAN: Okay, Robert Budens.

MR. BUDENS: Two comments. First of all, in this last comment, I would just say in my experience, I haven't found anything that the agency doesn't figure out a way to measure one way or another. So, I'm sure there's a metric out there somewhere.

I wanted to add on to something that Paul alluded to a minute ago, and that was the general direction of the statistics that Jim put forward this morning. Because I think that's -- first of all, on behalf of the examining corps, we will take full credit for those wonderful statistics. No offense to the management team. But on a serious note, I think those statistics show they are ultimately related to the fact that we have turned the corner on keeping examiners. And it goes back to that attrition statistic you also saw. Because as we keep examiners and they move up through the training and signatory program, the production increases, and their skills and their abilities,

and knowledge base of examining, and their familiarity with the technology increases. So, I think those things do go hand-in-hand, and I do think they are essentially a direct measure of the effectiveness of finally turning the corner, and realizing that it's better to hang on to examiners than there is to show them the revolving door on a regular basis. Just a comment. And on that, I will acknowledge the management team for reversing that trend.

MR. FOREMAN: Robert, thank you for that question. And we just -- one last comment from Esther Kepplinger.

MS. KEPPLINGER: I just wanted to reiterate what Paul indicated with respect to 112(a) and (b), which we discussed recently. And I think it is a consistent approach across the corps. The statute applies to everyone, and it's probably been under- utilized in a number of the areas. So, just applying it evenly across the corps, I think is the right thing to do, not any more in any technology. And I just wanted to say something for the record with respect to Peter's comments about reasons for allowance. We did

have quite a lively discussion about that. But I personally believe that what's in the manual right now is adequate, that it says that the reasons for allowance and the reasons that an application are allowed are very complicated. And it's often very difficult to summarize in a single document. You have to look at the entire record. And so what the manual says now is, if the record is clear, the reasons for allowance, then no separate paper is required. It's only needed if the record is not clear, and I think that's a good approach.

And I have had a lot of personal experience within the agency of unintended consequences of taking particular actions. So, I think that less is best here.

MR. HIRSHFELD: So, if I can just --

MR. FOREMAN: Thank you, Esther.

MR. HIRSHFELD: Can I quickly comment on consistency across the corps, and certainly I agree with that, and I know Peggy, Andy, and Bruce are on the same page as that as well.

The link that I mentioned to on the USPTO.gov, which now goes right to where the memos

are for the CLS Bank, we will broaden that link out in a week or so to go right to all of the training materials. You can all get them right now. We're only highlighting CLS Bank, because that's in the news, and we want to highlight the memo that went out. But all of our training materials that we do will be made available to the public. Most recently, we have 101 training materials that were from last August. We've even turned those into a CBT, so that not only can examiners go back to them, but people from the public can use those as well. And as we continue with training materials, they will all be added to that as well.

MR. FOREMAN: Great. Thank you, Drew. Thank you, everyone, for your comments. What I'd like to do at this point is turn the floor over to Tony Scardino, chief financial officer. Needless to say, some exciting times to be a CFO of a government agency, and Tony's got a discussion on the finance budget update and sequestration. So, Tony, I'm going to turn the floor over to you, and I'm sure we will have just a few comments afterwards.

MR. SCARDINO: Thank you, Louis. The most exciting part of my job is that I'm sitting in your chair right now.

MR. FOREMAN: You look good in that chair.

MR. SCARDINO: (Laughter) Thank you. That's what I was waiting for. Okay, if we can go to page 2 here. You know, since we met last, it's been a challenging time, as Louis mentioned, challenging and exciting, because we have a new fee schedule in place, after AIA was enacted, of course. We have fee-setting authority, and first inventor to file went into place, March 16th; new fees, March 19th; and sequestration hit March 1st. So, it was a very interesting March, and we're still dealing with the aftereffects.

Leading up to March 19th, and the new fees going into place, we had projected a bubble. In other words, we saw this when AIA was enacted, you know, we had the 15 percent surcharge, and before the surcharge went into effect 10 days later, we had a bubble of fees that was collected. This time around, folks knew way in advance that, you know, they'd have a 60- day notice for sure

as to when the new fees would go into place. So, from January 19th to March 19th, we were tracking fees to see what was going to come in. And the bubble, as we call it, was not as large as we had anticipated. And there are pluses and minuses to that.

We are trying to figure out what that means, to be honest with you. We expected an advance of work of roughly two months. Folks would send us more filings, you know, applications, and they'd pay their maintenance fees early. And we think it was really closer to about a month's worth of work that came in early. So, on the flip side, after March 19th, we expected a trough. Right? You get a surge of fees and then you get a reduction in fees, all the maintenance fees were front-loaded and some filings and such. So, we are seeing this trough, actually, since March 19t. It isn't quite as deep or as low as we thought it was going to be. So, things are normalizing over time.

But in the meantime, we did experience -- you know, you can only plan for what you've got so far, and then you can hope for the

best. But hope's not a strategy, so we had to kind of reset our plans for the end of the year and work very closely with Bruce and his crew to try to figure out where we were going to get for the rest of the year. Would things bounce back, maintenance fees, the filings? And we do think that things are going to stabilize and come back quite a bit, but it's still going to be less than we had initially projected in terms of fee collections for the year.

So, on top of that, as the next chart's going to show you, we've had other challenges. You'll recall -- and this is a bit of a confusing chart, so I'll try to explain it. The third bar is the President's Budget request. That's the 2013 budget, but this was submitted in February of 2012, which was the same time that we first gave PPAC our proposed fee schedule under the new fees. And that had a higher fee schedule of higher rates for many of our fees than we eventually enacted or went into regulation. So, we always knew we weren't going to collect to [the FY13 President's Budget] level. So, we -- as you'll see from the third bar to the fourth bar, we updated our

estimate by December of 2013, to incorporate the fact that, hey, we didn't raise fees as much as we'd initially anticipated back in February, so we're going to collect less in fees throughout the course of '13. So, that was kind of the first adjustment.

Then, we adjusted again to account for -- you'll see in footnote 2, based on basically applicant behavior, as we were seeing a fiscal year play out, we were seeing the kinds of activity that was coming about, and then when the new rule was put into place, along with sequestration, you get to the last one. You see that drop of the red arrow -- the sixth bar over -- that's our new estimate that we're working with, with sequestration. Sequestration is 8.6 percent of our fees collected from March 1st to September 30th. It goes into basically, like, a sequester pot, unavailable for expenditure.

So you add all of that up in terms of the new fee rates being lower than anticipated, some changes in applicant behavior, first inventor to file, and then sequestration, you've come down significantly from the initial estimate

presented in February 2012.

So, what does that mean? Well, you'll see when we go into a little more detail on sequestration, as I mentioned, $148 million is what was in the President's sequestration order. That would be 5 percent of $2.953 billion, which is what our February 2012 budget request to Congress was. Like I said, we know we're not going to collect to that level, so the way that the sequestration order actually reads for our fee-collecting agency, it's roughly 5 percent of your fees collected throughout the year. But sequestration was enacted halfway through the year, so it's 8.6 percent of your fees collected from March 1 forward.

Long story short, we won't be sequestering $148 million. It's going to be less than that. We just don't know what it will be exactly, because we don't know what we're going to collect from March 1st to September 30th. But it will be 8.6 percent of that. We think it'll be about $120 million on the patent side and then some on the trademark side.

So, that gets us to -- How have we

managed this? We took measures early on, because we knew, again, we were not going to collect to the President's budget request level. So, we had already made many spending reductions before the year even started.

Then, of course, as we're monitoring fees throughout the year, sequestration hits, as well as the new fee rules go into effect, we then took more drastic action in terms of reductions, and you'll see this pie totals $176 million. And you've got the pieces of the pie, you know, in major categories: Information technology, hiring, compensation. We had an initial plan from way back when, February of 2012, to hire 1,500 examiners. To date, we only hired 206. Peggy, keep me honest. I think it's around 206..

MS. FOCARINO: 209.

MR. SCARDINO: 209. We also had -- basically what we did was we reduced everything that we could reduce without hurting operations. We haven't cut overtime. We haven't cut the things that continue to help us get towards our pendency and backlog goals that continue to, in all fairness, to produce revenue,

fees collected.

