

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING
QUARTERLY MEETING

Alexandria, Virginia

Thursday, November 18, 2021

1 PARTICIPANTS:

2 Patent Public Advisory Committee (PPAC) Members:

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4 STEVEN CALTRIDER, Vice Chair

5 TRACY-GENE G. DURKIN

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8 DAN BROWN

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12 Union Representatives:

13 KATHLEEN DUDA

14 CATHERINE FAINT

15 VERNON AKO TOWLER

16 United States Patent and Trademark Office (USPTO):

17 DREW HIRSHFELD, Performing Functions of the
18 Undersecretary of Commerce for Intellectual
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20 Governmental Affairs and Oversight

21 ROBERT BAHR, Deputy Commissioner for Patents

22 SCOTT BOALICK, Chief Judge, Patent and Trial
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2 JACKIE BONILLA, Deputy Chief Judge, Patent Trial
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4 Director for International Affairs

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18 BOB SIMMS, Director of Infrastructure
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2 DON WATSON, Chief Information Security Officer

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P R O C E E D I N G S

(11:05 a.m.)

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3 MR. HIRSHFELD: (in progress) the
4 leaders, the Business Unit, head leaders of the
5 USPTO for their excellent work. I will tell you
6 that they are the ones who keep this office
7 functioning very well. They are an absolutely
8 wonderful group. You'll hear from many of them
9 today. But I will tell you, they are the ones
10 that, behind the scenes, are keeping this agency
11 moving forward and have made this time, for me,
12 exciting, enjoyable, and I really believe they've
13 done a great job helping to move the office
14 forward, as we await political leadership.

15 So, on that note, I have great news. I
16 think everybody knows this, right, but it's still
17 great news. But we do have a nominee for the
18 political leadership position, that is Kathi
19 Vidal. I am very excited to have her go through
20 the confirmation process and join USPTO. She has
21 a wealth of experience coming from Winston &
22 Strawn Law Firm. I will say President Biden has

1 -- when he nominated her, said she is one of the
2 leading IP lawyers in the country, and nationally
3 recognized for leading high profile patent
4 disputes. She has a wonderful background and
5 experience to be the leader of the PTO, and,
6 again, I'm looking forward to her confirmation
7 hearing.

8 I'm going to spend most of my remarks
9 looking back a little bit, at Fiscal Year '21 and
10 then giving some highlights of some upcoming
11 events. But let me also just share, before I look
12 back at Fiscal Year '21, something I know you'll
13 hear more of, in a little while, in the program.
14 But, I also wanted to say that we are very
15 fortunate that Secretary Raimondo has announced
16 her Chairpersonship of our Council for Inclusive
17 Innovation. This is our rebranded National
18 Council for expanding American Innovation. We're
19 thrilled to have her leadership be in the
20 forefront for this Council for Inclusive
21 Innovation. And this is, of course, our
22 public-private partnership working on a national

1 strategy for expanding innovation, particularly to
2 underrepresented groups. So, very happy to have
3 Secretary Raimondo's leadership there. You will
4 hear more about that, in the program, as we
5 continue forward.

6 Let me now turn to some highlights from
7 Fiscal Year '21. And I'll start with our status
8 at the office, during the pandemic. We have
9 spent, as you all know, the entire year, still
10 remaining in maximum telework capacity. I will
11 tell you, for the office, we are entirely
12 functional. However, so, we -- as you all know,
13 we have a wonderful telework program, prior to the
14 pandemic. About 60 percent of our employees were
15 home full-time anyway. So, for us, that we were
16 used to remote working, we did have to transition,
17 of course, some of the agency, but, for the whole
18 year, we've been in that position. We're
19 obviously watching transmission rates and seeing
20 when they're saying return back to what I will
21 call the new normal. We're not quite there yet.
22 But I think we are, hopefully beginning to move in

1 the right direction.

2 I wanted to share some words, next, on
3 quality, and pendency, and filings, and revenues.
4 So, let me start with quality. Quality is always
5 job one and most important to USPTO. I know I've
6 shared this in a previous meeting, but our most
7 recent customer perception survey results of
8 patent quality, which was the third quarter of
9 2021, we had the highest satisfaction with overall
10 quality, since the start of the surveys. I do
11 feel very good about that. If you were to see our
12 chart plotting out the survey, over the years, you
13 will see a continued increase of those who are
14 rating our quality as good or excellent and a
15 continued decrease of those who are rating it
16 poor, very poor. And that dates way back, to at
17 least 2015, and earlier. So, I think, we've made
18 really excellent progress there.

19 Our measures, that we do internally, of
20 patent quality, we look at statutory compliance.
21 So, we look at all of the patent statutes, and we
22 have our Office of Patent Quality Assurance do

1 reviews, with the four statues. I will just say,
2 at the high level, we made some of our internal
3 goals and didn't make some of our other goals, but
4 that being said, each of the compliance measures,
5 in all four of the statues, improved. So, we got
6 better in Fiscal Year '21, as compared to '20,
7 across the board. Again, some of our goals, we
8 fell a little bit short of, but, again,
9 improvement and movement in the right direction.

10 As far as patent pendency's go, I have
11 said many times that we're really trying to shift
12 our focus to patent term adjustment time frames
13 and not have such a focus on first action pendency
14 and total pendency. The patent term adjustment is
15 a better measure. It's better for the big
16 picture. It's better for certainty, for all of
17 you. And we've made progress there, I think,
18 you'll hear more later in the program with that.
19 We ended the fiscal year with 83 percent of our
20 total compliance for mailed actions, and 86
21 percent compliance for the remaining inventory.
22 Our goal is to get to 90 percent for both of

1 those.

2 That's our long-term goal. We are
3 moving in the right direction. We basically made
4 our internal goal, with regard to the compliance
5 for remaining inventory. And we're just short of
6 our internal goal, for the mailed actions, but,
7 again, those numbers are like quality, are moving
8 in the right direction, even the same.

9 As far as filings go, it's been a really
10 interesting year with filings, given the
11 uncertainty of the pandemic. I know we started
12 when the pandemic was new. We started to look at
13 other historical events, and to see how they
14 impacted filings because that, of course, is a
15 driver of everything we do, at USPTO, including
16 our current and future revenues. So, we were
17 actually forecasting about a four percent decline
18 at the beginning of the year, and where we ended
19 up the fiscal year was just about flat. So, we
20 saw a very, very slight decline in new utility
21 filings, of 0.1 percent.

22 It is only the second time, quite

1 frankly, in the last 20 plus years, where there
2 was a decline. Back in 2009, we saw almost a nine
3 percent decline, during the financial crisis, and
4 so, here, I think, it's actually very positive
5 news for the IP system, that we ended up at almost
6 flat again, a 0.1 percent decline. So, the
7 numbers of filing rates were better than expected,
8 and I think that's good news for all of us.

9 I will say, on the design front, we saw
10 significant increases in design patent
11 applications. We saw a 17.6 percent increase.
12 Designs, by the way, usually follow trademarks
13 more than utility applications. For those of you
14 curious, even though this is a PPAC, on the
15 trademarks side, we saw a 30 percent increase on
16 filings. So, it's not so surprising that we saw,
17 with design filings, a 17.6 percent increase.
18 That just -- I know it's on the side here, but the
19 trademark increase, of course, is due to the
20 online sales and more registrations that go along
21 with the online sales.