But there are certain other things -- travel, training -- things that are discretionary as much as they're very important. No one likes to cut things like training, but between now and the end of the fiscal year, they were deemed to be less of a priority than some of the other things that we were able to keep on, such as overtime.

So, you know, we've done what we can there, and we're going to continue to monitor the fees, obviously, every day. And if things come back a little stronger, in other words, if that trough turns out to be not as great as we thought, we would consider limited hiring later in the year to kind of get us back to our ultimate goals of reaching 10 and 20 months in terms of pendency, and the backlog to 350 thousand. To have that, we need the firepower. We need the examiners on board to do the work, as Robert continually reminds us. (Laughter)

So, where does that get us? We take an assessment every month to kind of give you a sense of where we are for the fiscal year, as well as

where we are to the end of the fiscal year. And then we're always looking to the next year, of course, because there could be a continuing resolution next year; sequestration is officially on the books again to continue next year. So, we are trying to manage our spending such that we have a limited carryover going into next year. I mean, that's what we've lived on this year.

Prior to sequestration versus post- sequestration, you'll see these two pieces of the pie here. We'd already made $65 million in reductions, but since sequestration and the lower fees, we've made another $176 million in reductions. Again, in planned spending.

So, going forward, you know, as I mentioned, we track revenue every day; we've focused on the fee collections. Director Rea is right on top of that to make sure that we're not being, as she would say, overly conservative. In other words, if fees come back strong, we want to continue doing what we wanted to do and meet our pendency and backlog goals.

We're also being very vigilant on

spending. You know, we don't want to have any further spending reductions, but, if necessary, we'd be prepared to do so. But, again, if revenue comes in strong, we will continue modest spending additions, possibly some hiring, possibly turning back on a few information technology projects. IT took the biggest hit this year because some projects were not executed yet, unless we had acquired goods or services. So, that's where we could cut. That's not always the best way to make these decisions, but it was a lot easier than RIF-ing people or furloughing people or hurting the engine that actually produced the revenue and got the backlog down.

Long term, that's not the way to go, of course. So, you know, we're very hopeful that in 2014, we can kind of level-- set again and get back to growth where we need it in terms of staff, resources, IT... And, you know, in the meantime, we're reworking our plans because we have to prepare for the worst, which is another year of sequestration, more continued resolutions, you know, limited funding availability with the staff on board the size that we have. We have to make

sure that we're ready to keep the trains running on time. So, that's about all I have in terms of prepared remarks, but I'm happy to field questions.

MS. SHEPPARD: Tony, this is Christal Sheppard. I'm lead on the finance committee, as you know. Thank you and your team and the PTO for your heroic effort during a very challenging time for the PTO. There's a lot of interest out there, so.

You didn't mention the spending report, which was, unfortunately, not PTO's doing. It was supposed to go up to Congress last Friday, and will come out sometime after this meeting, but I'm sure that most of the people on this call or listening in are very interested in (inaudible) and granularity of what activities are going to be affected by this, what's going to be cut?

But, more specifically, we really want to know what the impact of those cuts will be on patent quality, pendency, backlogs, and other changeable output. To put this quite bluntly, perhaps $148 million in fees that you just paid for service is not going to go to that service.

And these are the same people who acquiesced the fee increase if all those user fees went to patent-related activities. And, you know, it's just a point of fact $148 million of those funds will not or something approximating that. This didn't have to happen to the PTO. There was an interpretation of a congressional budget control act that could have exempted PTO. I know that's not the universe we live in. The administration, in the interest of fairness, took an interpretation that was not beneficial to the PTO or the PTO users. Whether that interpretation violates the law, no, it doesn't. Does it violate AIA and the assurances made there? No, it doesn't? Is it in the sphere of the law? Perhaps not, but it is in the letter of the law.

So, given that unhappy foundation, PTO has to do its part. The problem is, and you're doing a wonderful job, is trying to, you know, fix the engine of a plane while it's in flight. It's very hard for the PTO, because your user fee-driven organization, so you don't know day-to-day how much fees are going to come in, yet you have to plan accordingly. So enough on that.

A couple of things are -- people mentioned prioritization and how you're having to prioritize. Just wondering how you're doing that, what priorities changed, what's being pushed to the bottom. And additionally, the (inaudible) projections have gone up. And whether or not you think that that is a -- in the world we current live in, given CLS, (inaudible), Prometheus, and a lot of the inference about Myriad, is that increase in expected revenues is wise given the current environment we live in, and where Congress and the courts are reigning in some of the patent activities.

MR. SCARDINO: I'm sorry. Your first part of your question, I was probably more looking forward to answering than the second, but I just can't remember what it was now. Because I know I can't answer the second one that well.

MS. SHEPPARD: The first part was --

MR. SCARDINO: Oh, priorities. Right.

MS. SHEPPARD: -- prioritization. Many people mentioned having to re-prioritize, and also, on the congressional, I guess the

delineation on the granularity and the congressional spending report. I know it's not going to come out until after this conference and you can't speak to it, but maybe just in general terms. Because you did not mention the satellite offices. You mentioned IT, travel, and support personnel. But it's going to affect lots of other priorities.

MR. SCARDINO: So, let me try to address that. The challenge with things like sequestration or the new fees going into place March 19th, it all happened mid-year. In an ideal world you would know going into the fiscal year, what your budget's going to be, and then you can plan accordingly with prioritizing your spending actions. When things happen mid-year, you don't have much time. Time's, you know, clock's ticking, you've got four, five, six months to basically save a bunch of money. In other words, not spend money, avoid spending. So you tend to, of course, keep your eye on the end goal, which is, how do we keep the engines running? How do we keep patent operations going?

So, something like overtime was a

priority, because as I'm reminded every day, you know, while we pay overtime, we actually get more for it in terms of the revenue that it generates. If not that day, certainly soon thereafter. So, that's one of the last things we ever want to cut. So, when you take some of those things off the board, you know, what do we do immediately? Things like no more hiring, because that's an immediate action you can take. Right? You can control that.

Then when it comes to something like information technology, we'd already spent a certain amount of money and some was planned to be spent. So, it's not whether it’s a higher priority, it's just -- literally it could be saved. When you've got to find such a big delta of almost $200 million in savings, we had to do whatever we could. So, what I'm trying to get at is, it's harder to prioritize midway through the year than it is in the beginning of the year or before the year even starts.

So, while we went certainly through many strategy sessions, all business units, you know, get together with Director Rea and try to

figure out, all right, what can we do -- first we said, what can we literally stop doing? What can we cut? Then you get a big pie, you hope, right? And then you hope that the required cuts are smaller than that, so then you can kind of say, all right, we don't want to cut something like overtime. So, that comes off the table.

So that's kind of how we went through the prioritization. And something like the satellites that you mentioned, the satellite offices, that's an especially challenging one since we have a statutory requirement to open at least three offices by 2014. So, we are continuing to do what limited work we can do in each of those three offices of Dallas, Denver, and Silicon Valley, without spending money. We've got temporary offices there in each of those locations, as you know, so we've got a presence. We just don't have the permanent presence that we were hoping for. Our collective goal is to continue working hard to open those offices next year, assuming that there's funding available.

I'm hoping somebody can help me on the other one with --

MR. FAILE: Drew and I can jump in. We can -- I'll talk a little bit about maybe some of the backlog effects, and Drew can do the quality parts of Christal's question.

So, for a pendency backlog, obviously, as Tony mentioned, we had 209 hires on board as of now. We were shooting more for the 1,000 target range for this year and planning out our modeling for the out years. We were looking at our 10 and 20 pendency, first action total pendency goals. We would want to get 1,000 on board this year and then we would start tailoring hiring off in the out years. This was going to be kind of our last large year for hiring.

Since we only have 209 on board now, it's an open question to what we can get in the remainder of the year to try to gain back some of that ground if we can't get back to 1,000. So, what we'll probably be doing is, as Tony says, we are watching revenues to the extent we will be able to get some more hires on board for the end of the year. We'll try to kind of stave off a little bit of that ground we would lose by not getting our 1,000 in this year. Then we'll be

adjusting in the out years the number of hires to try to get back at our 10 and 20 pendency target. So, kind of has a large effect. The slow down hiring as of this time, or the uncertainty in hiring as of this time, will likely be moving our pendency targets out. And, Drew, for the quality, maybe?