22 With revenues, and I know you'll hear

1 more from Jay Hoffman, later on. I will just say,
2 at the high level, even though this was one of the
3 biggest stressors coming into the year of a
4 pandemic and not knowing what's ahead, we did
5 finish the fiscal year with the highest operating
6 reserves that we've had on record. So,
7 financially, the agency is in a very good, very
8 good position. So, that's an update on some of
9 the larger key measures.

10 I wanted to mention a few more topics
11 for '21. Obviously, in fiscal year '21, we
12 implemented the Post Arthrex Director Review
13 Process. There have been just over 50 petitions
14 that have been decided. There -- I know the
15 public is aware of one grant to the petitions, and
16 there will be second grant, that I believe is
17 being mailed today, possibly tomorrow. But that
18 is a quick update there.

19 In addition, we still have the POP cases
20 moving forward, the Presidential Opinion Panel
21 (POP), cases moving forward. There has been one
22 recent grant to that. Interestingly enough, I

1 will say that after the Arthrex Case and the
2 Director Review Process was put into place, we got
3 asked a lot, is POP still viable? Should POP move
4 forward? I think those are great questions. For
5 now, we certainly continue to have POP, but I will
6 tell you that the number of POP requests,
7 increased after Arthrex. I thought it would be
8 the opposite, but it certainly increased, but,
9 again, one recent grant to the POP Review Request.

10 The last topic I want to mention, for
11 2021, and I -- believe me, I know I'm not doing
12 the justice to all the initiatives that we have
13 going on, but I did want to mention the PTAB's
14 LEAP Program. That's the Legal Experience and
15 Advancement Program. I've been fortunate to be
16 able to kick that off for PTAB. Although I take
17 no credit for this program, it's been in place.
18 It's a wonderful program, and it gives oral
19 argument training and stand-up court room
20 opportunities for young lawyers. And I know that
21 at the end of October, PTAB has offered four mock
22 sessions, with more than 120 lawyers

1 participating. It's absolutely a wonderful
2 program, for those of you who are interested. You
3 should look into that, if you qualify and I'm
4 going to switch to a look forward here. Well, I
5 give you some more information in a minute, about
6 the LEAP Program.

7 So, that's a whirlwind summary of 2021.
8 Let me just mention some topics moving forward in
9 the short-term. Obviously, we have Kathi Vidal's
10 nomination, and she will have a lot of addition to
11 future events. But let me just mention some
12 things going forward. Let me start with quality
13 metrics. So, one thing that I would like to do,
14 and I know we've been talking about it internally,
15 is making many more of our quality metrics more
16 accessible to the public, so that you can see and
17 evaluate them. So, we're in the process of
18 putting more of the quality metrics and some of
19 the data behind that up on our website, which
20 should hopefully occur in a couple weeks or so, so
21 that you can all see that.

22 I would really love for the public,

1 quite frankly, to look at our Master Review Form,
2 which is the form we've been using for years. Of
3 course, we update it as needed, but it's the form
4 that we use for reviewing office actions. It is
5 very extensive. It has 20 sections, with up to
6 330 questions. I say up to because it does have
7 330 questions, but you only answer the ones for
8 the sections that apply to the office action
9 you're going -- but you're looking at, but you'll
10 see that this is a very extensive form. We'd love
11 to have a more robust public discussion about
12 these reviews. So, we are putting that
13 information out there, so everyone can see. By
14 the way, that form is used for all the 12,000
15 reviews that the Office of Patent Quality does
16 annually. So, I think, that's some good
17 information that the public will appreciate.

18 I also wanted to mention some next
19 steps, with regard to DOCX. So, you're all
20 probably all familiar with our initial proposal or
21 plan to move forward on January 1st, with a
22 non-DOCX filing fee of \$400. So, in other words,

1 if people did not submit their applications in
2 DOCX, we would have the fee. Throughout the year,
3 there's been an extensive back and forth public
4 discussion about this, and we have decided to
5 delay, for one year, the implementation of that
6 non-DOCX filing fee. I will just say, if -- I
7 would be happy if we -- for those of you who think
8 this is a moneymaking opportunity, I'd be happy to
9 make zero dollars from this because the whole
10 idea, is to have people transition to DOCX.

11 But I think there has been enough back
12 and forth and enough stress over this transition,
13 that what I would like to see is one where we're
14 going to delay the start of the non- DOCX filing
15 fee, and we're going to take a second step, and
16 that is to create a very robust plan for having
17 beta testers and a continued ramp up of usage of
18 the DOCX. To be totally transparent here, the
19 complaint that I hear mostly from folks is that
20 while they overall like the new systems that PTO
21 has, I think there are some level of stress about
22 renderings in DOCX. I don't want to be too weedy

1 in my opening remarks here, but the fear is of
2 that -- if there is an unknown problem in this new
3 system, of how a rendering into DOCX might
4 potentially change some application, and I don't
5 think this was going to happen a lot, it's
6 probably -- hopefully never going to happen, but I
7 think fear is, since this is new, we needed to put
8 more safeguards into place for applicants.

9 So, what we will do for this beta
10 testing program is have a way to safeguard you, as
11 we're doing this. This will not be in the notice,
12 by the way, this will be subsequent to this, but
13 I'm just giving you some background. What we will
14 mostly likely do is accept a PDF filing, as well.
15 The PDF filing is, hopefully, never going to be
16 used, but it's there to show what information was
17 filed, if needed to go back, if there is a
18 rendering issue. Again, I hope there is never a
19 rendering issue. We're making our system so
20 there's not a rendering issue, but we also
21 recognize we need to give everyone the confidence
22 in the system.

1 So, we'll take the year to have this
2 intense beta testing. Hopefully, it ramps up over
3 time. I've asked Andy Faile to take the lead on
4 planning next steps with regard to this pilot
5 program, or this beta testing program, and I think
6 this is a good step for all of us. This program
7 will hopefully give all of you -- I'm talking way
8 too much in DOCX, by the way. But, anyway, this
9 program will give all of you the confidence in the
10 system to be able to use it. It will highlight,
11 for us, if there is any concerns that we need to
12 address. It will let us do much more extensive
13 testing. And, again, we will make sure that
14 anybody who enters this pilot program will be
15 safeguarded. So, this is my -- also my way to
16 ask, please join our pilot program, when we come
17 out with it because we really need to move this
18 system forward.

19 Just a few other topics that I wanted to
20 mention. By the way, you should see a DOCX
21 Federal Register Notice, delaying the non-DOCX
22 fee, early next week. It might even come out on

1 Monday, but that has already been sent to the
2 Federal Register for publication, and, again, it
3 doesn't include information on the beta testing
4 pilot. That will be subsequent.

5 So, a few other topics I wanted to
6 mention. We are, on both on Patents and
7 Trademarks, also making some IT advancements, with
8 regard to the issuance of patents and trademark
9 registrations, and in the coming weeks, likely
10 after the Thanksgiving time, you'll start to see
11 some information from us, about the e-issuance,
12 the electronic issuance of both patents and
13 trademarks. I think that's a wonderful step.
14 Applicants will get their patents earlier than in
15 the past. It will help our pendency numbers. It
16 just makes a lot of sense. I've had many people
17 reach out to me and suggest that we take this
18 step, and so, we will be doing that, as well. By
19 the way, anybody who still wants the paper
20 issuance, can get one. We'll have a small fee of
21 \$25 to get paper, but we are going to come out
22 with some rule change on the patent side and get

1 some comments on that, same on the trademark side.
2 It's not, for technical reasons, it's not actually
3 a rule change on trademarks. But we will come out
4 with a request for comments there to be able to
5 hear from you all on this. But it is in the plans
6 to move forward with that.

7 Two other quick comments, I wanted to
8 mention, in the PTAB Front. This is sort of a
9 look back, and a look forward. I'll say it's a
10 look back because it was a September announcement.
11 But most of the planning is still moving forward.
12 But the PTAB has been working with stakeholders to
13 establish a pro bono program, first for ex parte
14 appeals, and hopefully in time for AIA Trial
15 Proceedings. I think this is a wonderful step.
16 The PTAB Bar Association will serve as the
17 National Clearing House for the program, matching
18 those in need of counsel, with volunteer
19 attorneys. So, much more information will be
20 coming on that soon.

21 And I mentioned the LEAP Program
22 previously, and, again, I think that's a wonderful

1 program, in the coming weeks, I don't know --
2 exactly know the timing, but we are in the process
3 of removing the condition that attorneys have
4 seven or fewer years of experience, as a licensed
5 attorney or agent, to be able to qualify for that
6 program. We're removing that restriction because
7 there are some instances where people have been
8 licensed or registered for more than the seven
9 years, but they still don't have the argument
10 experience. So, we think this would be a very
11 valuable program for them. It could be parents
12 with time away from practice. It could be members
13 of the Reserve or active duty. There could be
14 many factors that lead in, but we'd like to be
15 able to open that up to anyone who is thinking
16 that practice would be good for them. So, I think
17 it's a wonderful step that the PTAB is taking.

18 So, I know that was a whirlwind look
19 back and a look forward. It's been an exciting
20 time at PTO, and there is much more going on than
21 I can do justice here, but, again, thank you for
22 hearing me on the look back at fiscal year '21 and

1 a look forward to some of the items. I did -- I'm
2 going to wrap up, but I just also wanted to
3 mention, as Julie said, that we have a sad event,
4 and that this isn't moving on, for some of our
5 PPAC Members.

6 So, as Julie mentioned, she will be
7 moving on. Her time has expired. We also wanted
8 to thank Jennifer Camacho and Barney Cassidy for
9 their work. So, thank you to all of you. I see
10 that the tech is a step ahead of me here. It's
11 great. We have the certificate of appreciation up
12 on the screen, so you can all see that. So, we
13 will be sending out those to each of you. I wish
14 we were in person, for this part, to be able to
15 really give you the thank you, to the three of
16 you, that, really, you deserve. But up on the
17 screen, you'll see the certificates of
18 appreciation. I will just say, from my heart to
19 all of you, thank you for all of your great work
20 and the great teaming with PTO. I mentioned this
21 yesterday, to the PPAC Members, that we really
22 have worked very well together, and it's been a

1 great teaming effort. So, I'm grateful for all of
2 you.

3 I did also -- if we can go back to the
4 bigger picture screen, for a second. I wanted to
5 show one other item here, that's easier if you can
6 see me. And I'm going to probably have to slide
7 my chair off camera for a second, but I'm not
8 going anywhere. Well, I guess you can still see
9 me. But, Julie, this is something we wanted to
10 give for you as Chair, and I hope you can see it
11 well, but this is a USPTO Flag for you. You can't
12 see it on the side, but there's a, of course, a
13 nice label signifying that this flag was flown at
14 the USPTO in recognition of your service.

15 MS. MAR-SPINOLA: Thank you so much.

16 MR. HIRSHFELD: So, thank you very much.

17 MS. MAR-SPINOLA: Thank you. Thank you
18 so much. I will have that in a very special place
19 in my office. Thank you.

20 MR. HIRSHFELD: You're very welcome.
21 So, again, thank you to all the PPAC Members, and,
22 with that, I will conclude my remarks, and I'm

1 looking forward to a great discussion for the rest
2 of the session.

3 MS. MAR-SPINOLA: Thank you so much,
4 Drew. I appreciate that, and thank you, everyone,
5 for the flag. It's beautiful. I'm excited to
6 have it. So, thank you very much.

7 I neglected on not introducing all the
8 PPAC Members, this time around. So, what I'm
9 going to ask, to keep on schedule, is that for
10 each chair to identify themselves, when they make
11 their introductions to their own subcommittee
12 presentations, if that's okay? So, thank you
13 again.

14 And so, let's start with the Innovation
15 Subcommittee. There's a lot of great things going
16 on, and we have a new panelist with us, and we're
17 hoping that Cara Duckworth, who is the Acting
18 Chief Communications Officer at the Office, will
19 continue to participate in our PPAC Meetings to
20 highlight -- to help highlight, along with the
21 other programs that the Office has put on, any of
22 the programs that are inclusive and diverse for

1 promoting the diversity of our inventors. So,
2 thank you. Let me turn this over to Jennifer
3 Camacho.

4 MS. CAMACHO: Thank you, Julie. As you
5 just mentioned, I'm Jennifer Camacho, Chair of
6 Innovation Subcommittee, and this is my last
7 meeting. I want to thank the PTO, my fellow PPAC
8 Members, and truly the public, as well, for
9 engaging with us on this discussion, this really
10 important discussion.

11 Turning then to our Innovation Expansion
12 Subcommittee. As we've talked about before,
13 America's longstanding prosperity and global
14 leadership in innovation really depends on
15 leveling the playing field for all Americans to
16 innovate and reap the rewards through
17 entrepreneurship and commercialization. And as
18 we've discussed before, as well, in Fiscal Year
19 2020, the USPTO laid the groundwork for a focused
20 initiative directed towards inclusiveness and
21 innovation. And, you know, for example, we
22 established what is now known as the Council for

1 Inclusive Innovation, that's CI Squared, a catchy
2 shorthand there.

3 Chaired by Secretary Raimondo, the CI
4 Squared brings together prospects of U.S.
5 Innovation Ecosystem, including leaders and high
6 profile and high-level officials, from industry,
7 business, academia, not for profits venture
8 capital, you know, obviously venture funding is a
9 key here, and the U.S. Government, as well as
10 independent inventors, and those are -- voices are
11 very, very important on this council. The
12 objectives for CI Squared include developing a
13 national strategy for expanding American
14 innovation, or the national strategy, by fostering
15 innovation, competitiveness, and economic growth,
16 and this will be done through promoting and
17 increasing the participation of underrepresented
18 groups, as inventors, patentees, entrepreneurs,
19 and innovation thought leaders.