MR. HIRSHFELD: For the quality, it's difficult to pinpoint exactly what the effects of any cutbacks are on quality. I know that Tony mentioned some training cutbacks. Those training cutbacks are not to the internal, you know, we come out with guidelines and train examiners on. That would be more of the management level, or the bigger picture training, than what an examiner's doing in their case on a day-to-day basis. So, that training certainly goes forward. But the effects on quality, to the extent -- and I know many people do view quality and pendency as being intertwined, so that the more a case sits around, the less quality it is. To the extent that any of the backlog issues grow, and that you consider quality intertwined with the pendency of the case, there's certainly

effects there.

When the IT systems are either delayed or modified, those plans that could certainly have an effect on quality, and not that quality will go down necessarily, but improvements that are planned to quality, you know, might be delayed. Right? Because I think some of the IT enhancements will help examiners do their job.

And so, again, very hard to quantify. I think on the day-to-day, what examiners are doing now, they're still going to get the training that they need. They're still going to have the resources that are available to them now. It's whether improvements can be made in some of those IT resources.

MR. SOBON: This is Wayne Sobon from PPAC. I want to thank Tony, as well as Andy and Drew, talking about the effects, and I know you're not in an enviable position. I think it doesn't require much restating to let you know that, you know, most, I think, of the user community finds these cuts extremely distressing for the Patent Office. And this certainly drastically undermines the central balancing, the careful

balancing that was set out in the AIA that eventually provided fee-setting authority to the office.

And the PPAC last year in our operations, as part of the AIA to provide input during the fee-setting process, as you very well know, in our report we were -- we remain concerned about any ability for fees that users pay into the system for the providing of these services, for these applications would be in one way or another diverted. And it seems like the worst we could have thought has now again come to pass. So, I think you'll be continuing to hear those calls of distress and concern from all the sectors of the user community.

I have one technical question, but before that, you know, with all due respect to what Christal said, is also I think folks in the user community, who have taken a very different view, that, in fact -- I'm not sure you can comment on this in today's forum, but this approach by the administration and interpreting the Balanced Budget and Emergency Deficit Control Act, it is not correct. And the user fees that are being

paid in the patent system should be exempt from the sequester, and so we remain concerned. I think a lot of the user community remains concerned about this not only undermining the spirit of AIA, but also, frankly, just not being really appropriate under the relevant set of laws and regulations. I'm not sure you can comment on that, but I also have just a technical question, which is just to clarify the sequester effects -- I believe from your presentation, actually take effect against actual fee collections. They're not -- it's not taking away from the original budget -- that was for your internal, but you downgraded that budget based on fee collections that you already were seeing before the sequester took effect. But the sequester -- actually the amount of fees that will be diverted because of the sequester will be due to fees collected?

MR. SCARDINO: Correct. So, and another way of looking at it is, if it was off of our spending authority of $2.933 billion, which was the appropriation that was to be enacted after the Senate marked up and they went to conference,

that would have equaled $148 million, 5 percent of that number.

And the way it was actually interpreted once sequestration was enacted was a fee-collecting agency -- it was going to be a portion of their fees collected for the year. And the benefit to fee-collecting agencies there is that if you collect less than you appropriated, you don't -- not as much is sequestered.

So, under this scenario, we're not going to collect $2.933 billion as an agency overall. Let's say we collect something closer to $2.7 billion. Five percent of that would not equal $148 million. It would then be, you know, $135 million.

So, we're actually benefiting from the way this is being interpreted, if we collect to the full amount. If we collect $2.933 billion, it would equal $148 million. We're just not going to get there.

MR. SOBON: Okay.

MR. THURLOW: This is Pete Thurlow. So, I have a more specific question. I mean, I echo everyone else's comments about just how

unfortunate the whole situation is and that it's just wrong.

But more specifically, when I sent out an e-mail asking for comments on sequestration to some -- surprised that a number of people got back to me with concerns about PCT searches and the program spending for that being cut, significantly, if not at all. I guess my general question is, maybe this is better for Bruce or for Drew, but can you just address that point?

MR. KISLIUK: Yeah, I'll answer that, Peter. This is Bruce Kisliuk. As Tony said, it was a difficult exercise going through prioritization for what had and could be reduced. We have reduced the amount of PCTs that we are outsourcing, from now through the end of this fiscal year. It will create some backlog in PCT's big process. We hope, should funding come back to the appropriate levels in 2014, that we would be able to catch up or make it up, similar to what happened in 2009, when we did a similar exercise in reducing the amount of PCTs that we were outsourcing and then caught up in about an 18-month timeframe.

MR. THURLOW: So, Bruce, from a practical standpoint, does that mean that those searches just don't get done, that they're kind of a backlog of searches, or should we ask, I guess, when our clients ask who the search authority should be, should we request Korea or EPO or what do you recommend there?

MR. KISLIUK: I'm afraid I'm not going to be able to make a recommendation, but the PCTs that we don't outsource won't be done and there will be a growing backlog. But we are doing some. We didn't cut if off to zero. We're doing some, but it will create a backlog.

MR. THURLOW: Okay. Thank you very much.

MR. FOREMAN: Well, thank you, Tony. Obviously, these are difficult times, but we appreciate the feedback and the continued updates that you've provided, not only to PPAC, but also to the user community. We are at 1:45, and so we have a scheduled 15-minute break at this point. We're entering the home stretch, so if everyone could be back and ready to resume at 2:00. We will have John Owens and John Landrith, coming to

speak about OCIO. So, 15-minute break, and we'll see everyone at 2:00. Thank you.

(Recess)

MR. FOREMAN: I'd like to welcome everyone back. It's 2:00, and let's just get right back into the swing of things here. We now have John Owens, chief information officer, along with David Landrith, portfolio manager, to discuss OCIO. Good afternoon, gentlemen. John, would you like to begin?

MR. OWENS: I would very much. Thank you, Louis. Hello, everyone, again. I'm going to start off by just thanking David for coming. I'm sorry we didn't get to meet with you last month. We do have quite a number of good things to talk about, which we will shelve to the end of the presentation. We've had some successes over the last few months we thought we'd share with folks.

Unfortunately, as you previously heard, though, the sequestration and the fee collection has significantly impacted our ability to execute on IT initiatives. And I will be getting into that and taking questions on that.

So, we're going to speed through the slides a little bit to give plenty of time for conversation. So, I'm going to hand over the first few to Mr. Landrith to talk about.

MR. LANDRITH: Starting from the top, Patents End- to-End enables a new way of processing patent applications, providing a single place to manage examination and applicant activities, supporting the work done across existing systems. The overall vision of PE2E is to improve the quality of IT tools for applicants and examiners. It provides a highly integrated set of usable applications that are optimized to eliminate highly repetitive tasks that are text based, using XML for filing and examination, and that are flexible, scalable, and leverage modern technology.

This should be something you've seen before. It bears emphasizing. Part of what makes Patents End-to-End different from other efforts similar to it is that we are using an agile approach in which we are iterating through designs that come out of focus groups to prioritize the program test and demonstrate, and

then cycle user feedback back into it, so that we're staying close to the needs of the users.

So, looking at the top here, the user face in elements of Patents End-to-End, are divided into three areas. We have the IP community tools, the USPTO internal tools, which have been one of the primary focuses, and the international IEP5 tools, which have also been a very strong focus with CPC.

MR. OWENS: All right, now we'll get down to the impacts. So, as part of the impacts of the reduced funding for the year, Patents End-to-End, which had left at mid- year, unspent, $17.9 million. We turned back $11.6 million, keeping $6.287 million continued funding.

At a high level, what does this mean? The project had approximately 150 contractors, plus the USPTO federal support staff. It is now nine contractors with USPTO support staff. I can't tell you how big of an impact on Patents End-to-End alone that is, but it's massive.

Now, we do know that back in 2009, when we had to stop projects, and how long things took to restart in 2010, that we are looking at an

overall restart time of approximately nine months. That's the time necessary to recompete the work, as well as bring on contractors, reconstitute the team, some 140 people, and get them all up to speed and running at the same rate that they are now, after having done that over the last few years. Which means we will then have the 15 months left in this project in its very first phase to be done after that, which, overall, will increase the funding necessary for the product and the program completely. And it will delay at least that nine months.

I also must note that there are other reductions. The bulk of the reductions taken this last time around were from OCIO and IT projects, and the infrastructure and support costs were also seriously reduced, which will further impact other remaining deliverables.

So, what does this mean for the user community? Well, it's on here, because it's important to me, but work on Text2PTO and collecting text, which is critical for future evolutions of our product, has been suspended. That's a major thing, because we do want to

operate in a text-based world rather than a picture-based world.

But probably more important to all of you, all of our efforts to stabilize and enhance Public PAIR, Private PAIR, as well as EFSWeb have ceased. This means that we are going to have compromised support capabilities moving forward. In an ever-aging legacy series of legacy systems, with an ever-growing demand in population placed on those systems, which quite honestly were beyond their maximum life expectancy years ago, money that would have funded the replacements of obsolete systems are needed to maintain those obsolete systems now.

I am happy to report that over the last two years we have reduced our operations and maintenance budget to approximately 50 percent of the overall budget of OCIO. I am a leader in this in the federal government. That matches private industries for those companies that are heavily reliant on IT. So, we are world class with that percentage, and none of that operations and maintenance money was reduced at this time; however, continuing to just support the status

quo after the status quo had been the standard for so long, will long-term detriment our ability to perform our mission.

So, what is suspended, specifically? The Text2PTO; BPRE Grant Phase 1; IFW Images and Legacy Retrieval, which is a core foundation for the changes to EFSWeb; Public and Private PAIR; exploring our search technologies for enhanced search; patents end to end and office action interface, which is sorely needed by the examiner, and one of the most troublesome issues that an examiner faces on a daily basis with the current system; continuous capture of some of our CRU data; and, of course, further developments of our business architecture.

We have reduced the funding and, obviously, we kept the $6.287 million on a couple of projects. The Patents End-to-End, the examination tools, the nine remaining contractors will continue to evolve and establish a core team to continue to manage that environment, and, of course, cooperation patent classification, or CPC, which is going active right now.

What is unchanged? PATI Continuous Capture, because we want to capture as much text as humanly possible, since our current system is in the hands of all of our examiners and they're using it; CPC Classification in Search System, back end and front end, because we are continuing that project; One Portal Dossier; and Lightweight Search, specifically the initial launch of cycle data, both for internal and external use. That was a prototype based on the work we were doing for Search for Patents End-to-End.

Now, before we get into all those wonderful questions that you're going to ask me, that I hope to have answers to, I do want to hand this back over to Mr. Landrith. Because we didn't speak to you last time, we did have quite a bit of success with Patents End-to-End. And I think it's worthwhile to note that the team before the reductions was performing quite well. We were on time, on budget, and we were making our deliverables. In fact, right up to, I believe, this month, we have made our deliverables. Though it is a shame that these impacts will affect further deliveries, I do want people to

know that the team has worked and produced quite admirably. So, David, if you could take over for a moment.

MR. LANDRITH: Thank you, John. I'll go through these quickly to make sure that we have enough time for questions at the end.

The Patent Examination Tools and Infrastructure Project is the -- develops the core Patents End-to-End application for case viewing and docket viewing. It was first released to a group of 39 corps examiners, designated as a pilot group in November, and we've had subsequent successful releases in January and April, just last month. This is continuing on a reduced budget, so that the next steps for Fiscal Year '13 and '14 listed below, we don't have definite milestones associated with those. Patents End-to-End and Office Action is the core application for examiner authoring of Office Actions. It just completed its first release this past April to a pilot audience on schedule. So, on the heels of this big success, we've suspended the project due to funding constraints.

The Cooperative Patent Classification

is a partnership with the EPO to harmonize patent classification between offices under a single standard. The initial scope of this included classification tools used by the staff that does classification, as well as tools to resolve conflicts in classification between the EPO and the USPTO, as well as search functionality for the examiner. This initial suite of functionality was launched, taking CPC live with the EPO in January of this year. We have this month a release scheduled to update the January functionality. The next steps are going to integrate the CPC classification system more tightly with legacy tools, so it becomes a part of the examiner's daily work. That work is currently suspended right now due to budgetary constraints.

The PATI Continuous Capture of Application Data and the PATI Gap Conversion. This is a process of automatically converting images, snapshots of pages into XML text that can be processed and parsed by a computer to provide additional information to the examiner and allow them to look at it in text. We had spoken two

years ago about this when it started as a pilot project. It was an experiment to be released to a small group of examiners. It turned out to be so successful that we very quickly released it to the corps.

The PATI Gap Project represents batch conversions that were done by shipping hard drives of data back and forth. Continuous capture is a huge achievement and allows us to, within hours of the receipt of the data, have it converted into XML4IP on an ongoing basis, so that we are currently able to offer the claims, specs, and abstract, and structured text to examiners.

The next steps are to expand the number of document types that we're converting. We had planned -- we were prepared to go ahead with conversion of the IDS and the remarks documents, but the conversions of those documents has been suspended due to budgetary constraints.

Lightweight Search for SIPO Data. So this is a publicly available site where we have placed the original Chinese patent documents, the entire body of them, along with machine translations of those documents online, publicly

available, in a way that allows them to be searched. This leverage is the technology that we've been developing for the examination search and exploring search technologies, so we were able to complete it very quickly. And it was begun in January of this year, and we'll be rolling it out at the end of this month.

One Portal Dossier is a functionality that allows for the IP5 offices to access cases of other offices. So they're a functionality that we have completed, we have the services in place that allow the other offices to access and view our cases. The next step is to add the functionality for the inverse, where we are able to access the cases offered by other IP5 offices. Thank you.

MR. OWENS: Okay. So, thank you very much, David. Though David kept saying it again and again and again, these projects have now been suspended. The completed portions of these projects happened on time, on schedule, and on budget. And they did move us forward down the path of future evolution of systems to support the ever-growing demand of patents and our primary

function here at the United States Patent and Trademark Office.

So, with that, I would like to turn it open to questions, and I'll take them.

MR. FOREMAN: Great. Thank you, John. And I think it would be helpful for Paul Jacobs to step in at this point. Paul is the subcommittee chair for IT. Paul.

MR. JACOBS: Thank you, Louis. So, thank you both. I have been in the position where I had to tell people who were doing a good job, that we didn't have work for them anymore. And I know these aren't your favorite tasks, and thanks a lot for your candid remarks. I'm going to pass it to Marylee first, and then I'm going to reserve my questions.

MS. JENKINS: John knows, and I also was hearing that theme going on and the comments, budgetary constraints. One of the -- obviously, one of the concerns as a PPAC member, but also being part of the user community as well, is how that impacts us. Obviously, it's going to impact you greatly, among your employees, in order to do examination and the process involved in that.

But you highlighted, I guess, in slide 5, 6, where you said funding impacts on the user community. Could you give some more -- it was kind of broad. It was modernization for us. It was modernization of Public PAIR, Private PAIR, work on major improvements to public service capabilities. Can you be a little bit more specific of what you see it will be impacting us, and how that's going to impact us in the long run if sequester goes on for longer than we anticipate? So two questions.

MR. OWENS: So, I'm going to kind of combine the answers there, if you don't mind.

MS. JENKINS: That's fine.

MR. OWENS: Certainly what's happened this year is happening in future years, and limiting the ability of the IT organization to continue to deliver toward our primary mission will impact everyone. Not only will it impact the ability of the examiner to do their job, because many of the legacy systems we have today are well beyond their life. They were built for a much smaller population. Some of them were built many years ago, only to support 5-, 6,000

people. We have them supporting well over 10,000 today.

The ability to support further expansion in those systems is not possible. They were architected and written in such a time where they were basically single computers, single points of failure, and those computers aren't even, as you've heard me in the past, say here at PPAC, purchasable today. So, a major re-architecture has to happen.

It also is good to note that it's not only the demands of the growing corps as we get an ever-increasing need to examine more. Right. But many of those systems, the back-end parts of them support the public as well. So, as the public uses the environment, increase load goes onto the system as well, because it's a shared environment. For example, your Public and Private PAIR connect in the back end to our PALM servers, as well as our IFW services for images. Both of those servers have had issues due to load in the past year. And commonly you will see them as outages in those systems or slowness in those systems, when in actuality they're the back-end

systems that were built to support a much lower quantity of requests per second than is currently loaded on them.