20 A second objective CI Squared is to
21 develop a long- term comprehensive plan of action
22 for continuing to build our innovation ecosystem,

1 in areas that are key to the next technological
2 revolution. That's a really fun area to think
3 about. You know, where are we going to go next?
4 And how are we going to continue to build our
5 group, so that -- build the ecosystem, so that we
6 are in front of it, so that we are not chasing it,
7 but, in fact, we are leading the next
8 technological revolution.

9 Now, in this year, in Fiscal Year '21,
10 the PTO, together with the CI Squared, focused on
11 developing the national strategy, and Deputy
12 Commissioner for Patents, Valencia Martin Wallace,
13 is here to provide a brief update on the national
14 strategy. It's an effort that's still in
15 progress, but I'll give you a little bit of
16 context, as announced in the National Federation
17 Registry at the beginning of this fiscal year. We
18 anticipate the national strategy will be organized
19 by a broad framework that considers the entire
20 life journey of an individual and all the
21 opportunities along the way to cultivate an
22 interest and expertise in innovation.

1 We can't just start at the end of the
2 show, we have to start at the beginning, but then,
3 you know, that includes STEM at the very early
4 ages and goes all the way through the life journey
5 of a potential innovator. This is important. So,
6 with that in mind, it's not surprising that one of
7 the key elements of this framework will be focused
8 on creating innovators, which addresses expanding
9 access to foundational experiences and educational
10 opportunities for students and individuals of all
11 ages and backgrounds.

12 Another element will be focused on
13 practicing innovation, which is directed to the
14 empowerment of all innovative individuals, by
15 ensuring that they have the adequate resources and
16 supportive environments to turn their ideas into
17 protectable inventions. The third element will be
18 focused on realizing this, realizing innovation,
19 which addresses successful commercialization of an
20 individual's innovative products and services.

21 And the fourth element will be focused
22 on measuring and monitoring, of course, which

1 enables organizations to measure their own
2 progress, of fostering equal access to innovation
3 along each stage of the pipeline. That's critical
4 because you can't do it alone. You know, it's
5 part of -- we're all part of a bigger ecosystem,
6 and a lot of that depends on organizations, and
7 corporations, and academia. This is an important
8 aspect. So, we're all very eager to see the
9 national strategy, and the PPAC, of course,
10 encourages the CI Squared to continue to move with
11 this effort, forward, with urgency, as it has been
12 all along, and we're really looking forward to
13 seeing this.

14 In the meantime, we also encourage the
15 PTO to communicate frequently with the public
16 stakeholders on the status and projected timeline
17 for the release and implementation of the national
18 strategy. We're not the only ones who are eager
19 to see it. A lot of people out there are.
20 Another aspect that I would love to talk about,
21 and as Julie has -- had alluded to, we have
22 additional voice at the table today, and we're

1 really excited about expanding the discussion on
2 innovation expansion, into what else the Patent
3 Office is also doing.

4 So, throughout Fiscal Year 2021, the PTO
5 continued to promote initiatives, and
6 inclusiveness, and innovation through its
7 expansive Public Outreach Programming, with
8 greater attendance even enabled with the remote
9 access tools. So, that, you know, there are very,
10 very few silver linings to -- we've all been
11 through in the last year and a half. But getting
12 everybody access through remote tools has really
13 been, I think, a good -- one of the silver linings
14 that is there, and that we're able to reach out to
15 broader audience, and have them be able to access
16 the important information and tools that are
17 available through the Patent Office.

18 The Office of Chief Communications
19 Officer, OCCO, is responsible for a significant
20 portion of the agency's outreach efforts, through
21 the Office of Innovation Outreach, the Office of
22 Education, and National Outreach Partnership

1 Division. In fact, as Julie mentioned, the Acting
2 Commissioner, or I'm sorry, Acting Communication
3 Officer, Cara Duckworth, has joined us today, and
4 will be with the group moving forward, to share
5 some highlights from this year's outreach efforts.
6 So, that's very exciting very exciting. It's a
7 fun discussion.

8 We certainly have a long way to go with
9 this initiative. But we congratulate the PTO for
10 the truly meaningful strides that you have made,
11 in Fiscal Year 2021, towards this objective. So,
12 thank you. And with that, I will turn it over to
13 Valencia and Cara to share some highlights with us
14 from this last year.

15 MS. MARTIN WALLACE: Thank you,
16 Jennifer. Before I get started there, I also like
17 to add my warmest and best wishes for all of you,
18 Jennifer, Julie, and Barney, on moving into your
19 next phase of still working and supporting the IP
20 System in the USPTO, as you always have. I can't
21 thank you enough, and in particular, to Julie and
22 Jennifer, where we are with expanding innovation

1 is, in part, due to your creativity, and your
2 ideas, and your reaching out to assist us and
3 support us in gathering the right people together
4 to work with us on moving this forward. It's been
5 invaluable to us, and to me, and your advice and
6 your work with us has just -- it's been amazing.
7 And I know that that's going -- we can rely on you
8 still doing that, beyond PPAC. PPAC was not the
9 reason why you did it, it's because you believe in
10 what we're doing, and I can't thank you enough.

11 So, I will then give a very short
12 update, as Drew and Jennifer mentioned. We are
13 now CI Squared Council, we still have the same
14 council members, except we're happy to say, as
15 Drew and Jennifer mentioned, that Secretary of
16 Commerce Gina Raimondo is now our Chair, and our
17 Vice Chair is Drew Hirshfeld, in his role, that
18 he's currently in. So, our leadership on that
19 council is phenomenal, outstanding, and a lot of
20 energy. So, I love to -- working with them, and
21 talking with both of them about the direction
22 we're going in.

1 We are currently working on the strategy
2 still. We have finalized our first draft, and it
3 is in the review process. The review process is
4 through our agency, as well as through DOC. We
5 are meeting as -- today actually, this afternoon,
6 meeting with our working group, that I've
7 mentioned before, who helped support us in
8 building the strategy. So, our next steps with
9 them are today, in reviewing what we have put
10 together for the strategy and getting their
11 comments. So, I am excited to hear what they have
12 to say today.

13 I'll step back just a minute, and say,
14 when the Secretary announced that she would chair
15 CI Squared, she did it through an event, through
16 the AnitaB Organization, an innovation chat that
17 she had. It was between the Secretary and Safra
18 Catz, the CEO of Oracle, who is a member of our
19 council. It was an exciting discussion between
20 the two of them, two very accomplished women in
21 the innovation field, and sharing their
22 experiences and their vision for what we're doing,

1 as well. So, I would encourage everyone to go
2 onto our web page, where we have that recording,
3 to hear what they had to say.

4 So, we're still very, very excited about
5 the direction that we're going in. We are looking
6 forward to a release of the strategy, early next
7 year. And we are also working, through Drew, and
8 through the Secretary and her staff, on a series
9 of actions that we will be taking underway for --
10 USPTO will be taking underway, under the name of
11 the strategy. We're very excited in our
12 development of those and we will be able to share
13 more information about those actions soon. So,
14 very excited about everything we're doing, and all
15 the work that we've done there.