So, what you will see when I talked about the impacts to Private PAIR, Public PAIR, and so on and so forth, EFSWeb, is probably, generally, things will get slower for you. Transactions will go through, they'll time out. Things will get slow, and that's generally what the examiner will see as well. The examiner will do searches, their flip rate will go down, the searches will be slower, writing off the sections will be slower, as we have to live in and with these legacy systems, again, well beyond their life expectancy.

You know, over the years -- this hit us in 2009. It took us 2010, 2011 to recover. It will take time to recover from this. Future degradation and our ability to acquire the necessary resources to facilitate change will continue to put further stress on an already fragile environment, which you will see in your daily activities. And you will likely see that as delays and failures of the environment.

MS. JENKINS: And obviously this is only going to continue -- sorry. Sorry, Louis. I'm looking upward. (Laughter) I don't know why, but I am. This is going to continue for the future, too? So, anything more off of that if sequester, how is that even going to impact you if sequester continues into next year?

MR. OWENS: Well, if sequester continues or the fee collections are significantly reduced, or a combination of both, then that less funding continues to exacerbate the problem until the system fails. And it just has to be one part of a system that was designed largely back in the day when single points of failure were acceptable.

Obviously, with Patents End-to-End where we were moving, we have no single points of failure. It's a self- healing system by design. And moving to that is the only way to get out of the situation we're in. So, I can't stop supporting the current system with a reduced level of funding, and I can't build the new system due to the reduced level of funding. So, I'm in a spiral and it takes time to get out of that

spiral. It's not like if you turn on money tomorrow, I could suddenly get out of it. It's going to take me months, as I described, to get out of that. For Patents End-to-End alone, we're looking at a nine-month recovery time just to spin up that one team. Multiply that by the fact that I just cancelled the USPTO-wide several hundred -- or suspended, I should say, several hundred projects, each one requiring a massive amount of time and money to restart.

So, the longer it takes, the more degraded the system will get, the harder it will be to recover. It's pretty simple.

MR. JACOBS: Yeah, I'd like to exercise the PPAC prerogative of applying an extended preamble to my question. So, in December, we heard a lot of good things about PE2E, and then I happened to stay the following day, I think it was the day after our meeting. There was a public demo of PE2E showing a lot of impressive capabilities, and this, of course, was in the strategic -- five-year strategic plan as one of six objectives under improved patent quality and timeliness. And then the President's budget

request, there's a line, without a 21st century IT system, the USPTO will be unable to satisfy an increasing level of demand for USPTO products and services, as well as jeopardize the accomplishment of departmental and USPTO strategic goals. So, this is kind of building on what you just said, John, I think, is that at some point, if we don't apply adequate resources to IT, there is this risk, right. So, the question is specifically with respect to PE2E, now which is being drawn down $11 million. At what point does this become no longer a matter of just delaying a strategic project, but become a matter of essentially giving up on the strategic element of the office as planned?

MR. OWENS: So, the strategic plan does call out the necessity of the modern IT environment, because it is necessary for the examiner to do their job. We are long past the days of examining on paper. We can't go back there today. IT is a core requirement for how this organization operates, and if the IT fails, we grind to a halt. And I think that could be well supported by POPA and other examiners in the

organization. We do take that very seriously. You know, so right up to the top, which is why it's in the strategic plan. So, the delays, when is it critical? Well, actually it's critical now, because I have failures now: Keeping legacy systems alive, finding parts, the people to work on them, the necessity to further expand them. I had to modify many legacy applications, including continue to modify many legacy applications, just to support decisions out of AIA as they come about, that further adds stress and load on an already fragile system.

So, if you're asking me when are we in the danger zone? We're in it. We're in it now. We've been in it for a while. And I think that's completely consistent with what I've told you all for quite a while.

Now, Patents End-to-End was supposed to drive us out of it. It was never going to be one of those quick things, right. We had millions and millions and millions and millions of lines of code written for very custom systems that I can't buy anywhere, and we're re-writing it and re-architecting it from the ground up with

Patents End- to-End. That process has been going along at a very nice and steady pace. As you saw in the demo, we have real things that we are showing. We have 39 people using it in the corps. We're getting real feedback. It's getting iterative. It's the first time we've ever used it, and the process is getting better and better. The longer we go without that, the more expansion we do to legacy systems, the slower they get, the bigger impact on our environment. If that does result in lost production or lower quality, that will directly impact our fee collection. That fee collection will be felt first in the CIO budget, because the CIO budget is mostly "discretionary." And I'll take a moment to explain that.

Operations and maintenance of the environment, paying people here at the USPTO, takes 80 percent of what we collect. There is very few budgets -- in fact, I have the largest budget outside of Patents, literally, that has the largest discretionary portion. So, when the agency looks at paying people first to keep up production, which I totally agree with as a member

of the Executive Council, by the way, as well as keeping the systems running at the current pace that they're running today, that's what happens first. Patents End-to-End and everything else comes secondary.

The problem is we're well past, a decade ago, the need to replace the systems with something much more robust and something more stable. And continued progress down this path, as you would interpret that strategic direction would mean, we will eventually get to a point of failure. Failure in the systems results in failure in the ability to accomplish our mission, which is why it's in the strategic plan which corresponds in our failure to deliver.

Did that answer your question? I'm sorry it's so bleak, but that is what you're asking, and that's why it's in there. Robert.

MR. BUDENS: Well, hearing nothing else, I guess I'll jump in. Sorry, Louis, is there somebody ahead of me?

MR. FOREMAN: No, please. Please jump in, Robert.

MR. BUDENS: Okay. I wanted to

examine -- provide an examiner perspective on some of this, too. Of course, the first perspective, I have to agree, is that given the choice between furloughs and cutting back on IT, I mean, from an examiner point of view that's a no-brainer. Sorry about that, John. But the fact of the matter is I think people need to really understand from the examining corps point of view how critical these situations are, too. I'll just share with you an example.

I mean, just yesterday morning, we had the system go down for a while, the IFW database and EDAN system went down. That's our tools, that's what we use on a day-to-day basis to do our jobs. If those systems -- if and when those systems go down, the examiners are kind of against a wall as to what to do because everything we do is on the computer. And I do share John's concern that the systems, especially the underlying system -- the PALM and IFW -- these things are decades old systems and weren't designed to handle an 8,000, you know, member examining corps, you know, a good portion of whom are coming in from outside on Internet access and what have

you.

But to get an idea -- maybe, Peggy, if you could tell us -- when we go down for an hour, when the examining corps goes down for an hour, what's the dollar cost to the agency for us being down, you know, the examining corps can't work for an hour?

MS. FOCARINO: It's over a million dollars, Robert.

MR. BUDENS: It won't take too many of those downs, you know, downtimes to, you know, take away the savings of what we supposedly are saving in the sequester is my point.

MR. OWENS: Just so you know, we keep track of the downtime. It gets notated personally in my end-of-year for unplanned for downtime. But if you think about it, that lost $1.2 million comes out of my budget first. So, it's a self-defeating prophecy for me. I don't want the downtime. Now, yesterday's failure's a good example. The IFW system was installed and originally spec'd for approximately 5,000 people to use. We're well over that capacity today.

We have a primary database in what's

called a cold spare secondary database. The database and the hardware it was on had a major malfunction. It took us approximately an hour to get that secondary database switched over. We then had a huge report into the system of failure logs, which crashed the system a second time. We had a total outage yesterday of 1-1/2 hours.

These things -- there's no way to fix the current environment. It's working as designed. It wasn't designed to meet our current need. We need new systems. And trust me, there is no one more knowledgeable on exactly when we have failures and how long they last and how much they cost, than myself. Because that money is then next year not available for me to do my work. It's a major problem.

MR. FOREMAN: Thank you, John. Valerie McDevitt, do you have a question or comment?

MS. McDEVITT: Excuse me. Hi, I just have a comment. I guess in listening to this, it does feel very troubling and concerning. And I just want to echo the sentiments of everybody else who's spoken, as we're hearing more and more of

the effects of sequestration. Everything you people have talked about has been incredibly important and necessary things for you all to do your jobs, and it's going to affect the user community. So, I just wanted to express the same comments everyone else has made, but it is very concerning.

MR. FOREMAN: I would say, John, that was a sobering report on the state of the situation, but, at the same time, we appreciate the feedback that you've given us. And hopefully, PPAC can be a resource to address some of these issues to any extent that we can.