16 I do want to give just a short update,
17 also, on some work that we've been doing globally.
18 So, one of the things that we're doing to better
19 support our stakeholders, better support
20 inventors, small business owners, in the
21 innovation ecosystem, is to work with offices
22 around the world, as well. And one of the ways

1 that we're doing that is, just this week, we had a
2 global discussion called Women in IP, with several
3 other offices that USPTO hosted, and Drew opened
4 up for us, and spoke very eloquently about the
5 work that we're doing.

6 The discussion was among the offices of
7 New Zealand, Australia, the Hashemite Kingdom of
8 Jordan, Canada, the UK, Mexico, Philippines, South
9 Africa, Namibia, all joined in. Representatives
10 from all of those offices joined in on this
11 discussion. It was a two-day discussion. The
12 first was Tuesday, a public session, that we --
13 you can also go to our web page, in about a week,
14 to see. And the second day was a closed session
15 discussion about how all of our offices can work
16 together, collaborate, to build a better
17 advancement of women in the IP and Innovation
18 Ecosystem. So, it was a really exciting two-day
19 discussion that I will have more information on,
20 as we work together to put actions together there,
21 as well.

22 MS. CAMACHO: Thank you, Valencia. Are

1 there any questions, or I know that we are short
2 on time, so, perhaps, if there no questions, we'll
3 go forward with Cara.

4 MS. DUCKWORTH: Thank you, Jennifer.
5 Hopefully, everyone can hear me. There are a
6 couple slides, but, as Jennifer and Julie
7 mentioned, my name is Cara Duckworth. I am the
8 Acting Chief Communications Officer, here at the
9 USPTO. I think, relative to a lot of folks that
10 you'll hear from today, I'm actually a newbie. I
11 joined in January, and so, I'm getting my PPAC
12 wings today. So, I really appreciate Jennifer and
13 Julie for bringing me into the PPAC conversation.
14 I look forward to continuing to work with you,
15 even beyond PPAC, and I look forward to continuing
16 the dialogue with PPAC. So, thanks again.

17 So, I want to talk a little bit today,
18 as Jennifer mentioned, OCCO, my department, the
19 Office of Chief Communications Officer, we have a
20 unit called our Community Engagement Unit, and
21 this unit does a lot of outreach programming to
22 historically underrepresented, underserved

1 communities and innovators, to really help
2 demystify concepts of intellectual property and in
3 the patent and trademark system. That is very big
4 goal of ours, and we are continuing to do that on
5 a daily basis. So, I'm going to talk a little bit
6 about our out -- enhanced outreach programing and
7 storytelling initiatives, that we conduct here,
8 within the office of the Chief Communications
9 Officers.

10 So, I'm going to go to the next slide,
11 please. So, in Fiscal Year '21, our Office of
12 Innovation Outreach, within the OCCO, we launched
13 four new annual programs, including our
14 Asian-American and Native Hawaiian Pacific
15 Islander Inventors Program, in May, which Julie
16 was gracious enough to moderate both panels, the
17 Proud Innovation Program, in June, corresponding
18 with Pride Month, the Hispanic Innovation and
19 Entrepreneurship Program, in October, and, just
20 two days ago, our Veterans Innovation and
21 Entrepreneurship Program. And so, for all of
22 these programs and everything we do, we want to

1 make sure that its appropriately structured to be
2 able to give folks enough resources, no matter
3 where they are in their journey of innovation.

4 If they're just an inspiring innovator,
5 who has an idea, or if they've already been
6 building upon their business for a while with
7 intellectual property portfolio, and they want to
8 strengthen that, we want to make sure that we're
9 giving value to all of the attendees. And so, our
10 job, obviously, is to inspire attendees. We
11 always structure it in two different panels. We
12 have one panel of inventors, successful inventors
13 and entrepreneurs, from a particular demographic,
14 talking about their story, talking about how they
15 became the inventor that they are, hopefully,
16 giving everyone an example of what it can be to be
17 a successful entrepreneur or inventor.

18 We educate folks about resources, and we
19 promote awareness and establish new and
20 strengthened existing conditions -- connections.
21 Our second panel, as our structure, as I
22 mentioned, includes a lot of our Government Agency

1 Partners, including the Small Business
2 Administration, who have representatives who
3 participated in these panels, talking about the
4 resources that SBA provides. We also, during our
5 Veterans Program, had somebody from the Department
6 of Veterans Affairs, talking about VA Resources
7 for those who want to start businesses, who have
8 already started businesses. Next slide, please.

9 So, during this last fiscal year, we
10 pivoted because we recognize there is a lot of
11 Zoom fatigue out there, and it's really hard to
12 get folks to pay attention, for more than, really,
13 an hour, and sit there and listen to other folks
14 talk. We recognize that happens to all of us, on
15 a daily basis. For our Black Innovators Program,
16 we had two different events that were a little bit
17 shorter than we did last year. One included some
18 three incredible Black women inventors, including
19 April Ericson, Iana Howard, and Arlene Simon.
20 You'll see April Ericson down in the bottom left
21 there. She had a really great virtual background.
22 She works at NASA, and she had a really inspiring

1 message, especially to young girls, that they,
2 too, could become an engineer at NASA, so,
3 obviously, recognizing that kids just can't be
4 what they can't see. She is really a great
5 example. They all were.

6 We had another event that focused on
7 business. And we had the Google Art Director and
8 a Google Doodle Illustrator come on and talk about
9 their work, and especially having to execute, on a
10 daily basis, these really cool historical,
11 storytelling Google doodles, and their
12 inspirational messages to young kids and young
13 girls, as well. And for our Women's
14 Entrepreneurship Symposium, normally, that is a
15 very long, four-to-five-hour program. It was a
16 virtual program in FY '20. So, last year, it was
17 a virtual four-hour program, we recognized the
18 Zoom fatigue was real, and so, we chunked it up,
19 and we did one hour programming's during Women's
20 History Month, in March, and that was during
21 folks' lunch hour.

22 So, from twelve to one, every Wednesday,

1 we had a panel, and they went all the way from
2 just hearing from successful women entrepreneurs,
3 to talking about STEM and education, and reaching
4 young girls with STEM and IP Invention Education.
5 And it was really, really successful. I should
6 mention our Black History Month. In FY '20, when
7 we did the long virtual program, we had a little
8 over 200 attendees. This past year, when we
9 chunked it up, we had over 1000 attendees.

10 And for our Women's Entrepreneurship
11 Symposium, last year, we had a little over 500
12 attendees for our day long program. This past
13 year, because we did chunk it up, recognizing the
14 Zoom fatigue, we had well over 7,000 attendees.
15 So, we were able reach more folks, wherever they
16 are, in their innovation journey. Next slide,
17 please.

18 I also want to talk a little bit about
19 our storytelling, within the Office of the Chief
20 Communications Officer. We have, every month, a
21 series called, Our Journeys of Innovations
22 Stories. And this is, like I said, a monthly

1 series, that comes out on the first of every
2 month. It tells a story of a really game
3 changing, world changing, inventor or
4 entrepreneur. We look at specific demographics.
5 So, Arlene Simon, on the top left there, she is a
6 biomedical engineer. She is an author of the
7 "Abby Invents" children's books. She is an
8 inventor. She invented a blood test that detects
9 when cancer patients have rejected bone marrow
10 transplants. So, she is an incredible example of
11 successful inventor entrepreneur and young.