We are now at 2:30, and so, John, I'd like to dismiss you, and thank you again, and welcome Bruce Kisliuk to lead us in the discussion on international. Bruce, are you with us?

MR. KISLIUK: Yes, I am. Thank you, Louis. I'm going to welcome Mark Powell and Charlie Pearson. They're going to cover three topics for us this afternoon, quickly. Mark's going to cover the Global Dossier Initiative. Charlie's going to cover two topics: The Hague Agreement and PCT 20/20. And also, I just want

to thank PPAC and appreciate PPAC's interest and support of the international projects and programs that we're doing. Again, we're going to do these three briefly, and then I'm going to ask Mark and Charlie to stay for any follow-up questions.

MR. POWELL: Yes, I believe Bruce has covered what the topics are. Good afternoon, everyone.

On Global Dossier, which as you, hopefully, have learned, is a project in which basically we are trying to tie together a number of international IT projects to provide an outcome, which includes services to users. I was happy to see in Mr. Owens' presentation that the One Portal Dossier work is at least going to continue through '13. I wasn't certain of that until just now, because the Global Dossier, from a technical standpoint, is really based on the One Portal Dossier.

Global Dossier is essentially connectivity and services. All right. We have held our first Global Dossier task force meeting, which was held in Europe a few months ago. It

includes what we call IP5 industry. From the U.S. Side that's represented by IPO and AIPLA, Business Europe in Europe, GIPA and KINPA in Japan and Korea, respectively. And I'll talk about that a bit more.

Expansion beyond the IP5 is quite possible through a program that WIPO's been working on called CASE, which is Centralized Access to Search and Examination. That project is underway in one of the Vancouver offices, which are the UK, Australia, and Canada. If we're able to include this system as a node in our One Portal Dossier System, that will open up expansion to a number of countries. The JPO is working with the ASEAN countries in actually providing funding to WIPO to help them get on board.

And we've had some discussions with the PROSUR offices, which are, of course, South American countries cooperating. And they are interested, so we were hoping to see.

The main point here is we're trying to keep the momentum going. This was only introduced to the IP5 last March. It was quickly agreed to by the heads of the IP5 offices as a way

to sunset some of the IP5 foundation projects that we were working on, that were not really connected, not going to provide an outcome, and pull everything into an umbrella environment. So we're working very hard to keep it going, sequestration notwithstanding.

I mentioned the Global Dossier task force. A main tenet of this project is that we want to have user input for the entire life cycle of this discussion. I think we're out of the days where we'll build it and you will come. We want to know from the users what they want in their system, what the services are that they need. And our office actually has meetings monthly with our user groups here in the area to get their constant feedback.

Some of these requirements -- in fact, the One Portal Dossier System should be implemented here among the examiners. As John mentioned, we can't do things to legacy systems, so these future services, which we're getting from the users, are going to be fed into our end-to-end, and, however, as you heard, that will likely be delayed.

And USPTO values the input of all users and all user groups, and certainly PPAC is one of those groups that we more than welcome input from. Thank you, and I'll turn it over to Charlie.

MR. PEARSON: Thank you very much, everybody. It's good to be here. I just want to give a little brief overview of the Hague Agreement for the Protection of Industrial Designs. Now, this slide, the brief illustration of the alternatives, the Paris Route, the standard filings with the applicant must go to each individual office to get protection for design applications -- or for designs. Now under the Hague system, the applicant can file a single application, either directly or indirectly, with WIPO, and there the applications are distributed to the respective offices for treatment.

Now, this is just a quick timeline of the major events in the intellectual property history over the years, starting off in 1883 with the Paris Convention. You can see in 1925, there was the first of the Hague agreements. There are several different versions of the agreement:

The 1934 London Act and the 1960 Hague Act and most recently the 1999 Geneva Act of the Hague Agreement. And, of course, the implementing -- the legislation passed by Congress last December implements the Geneva Act.

Here's just a quick view. You can see that the Geneva Act is primarily Eurocentric. When the U.S. comes on board, it will be an opening in the Western Hemisphere, and we will also be the, as I understand, basically the only country that does a robust examination as to novelty and obviousness of the designs. And countries such as Japan, Korea, even China, are looking very closely at what our experience will be.

Just a few statistics. There's been over 10 million design registrations since the system's inception. Currently, there's over 100,000 active registrations on the international registry. It shows that a large percentage of right holders are just basically small-time users.

The last bullet there is sort of interesting to me. Actually, in 2012, there were only 2,400 international registrations filed.

Since you can have multiple designs per each registration, there was almost 12,000 total designs covered. But I expect after the U.S. gets going, those numbers are going to skyrocket a bit, much like has happened in the PCT.

The applications themselves can be filed in English, French, or Spanish. They can be filed directly with WIPO. They have an electronic filing interface at WIPO, and you can also file in paper. My understanding is that about 97 percent of the applications are currently filed directly with WIPO. You can also file the applications through an office of indirect filing. The USPTO will be such an office. The applications can contain up to 100 different designs per registration. It makes people cringe. You can restrict, so I expect that the U.S. Will, you know, retain its policy by having one design per application.

There's a single set of requirements, particularly formal requirements, and a single set of fees is paid in relation to the application. If you do that to WIPO, it's done in Swiss francs.

Another role of the International Bureau, they have the Hague Registry there, they call it. They examine the applications for formalities. Okay, they also translate the application into the other two official languages and they record the registration in the International Register. As you file the application, you pay the fees. Part of the fees include designation fees which go to the national offices involved, and the WIPO will collect those fees and distribute them to the national offices that are designated in the application. On the paper form there's a bunch of countries and check boxes where you select the countries you want protection in. And they also publish the registrations in the International Design Bulletin.

Now, for procedure in the designated offices, the applications will undergo normal substantive examination, just like they would with a regular nationally filed design application. It's not necessary to look at the formalities since they have been treated in the International Bureau. And a statement of a Grant

of Protection may be issued.

Now, refusals can be made on the same substantive grounds as for direct national filings. And they are to be communicated within a prescribed time limit, which in the case of the U.S., since we're an examining office, is 12 months from the date of publication.

Now, the effects of the international registration. It has an effect as a regularly filed design application from the date of the international registration; in fact, the implementing legislation provides that the U.S. Filing date is the registration date granted by WIPO. As a grant of protection under the law, the contracting party -- it has the effect of a patent if we do not refuse it timely. Once again, no need to get overly concerned here. There is a provision in the treaty that if our failure to act within the prescribed time limit was unintentional, it will not have effect. So, and we are currently working very diligently on a Notice of Proposed Rulemaking and, hopefully, will have that out, and intend to consult with the PPAC on that.

The second topic I'm covering today is what we call PCT 20/20. It's a program for improvement of the PCT system. I gave a little talk on this, I don't know, a year or two ago, and I just wanted to give you a bit of an update as to where we stand. Now, of course the PCT has been very successful. There's been over 2 million applications filed since its inception in 1978. And the PCT was really the first international work-sharing system. And Director Kappos came to us. He formed a task force and requested that we come up with specific ideas to improve the PCT system. We came up with this plan. We called it PCT 20/20. It was originally supposed to be -- the PCT as it stood in the year 2020, it had a little typographical error and came out 20/20, so now we say it's the PCT with a clear vision for the future. We developed it in cooperation with the UK office, identified a series of diverse proposals and wanted to focus on quality, transparency, and simplification and streamlining of the system.

Now, there's a PCT working group meeting in Geneva next week, where these

proposals will be discussed, and a number of them have been identified for specific intense treatment next week. So, I'm going to go through the six of them here. It will be discussed next week, just informing the status. The self-service changes, this is where applicants could make corrections to bibliographic data and priority claims that would be effective immediately, and provide instant feedback of approval to the applicant. Now, this particular system, it looks like, will be incorporated into WIPO's EPCT Electronic File Inspection System. So, that's probably taking the lead here.

The second item is the integration of the international and national phases. Basically, this is a proposal where national and regional offices would be allowed to require at the time of national phase entry, a response to outstanding negative indications made by the International Searching Authority or the International Preliminary Examining Authority.

The next item is formal integration of the Patent Prosecution Highway into the PCT. Under this proposal, a PPH-type system would be

formally integrated into the PCT. Offices would fast track national applications, which presented only claims which received a positive report in the international phase.