12 We also highlighted the inventor of
13 salsa, Johnny Pacheco, there in the middle, and
14 Audrey Sherman from 3M, who has over 120 patents
15 in the field of (inaudible) and has a really
16 incredible inspiring story, herself. These are
17 smack on our home page. So, if you visit
18 USPTO.gov, you'll see our Journeys of Innovation
19 Series, and you're able to visit our entire
20 library of them. We've been doing them for quite
21 some time, and they're really a great opportunity
22 for us, whenever folks come to our front door of

1 USPTO.gov, to see examples of inspiring innovators
2 and entrepreneurs who have really great stories.
3 Next slide, please.

4 So, I know we're a little pressed for
5 time, I will try to go through as quickly as
6 possible. But I wanted to talk about our largest
7 partnership with the National Inventors Hall of
8 Fame. We're creating and celebrating innovators.
9 Next slide. So, for those who are familiar with
10 the National Inventors Hall of Fame, you probably
11 know all this already. But I just want to give a
12 little bit of background to those who may not be.

13 NIHF was co-founded in 1973 by the
14 USPTO. They have a little over 160 employees and
15 more than 2,000 philanthropic partners. They are
16 headquartered in North Canton, Ohio. And they
17 have, for folks who have visited USPTO
18 Headquarters, in Alexandria, Virginia, their
19 National Inventors Hall of Fame Museum is located
20 right in our lobby, in our Atrium, in USPTO
21 Headquarters. They have an annual induction for
22 their NIHF inductees in May. This coming Fiscal

1 Year '22 will be at the Anthem, in May.

2 They also conduct some incredible STEM
3 and intellectual property education programs,
4 reaching kids from all ages, Pre-K thru 12,
5 nationwide, reaching over 180,000 children
6 annually, and over 22,000 teachers trained in the
7 field of invention education, so, really helping
8 inspire students and kids to learn how to become
9 inventors. They also administer the Collegiate
10 Inventor's Competition, which is a nationwide
11 graduate and undergraduate contest, featuring some
12 truly incredible college students, who are already
13 changing the world with their ideas. And the
14 ceremony is held annually at the USPTO.
15 Obviously, it's had to be virtual the past couple
16 of years, due to the pandemic. Next slide,
17 please.

18 So, inductees to NIHF must hold a U.S.
19 Patent and significantly contribute to the
20 nation's welfare. There have been over 600
21 inductees. Like I mentioned, the induction is
22 held annually in May. It will be held at the

1 Anthem this year, and they are featured in the
2 NIHF Museum located in USPTO Headquarters in their
3 wall of fame. And NIHF is really -- what they do
4 is really, really, unique. They talk to the NIHF
5 inductees. They get a good sense of, okay, what
6 kind of innovator mindset do you have, and had --
7 have you had to have, in order to become an
8 inventor, a successful inventor and entrepreneur,
9 and they integrate all of what they learned from
10 these interviews into all aspects of their program
11 offerings to teach kids. Next slide, please.

12 So, the class of 2022 inductees include
13 the first Black Women, Dr. Patricia Bath, who
14 invented laserphaco eye cataract surgery, and Dr.
15 Marian Cook, who works at Google, and she invented
16 the voice to text functionality that we all have
17 on our smartphones. This is not an exclusive
18 nomination process. Anyone can nominate to NIHF.
19 Like I mentioned, they have to have a
20 groundbreaking patent, and have a truly inspiring
21 story, and their invention has had to had wide
22 spread use, and be willing to kind of give back to

1 the next generation of inventors and
2 entrepreneurs, and inspire that next generation.
3 Next slide, please.

4 This is just a wide offering of what
5 NIHF does, their programming. So, as I mentioned,
6 from Pre-K, their invention playground, to their
7 K-6 Camp Invention, which I'm going to talk a
8 little bit more about in the next slide, all the
9 way to the Collegiate Inventors Competition in
10 college, and the professional development. Like I
11 mentioned, they talk to all of the NIHF inductees,
12 and say, okay, what kind of concepts do you think
13 we should build into the curriculum? Next slide,
14 please.

15 And they conduct this curriculum
16 annually. They create new ideas, new concepts,
17 every year, to teach to kids. So, it's not the
18 same old, same old, every year. And something
19 really unique about NIHF, which we love, is they
20 provide all resources that are needed. So,
21 whenever they ship boxes of things to classrooms,
22 they include everything. So, recognizing that a

1 lot of underrepresented communities and
2 underrepresented families may not have scissors,
3 may not have screw drivers, laying around the
4 house. They make sure that, included in those
5 boxes, everything is there, so that no one needs
6 to go searching for anything. And like I
7 mentioned, during Camp Invention, in the summer
8 camps, a lot of the NIHF inductees come and do the
9 hands-on interactive lessons with the students,
10 themselves, while teaching them the intellectual
11 property triangulation pro.

12 So, from start -- scratch, let's talk
13 about what kind of thing might be -- need to be
14 invented? What ideas do you have? And then, from
15 there, they talk about, okay, let's build your IP
16 Portfolio. Do you need to register for a
17 Trademark? Do you need to apply for a patent?
18 And so, they are really are teaching some basic
19 concepts of entrepreneurialism and
20 commercialization. Next slide, please.

21 So, at Camp Invention, as I mentioned,
22 the summer camps, over 140,000 children

1 participate annually, and these are located in
2 30,000 school districts, including, I'm sorry, in
3 3,000 school districts, in 50 states, including
4 D.C. and Puerto Rico, each year, 17,000 certified
5 teachers trained in invention education, and over
6 200,000 children in these schools districts,
7 nationwide, are impacted by these teachers that
8 are trained in invention education. And something
9 really, really, important, an important statistic,
10 is 60 to 100,000 underserved students receive
11 scholarships annually, thanks, in large part, to
12 support from the USPTO. Next slide, please.

13 I'm almost done. This is a really
14 important slide because it talks about
15 evaluations. So, NIHF undergoes third party
16 evaluation, every year, to make sure that their
17 program is having the impact that they want it to
18 have. And by all accounts, those third-party
19 evaluations say, yes, actually, your camp
20 invention has a lasting impact. So, just one week
21 of camp improves students' creativity, a STEM
22 interest, teamwork and collaboration, which,

1 obviously, is so critical, problem solving. It
2 improves attendance, GPA and test scores, the
3 following school year, after a kid participates in
4 camp. And teachers take these lessons of
5 invention education and entrepreneurial concepts
6 into their classrooms, every year, to really
7 foster that risk taking mentality and to teach
8 students to fail forward. Next slide.

9 So, moving forward. Let me just talk
10 real quickly about the pivot. So, NIHF, because,
11 obviously, March 2020 hit, the pandemic hit, and
12 they were planning to have Camp Invention in the
13 summer, with kids coming to camp, just a few
14 months, short months, later. What they decided to
15 do was, all right, let's just provide Camp
16 Invention in the form of innovation exploration
17 kits, that they delivered to both virtually and
18 offline to homes. So, about 100,000 Pre-K-12
19 students, in all 50 states, were reached with
20 these at home exploration kits. They also were
21 able to do Camp Invention Connect, which is a
22 virtual, teacher lead camp invention during the

1 summer of 2021.

2 And in 2021, they also did a hybrid.
3 They did in person and hybrid camps, and they
4 reached, because of this sort of remote offering,
5 they reached more than 200,000 students, which is
6 the first time ever. And scholarships were
7 provided to over 144,000 students, again, thanks
8 to a lot of USPTO support. Last slide.

9 So, moving forward, we're obviously
10 looking to build upon our relationship with NIHF
11 and to be able to reach more rural, small
12 population areas, underserved communities, as many
13 as we possibly can reach. So, we will be
14 contributing more to keep this virtual kit format.
15 We will also be providing material support and
16 funding, moving forward, and this will be,
17 obviously, included into our permanent joint
18 agreement with NIHF because, obviously, we want to
19 make sure that we are reaching students, and
20 letting them understand and demystify all of the
21 intellectual property process.

22 We want them to know that USPTO is here.

1 Resources are here. We also have some great paid
2 internship programs. So, we always are trying to
3 reach as many folks as we can, especially in the
4 underserved communities, and so, this is just one
5 of the ways, and one of the partners, and our
6 biggest one that helps us accomplish that. So, we
7 look forward to building upon all of these
8 outreach efforts in FY '22. Thank you so much. I
9 think my next slide will include my contact
10 information. So, please feel free to reach out to
11 me with any questions or comments. I look forward
12 to continuing this dialogue, and I'm going to turn
13 it back to, I think, Jennifer.

14 MS. COMACHO: Thank you, Cara. That was
15 fantastic, I mean, really, the programming is
16 dynamic. It's interactive. It's adaptive. It's
17 interesting. It's exciting. That's terrific.
18 Thank you so much for highlighting that for all of
19 our participants and really appreciate it. Could
20 you please put, in the chat box perhaps, put a
21 link for the events page, so that folks can go and
22 see events, sign up for it, and if there is any

1 way to get an alert on what's going with this,
2 Valencia, on the innovation expansion and on the
3 programming. That would be terrific. I'd really
4 love to see people accessing these terrific
5 programs. We really do appreciate that.

6 Any questions? I know that, again, we
7 -- this is a topic that we love to talk about, and
8 we always take up our time, and then some. So, I
9 apologize to the -- to AI, who I think we've eaten
10 five minutes of their time. But thank you both,
11 Valencia and Cara, and I'll be cheering you on.

12 MS. MAR-SPINOLA: Well, thank you,
13 Jennifer, Valencia, and Cara. This is a great and
14 a very important topic. So, the time and
15 attention put into it, and, you know, I'm
16 optimistic that progress will actually be made, as
17 a whole. I'm not talking about that the Patent
18 Office hasn't made progress. I'm talking about,
19 as a whole, that the Patent Office can be the
20 example, the role model, of saying we're committed
21 to this, and we're moving on it, and we're
22 advancing it at every level, and I'm very proud to

1 say that that's what I see right now. So, thank
2 you for your efforts and time, and to the Patent
3 Office, generally. So, thanks again, and we'll
4 move onto Artificial Intelligence and Information
5 Technology.

6 MR. CHAN: Great, thank you, Julie. I'm
7 Jeremiah Chan, and I chair the Subcommittee for AI
8 and IT. And to provide a little bit of context,
9 the PPAC formed the AI Subcommittee last year, in
10 2020, to provide the USPTO guidance on the growing
11 number of AI related policy issues, the
12 application of AI Technology to its processes and
13 workflows, and to facilitate the USPTO's position
14 as an AI leader, among the world's Patent Offices.

15 Last year, I had the privilege of
16 co-chairing that subcommittee, with Barney
17 Cassidy, and it provided great visibility into the
18 impressive work by the USPTO's personnel working
19 on the applicant of AI Tools, as well as the
20 growing number of AI related policy issues. Over
21 the course of 2020, we saw that the opportunities
22 for collaboration between AI and Information

1 Technology became increasingly clear. And in
2 2021, our PPAC Chair, Julie, recommended that we
3 combine the two subcommittees. That proved to be
4 a great decision.

5 The combined Subcommittee for AI and IT
6 facilitated even closer coordination, sharing data
7 and technology across the Office, avoiding
8 duplication of effort, and really doing a great
9 job in improving efficiencies, all of which led to
10 even faster execution against its goals. Now, I
11 think it's important to continually step back and
12 remind ourselves of the purpose of the extensive
13 investment that the office is making and has made
14 in IT and AI, which is ultimately to improve
15 patent quality patent quality and the efficiency
16 and the performance of the Office.

17 AI and IT initiatives deliver
18 significant impact, in a number of different ways
19 that we're going to discuss further today but let
20 me give you a few highlights. The first is that
21 the USPTO's IT Systems remained remarkably stable
22 and secure during the pandemic, despite having to

1 support one of the largest telework programs, with
2 over 13,000 employees working remotely. I know
3 that many companies and organizations lost
4 productivity during the pandemic. And one thing
5 that I would like to continue to remind the public
6 of is that USPTO actually realized the increased
7 productivity, in large part, due to the work of
8 the Office of the Chief Information Officer, OCIO,
9 which supports the stable and seamless operation
10 of the USPTO's IT Systems. Bob Simms is going to
11 talk about the resiliency of the IT Systems and
12 the organization's cloud migration.

13 Cybersecurity plays another key role in
14 ensuring that the USPTO's IT Systems are
15 protecting the confidentiality, integrity, and
16 availability of information. Don Watson is going
17 to talk about the Office's efforts to proactively
18 guard against the continuous threat of
19 cyberattacks on the USPTO's IT systems.

20 The effort to encourage transition to
21 uniform DOCX filing format, which Drew mentioned,
22 by applicants and petitioners, we also continued

1 this in 2021. Adoption of DOCX format will
2 improve quality and efficiency in examination and
3 the publication process. And Rick Seidel is going
4 to give us the latest context and updates on DOCX.

5 The USPTO also continue to make progress
6 on the deployment of AI tools to automatically
7 classify documents and assist examiners in finding
8 relevant Prior Art. Matt Such is going to discuss
9 updates to patent search, and then Nelson Yang is
10 going to provide updates on Auto Classification.

11 Lastly, from a policy perspective, the
12 USPTO remained in very close connection with other
13 government agencies focused on AI, as they
14 continue to examine the national and international
15 duplications of the AI technologies, for laws and
16 institutions. The USPTO was extremely active in
17 soliciting feedback, holding conferences, and
18 publishing reports on AI and related to IP policy.
19 And all this great work is detailed in our
20 forthcoming Annual Report.

21 Charles Kim is going to discuss the
22 latest developments, with respect to AI

1 inventorship. There's been a lot of activity
2 there, and he'll also discuss the National
3 Artificial Intelligence Advisory Committee, that
4 some of us have heard about. Overall, the USPTO
5 completed the goals, that it set for itself, in
6 2021. And the continued work and investment that
7 the office is making, in IT and AI today, has and
8 will continue to raise the quality of patents and
9 the efficiency of its operations.