Other proposals being considered next week is that of making a written opinion of the searching authority available to the public after publication. This proposal would enable national offices and third parties to view the content of the written opinion of the ISA before an application enters the national phase. And this written opinion would become available upon international publication. Currently, only the search report itself, the summary page, is made available.

Next item to be considered next week will be a mandatory recordation of search strategy. We feel that if these searches from other offices are going to be relied upon, we need to provide confidence in the quality of these searches. And if we had a system for letting examiners record their search strategy and make that information available to downstream offices, it would increase the credibility or the

confidence in the first search.

The other item is that of mandatory top-up searches. And in order to increase the quality of the PCT reports, examiners would perform top-up searches or update their searches during chapter 2, which surprisingly doesn't occur in all offices at present.

Just the other proposals that are still in the plan, I won't talk about them in detail, but one is the idea of having chapter 1 claim amendments, limited amendments. Another item is to simplify withdrawals of the international application, and a third item is the standardized fee reductions for national stage applications. Also in the system is development and implementation of the Global Dossier. It marks that project here and incorporation of that into the PCT. Also be discussing international small and micro-entity fee. And the last item still in the plan is that of collaborative searching, where two or more offices would work together to prepare a single search report that would, hopefully, be of high quality and be relied upon more so than the PCT currently is.

And thank you very much. I took too much time, but I'll try and answer your questions.

MR. FOREMAN: That was very helpful. Thank you, Charles, and thank you, Bruce and Mark, for that presentation. I'd like to have Marylee Jenkins step in at this point. This is her subcommittee. Marylee, do you have questions for that panel?

MS. JENKINS: I do. I just want to say, also, my thanks again. As a new member, they were so receptive to my questions and my enthusiasm, because I feel that this is just the future of our practice. I was very lucky when I was chair of the ABA IP section, to be involved in the harmonization meeting that Dave Kappos put together. It was just inspiring, and just wanted me to just continue to do, and so I was thrilled when Louis appointed me to this committee. Thank you. And you have a great team, Bruce, and I look forward to trying to get the message out. I think it's so important for the user community to hear what you're doing.

And also, too, I think it was great for the presentation. It was a positive spin on a

somewhat negative presentation prior to you, not intentionally. IT is so important to us. But just to talk about what we are doing on an international front and how we are moving forward, we're not going to just stop, and I think that's important for the user community here.

Also, too, real quick, we asked them to pick particular topics. So there are other things that the team is working on and so this was just some highlights. And so we're going to continue to bring back more information to the user community so they can hear all the great things that you're doing.

But you know the question I'm going to ask and, actually, Wayne alluded to it earlier. So if Wayne was here, I probably would have been kicking him at that one point, was the idea of what was sequester going to do to you and the importance of travel. So, Bruce knows this is coming, so softball over to you.

MR. KISLIUK: Thank you, Marylee. Yeah, I'm kind of ready for this one. So, Dana mentioned a little bit and so did Tony. So, there's really two aspects that I'll touch on

relative to our current budget situation and our international projects. One is the IT aspect, you know, and the other is travel.

So, as Mark mentioned, at least in the Global Dossier and almost all of our other international projects, there is an IT component. You know, exchanging of information internationally is huge. The security of exchanging that information is huge. So, anything that touches on slowing down our IT development is going to impact those programs. And more specifically talking about Global Dossier, the intent is to build it on the new "next gen" PE2E system, not on our legacy PALM system. So, if there is a delay to PE2E, it may impact that.

Another thing just to point out from IT, on the international front at least, is that many of these projects are long-term projects. They're not near-term development projects. So, we hope, pray that our funding situation improves next year, so we can get back on track and some of these programs wouldn't be greatly impacted.

Travel, similarly, Dana mentioned it.

You know, prioritizing travel has been difficult. We are continuing to send staff to what I call the major working group sessions, the international sessions where the U.S. must be represented, particularly in things like PCT. Charlie mentioned it, classification, some other big ones, WIPO- related meetings. It's not as full of a staff as we typically would be sending. But we need to continue to do participate, to keep that dialogue. Our U.S. interest must be represented, and we are in many ways leading key initiatives based on our suggestions, and it would be more than uncomfortable to not be there to put forth the U.S. position. So, we're continuing to do that, but it's, again, at a limited crew.

Some of our user outreach, some of the more public things we're trying to do overseas to, again, expand on outreach activities, are going to be impacted a little bit more, because of the travel, the prioritization that we'll have to do. We won't be able to do the extent of that outreach, either here or internationally. So, again our prioritization would be to attend the working

group sessions where we have to work on international things.

MR. FOREMAN: Okay, thank you, Bruce. Marylee, do you have any follow-up questions?

MS. JENKINS: No, not at the moment. He covered what I wanted to cover.

MR. FOREMAN: Then Christal Sheppard.

MS. SHEPPARD: Thank you. I was going to follow up on some things that Marylee said. I agree that this work is very important. It's very important to the user groups, as you can tell from Global Dossier, all the things that the PTO's doing, the Hague PCT working groups. But those things are all procedural, and the things that I'm really concerned about, about the budgetary impacts, are the substantive things.

Procedural is important. It increases efficiency, and international activity is obviously important to all users. However, the conversations that are taking place right now, substantively, on what international IP law should look like, we really need the full support of the United States PTO, the technical people, the attorneys, everyone involved, to make sure

that 10 and 30 years down the line, we're not paying for having to cut back on travel or U.S. participation. Conversations now that are going to affect us later.

I understand that the CPC is going on right now, and conversations are taking place there. The PCT working group is upcoming, the WIPO VIP -- visually impaired persons -- is going on right now. And all of those, if not directly involving patents, could have an impact on patents.

So, I'm not sure if you can answer this direct question, you probably can't. You're still sending people to these conferences, but previously to now you were sending skeleton crews. Are you still sending individuals? Do you feel like the United States is being shortchanged or undercut by the inability to travel?

MR. POWELL: Hi, I'm Mark Powell here to answer that. We've had to severely curtail the amount of travel to conferences. We are having people speaking at some of the very most important ones. But you touched on substantive

law patent -- substantive law harmonization, for example. Prior to our budget crunch, and over the last year or so, we had been doing a significant amount of outreach on harmonization, particularly in Europe on the subject of the grace period. This is not outreach to other offices. This is outreach to that user community, which also happens to be a large customer of ours, not just the USPTO, they're our customers as well.

Knowing that, if there's going to be significant progress on something like the grace period or prior user rights, or anything else, this has to come from the users, and we have to get the message out.

So, there is concern that by not being able to continue to hammer this message, or get their input and so on, that we might lose momentum. And having passed AIA and so on, we really have some momentum going and we're hoping very much not to lose it. Thank you.

MS. JENKINS: I'm waving at you, Louis. Can you see me?

MR. FOREMAN: Okay. Clinton Hallman has a question. Clinton.

MR. HALLMAN: Can you hear me now?

MR. FOREMAN: Yes, we can hear you, Clinton.

MR. HALLMAN: I had one quick question about the presentation that was just completed, regarding, I guess, some harmonization or alignment that's going to be reviewed for the way the patent searches are done. I was just very curious as to whether or not the speaker had any thoughts about how a search drive engine was going to be documented from country to country, so that to the extent we want to take a look at the robustness of the search, we would understand how -- somebody's going to explain to us how the search was done.

MR. POWELL: Mark Powell again. I have a couple of remarks, and Charlie may chime in as well. This is a topic we've been discussing with other patent offices for years. As you know, in the USPTO we have always recorded our searches in detail. We believe that offices should record something. All right, it won't do a lot of good for our examiners or our public, for example, to actually see the search syntax of the

JPO search tool.

It would be helpful to know basis things, for example, where classes and subclasses were searched, what databases were searched, and possibly what keywords were used. So, we continue to press upon other offices to at least provide that much. And different offices have different reasons for not providing these, some internal, some policy guided, but we continue to press on that. And I'll turn it over to Charlie to --

MR. PEARSON: Just very briefly, in the PCT we did ask different offices to provide samples of their search strategy, what they would record and it was quite helpful. Some of them we looked at and we didn't understand what this was, or, in fact, there was a couple of them that had some good ideas. I think Australia had a couple good ideas.

So, right now we're looking at recording, you know, however you do it in your national office. Put it there, we can use that. And I think there's going to be further discussions on whether or not there can be maybe

best practices developed or even more of a standard format. Thank you.

MR. FOREMAN: Okay, thank you, Charles. And now we've got a question from Peter Thurlow.

MR. THURLOW: This is Peter Thurlow. Thank you very much for your presentations. It was very helpful.

I guess I have more of a comment. I just want to actually thank the Patent Office, the Office of External Affairs, and, of course, what the PCT branches have been doing for years. I think one of the best-kept secrets -- I kind of echo Marylee's earlier comments where the future of, I guess, our practice is so global in nature, that I don't think the patent community really fully understands or appreciates all the work that the PTO does internationally. So, as one of the many good things that the PTO does, to the extent you can continue to publicize your efforts in that area, would be very helpful. I can tell you that going back two years ago, we asked for help on some touchy issues in China, some companies over there, IP concerns over there, and

the PTO Director Kappos, in particular, was very helpful. Terry Rea and Mark Cohen had just carried on and had been very helpful. And the fact that it started with the PTO doing the introductions as part of the IP5 meetings, now we have (inaudible) coming to New York for meetings before the IP5 meetings with private practitioners. We also have the head of the Korean patent office coming to New York on June 7th to speak with private practitioners. So, I think what started with the government is now expanding, and the more and more that we do that, I think the better off that the global IP policies will be.

MR. FOREMAN: Thank you, Peter. And we have one last comment before we wrap this up from Marylee Jenkins.

MS. JENKINS: Actually, just a request. I think it would be helpful, based upon Mark's earlier comment, that we do maybe next time a harmonization presentation, so even if we're not sort of doing as well as we would like, I mean, this is certainly a forum where we can send the message out and get it out more to the user

community. I think it's really important. So, if that's okay?

MR. POWELL: I think we certainly could do that. And things are going on. There's a lot of cooperation among offices and the IP5 and the so-called Terganzee Group. We could certainly give you an update. In fact, we had -- at the IP 5 meeting coming up, we're trying to resolve what specific activities we're going to be doing in that group. So, yes.

MS. JENKINS: Thank you.

MR. FOREMAN: Wonderful. Well, I thought given the technology and the constraints that we were facing, this meeting has gone very well, better than I think a lot of us expected, so I want to thank everyone who participated this afternoon. But every good meeting needs a great closer, and so we're very fortunate to have the Commissioner for Patents, Peggy Focarino, to share with us some closing remarks. Unfortunately, I had planned on congratulating her on her award, but I got beat to the punch. I was even going to bring you a big bag of gummy bears, but at the impact of sequester, so we'll

have to wait until our next time together. But I'd like to turn the floor over to Peggy Focarino, Commissioner for Patents.

MS. FOCARINO: Okay, thank you, Louis. And good afternoon to everyone. And appreciate the congrats, again. And as Terry pointed out, last week was Public Service Recognition Week, and I want to add my thanks to all of the PPAC members in the room for being public servants, as well as everyone in the patent business unit, and particularly Jennifer Lo, who you can't see right now. She's over in the corner, but she has put in a tremendous amount of effort. I think Louis pointed out how well the session worked today and Jennifer Lo really was the lead in this. And then we have some IT support people in the room, too. So, it worked out very well and it's certainly a good option for future meetings. We do want to get together in person frequently, but this is a great alternative given the current budget situation.

One thing I should add about the whole award, the Sammie finalist award, you know, everyone of you knows that it really takes a team

effort to make progress. And we had some great partners, I had some great partners both here in the room, Robert and his team, his POPA team, my senior leadership team in patents. So, it's really a team effort, and I think many of you know I talk about this almost every time I get the chance, but the USPTO is in the top five of the best places to work in the federal government, and there's a number of reasons for that, but one of the main reasons is because employees here are very engaged and they have a high level of commitment to our mission. And for those of you in the public that are tuning in, that's exactly the kind of workforce you want, when we are facing tough budget times. People here are willing to roll up their sleeves. They're willing to go the extra mile, and we certainly will do whatever we can do to mitigate the impacts of our current financial situation, but having that level of commitment is exactly what you want in your government public servants. So, I just wanted to mention that.

The discussions today were very informative, collaborative, great exchange of

ideas, and we really appreciate your feedback and suggestions. And I hope you know that we continue to want to maintain a level of transparency and collaboration, and that, I think, really came through today.

So, I think that needs to be and continue to be the focus of the USPTO and certainly the patent's business unit. We want to continue that theme, and one of the things that displays it, I think, is the patent's dashboard. And I know, certainly through the efforts of PPAC and our public commenters on what's on the dashboard, we continue to refine that. That's a great example of transparency in open government, and we continue to want your feedback and want metrics we can display there.

I think Drew Hirshfeld mentioned earlier, now prominently displayed on our website is the memoranda to the examining corps, and particular for starters, the CLS bank decision, and I think you will see that replaced very soon with the Myriad decision. So, I'm sure you'll all be looking for that. But we intend to share all of our materials with the public and

practitioners. We know it's really important, and especially our training materials. So, hopefully, you can find them easily on our website now.

One of the other things I want to mention is a thing that we're calling E-Stats, which is examiner's statistics. It's a little different than the production reports that examiners typically get, because what it does is really give examiners a view into their own statistics, alongside data from his or her art unit, and also the TC. So it really allows the examiner to see how their statistics looks relative to their counterparts. And in our current transparent environment, I think this is really something that we need to do, and I think many of you know that there is several external entities that make information available to practitioners. For example, prosecution tendencies of particular examiners. So, given that, certainly and our information is more accurate. We're starting to provide examiners with that data, and I think that will be very useful for examiners.

You mentioned a lot of initiatives today, so as we wrap up the meeting, I just wanted to give you a few stats on some of them. One of them was the First Action Interview Pilot Program, and that's a great program. The number of participants could be higher. I think it's just under 4,000. I know we were discussing the interview practice, and an interview is held in this pilot program. And I should mention the first action allowance rate for these pilot participant applications is 30 percent compared to 11 percent for a non-first-action interview application. So, certainly something to take note of. And I continue to have dialogue with Robert and his team about making this pilot program permanent. So, Robert will be talking again.

Track One, Jim Dwyer touched on Track One earlier today. Just a couple of stats on that: From petition grant to first action it's 1.9 months as compared to a non-Track- One application, first action pendency, is currently 18.7 months. So, a big difference there. And then for Track One petition grant to final

disposition is 5.8 months contrasted with traditional total pendency, which is currently 30.6 months. So, this is a great choice for applicants needing quicker disposition of their applications.

The AFCP, I know Andy mentioned this, the After Final Consideration Pilot. We recently refined that pilot program to have in place in their mandatory interview when an applicant would opt in to that program, and I think that with these modifications, we'll increase the effectiveness of the program, and, of course, the goal is to help reduce the need to file an RCE for those applicants that do not wish to do that.

So, I want to emphasize certainly my commitment to creating more opportunities for feedback by our stakeholder community and continuing to work together with PPAC to encourage public participation in collaboration because we know that this is really the key to being more efficient and more effective. And given our current budgetary challenges and fiscal environment, we all need to be very, very mindful

of that and to look at that more critically and to look at ourselves more critically.

So, thank you again for your input today, and we look forward to your thoughts as we move forward and through the second half of the year. And now I'll turn it back to Louis.

MR. FOREMAN: Great, thank you again, Peggy. And I'd like to open up the floor for any comments or questions for the Commissioner. Peter Thurlow, do you have a question?

MR. THURLOW: No, I enjoyed all the information we got today, and I thought it was a great -- a lot of helpful information. And I thank everyone at the PTO, and Jennifer and everyone else. Thank you very much.

MR. FOREMAN: Well, I want to -- if there aren't any other questions or comments, I'd like to thank all of today's presenters, the participants, and certainly the general public who called in for this. This was a real experiment that I think went off better than expected, but, at the same time, we hope to be back in person for our next quarterly PPAC meeting which will be held on August 15th. At this point,

I also want to extend a thank you to Jennifer Lo and all of the technical staff at the USPTO. We could not have pulled this off without all of the hard work that went behind the scenes to get this to happen. And if we don't have any other questions or comments, I would like to go ahead and adjourn this meeting. Anyone else?

MS. JENKINS: Second.

MR. FOREMAN: Then this meeting is adjourned. Thank you very much and have a wonderful afternoon.

(Whereupon, at 3:12 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: September 30, 2013

Notary Public Number 256314