10 So, I'm please to host this topic today,
11 and, with that, I'm going to actually turn it over
12 to Bob Simms to talk to us about resiliency and
13 the cloud. Bob?

14 MR. SIMMS: All right. Good afternoon
15 everybody. As Jeremiah mentioned, I am Bob Simms,
16 and I am the Director for Infrastructure
17 Engineering and Operations. Next slide, please.

18 Okay. So, the Resilience and Data
19 Center and Cloud Teams have really had an
20 excellent year of achievement. As part of our
21 efforts to establish a new Data Center, in FY '21,
22 we successfully migrated our alternate processing

1 site, from Boyers, Pennsylvania, to Manassas,
2 Virginia. Alongside that, we also increased the
3 reliability and bandwidth of our network services,
4 going from 10 gigabyte through put to 40
5 gigabytes, so, a remarkable uptick in gigabytes
6 per second.

7 So, in FY '22, we prepare and begin the
8 relocation of our Alexandria Data Center to
9 Manassas, Virginia, using what we call a product
10 bundle approach to reduce the amount of time our
11 products may experience, as services are being
12 moved. So, that allows us to do that work, with
13 the least amount of impact. So, in relation to
14 cloud, we implemented an intake process. And what
15 that does is it goes out and assesses the
16 feasibility for a product to move to the cloud,
17 with several successful product migrations
18 actually taking place this past year, from our
19 (inaudible) System in USPTO Data Center to our
20 cloud service provider, that we have agreements
21 with.

22 In FY '22, we continue to assess our

1 product feasibility for moving to the cloud,
2 leveraging an Enterprise Cloud Management Contract
3 that we put in place, while using data analytics
4 and other methods to drive increased cost savings,
5 as well as efficiency into our systems. And that
6 is really all I had. I just wanted to go through
7 and kind of highlight what we have in the
8 Resilience Data Center area, as well as cloud.
9 And I don't know if we're taking questions now, or
10 otherwise I can just pass it onto Don Watson.

11 MR. CHAN: Thank you, Bob. Why don't we
12 hold questions till the end, just to make sure
13 we're managing the time? And we will -- we'll go
14 over to Don Watson to give us a cybersecurity
15 update.

16 MR. WATSON: Thank you. Good afternoon,
17 everyone. We deployed at endpoint a detection and
18 response capability, and we began this earlier in
19 the Fiscal Year '21, ahead of the President's
20 executive order on improving cybersecurity, which
21 came out in May of 2021. And in a recent Office
22 of Management and Budget mandate, we completed the

1 deployment of an endpoint detection and response
2 capability. Now, what this capability does is it
3 allows us to capture endpoint activity on our
4 servers and our systems, and it provides in-depth
5 analysis to automatically detect suspicious
6 activity and to stop breaches.

7 We've also improved our ability to
8 respond to security events, through automated
9 response and orchestration. And this also
10 includes deploying a user behavior alias
11 capability. This capability uses machine learning
12 to baseline user activity over time, which can
13 help us identify user activity that is outside the
14 norm. This does support us with insider risk
15 management activities.

16 We've also improved our security
17 configuration standards and integrated cloud
18 threat detection into our security operations. In
19 the next quarter, we want to integrate supply
20 chain risk assessments and update security
21 requirements into acquisitions. Every
22 organization nowadays faces supply chain risks.

1 So, it's important that we address that early in
2 the acquisition's life cycle.

3 We also are going to improve cloud
4 security and monitoring instrument response, as we
5 move more products into the cloud. And one of the
6 key elements we're going to deploy, software's and
7 servers, is called Cloud Security Posture of
8 Management. That ensures, as we develop and
9 deploy products in the cloud, that we are able to
10 detect any misconfigurations of anything that's in
11 our cloud environment. This is critical because
12 most breeches that occur in the cloud are due to
13 misconfigurations.

14 And lastly, we are beginning integration
15 of the new and updated Federal Security Privacy
16 Controls, which came out within this special
17 publication, in Rev. 5. We intend to do this in a
18 very -- the reproach. We do not want to impact
19 our product teams. And we do have some reliance
20 on our Government's Risk and Compliance Tool,
21 which needs to be updated to -- for us to be able
22 to apply these new controls and updated controls

1 that NIST has put out. So, we don't intend to
2 impact the product teams as they perform their
3 work. And we'll take an inter-approach and make
4 sure we can meet those compliance requirements.
5 With that, that concludes my brief. Thank you.

6 MR. CHAN: Great, thank you, Don. I
7 know for many of us, you know, just turning on the
8 news each day, we'd see that cyberattacks have
9 become so common, and it's quite nerve- wracking
10 to think about all the measures we need to take.
11 But I can tell you that, you know, hearing from
12 you and your team, Don, and all the proactive
13 measures that the team has been taking, really
14 given me quite a bit of piece of mind around the
15 security of the system, the PTO. So, thank you.

16 MR. WATSON: Thank you.

17 MR. CHAN: Why don't we move it over to
18 Rick Seidel. I know there's quite a bit of
19 questions on DOCX, Drew mentioned it, but
20 hopefully we can dive a bit deeper. Rick?

21 MR. SEIDEL: Thank you, Jeremiah. I
22 think the big news, I'll just cut to the chase, is

1 we are delaying implementation of the non-DOCX
2 surcharge for another year, to January 1, 2023.
3 During that time, we continue to try to do two
4 things. One, get more entry into the DOCX filing
5 stream. Drew mentioned the issue of rendering.
6 Stay tuned. We will have more details on that in
7 the future, as to, you know, how we can address
8 that, and, again, get more folks into the system.
9 Just a reminder, we continue to have weekly
10 sessions of how to navigate DOCX, and we will see
11 those events carry over into the new year, as
12 well.

13 And then, just as a reminder, I believe
14 it was either our last PPAC or two PPACs ago, we
15 talked about Patent Center Training Mode, where
16 you can actually go into the system, and explore
17 it, and use it, and get yourself familiar with it.
18 So, it's on our Patent Center website. You can
19 click on it. It's up at the top, DOCX, on our
20 DOCX landing page. Again, I would encourage those
21 of you who haven't taken a look to please
22 familiarize yourself with it. And that's really

1 all I have. So, again, the big news is we're
2 delaying implementation, and we will continue to
3 work with our stakeholders to address concerns and
4 ultimately get more users into the system. Thank
5 you. Back to Jeremiah.

6 MR. CHAN: Great. Thank you, Rick. We
7 will reserve questions for the end. And it looks
8 like we may have some time there. I will say,
9 Rick, you and the team have been incredibly
10 responsive with the feedback, and so, just putting
11 it out there for the public, that the team really
12 is craving your feedback. Please keep it coming.
13 I know we've heard quite a bit, but the USPTO's
14 extremely responsive to the feedback and making
15 sure that we hear you all. So, thank you for
16 that, Rick.

17 MR. SEIDEL: Thanks, Jeremiah.

18 MR. CHAN: Let's switch gears a bit now
19 to the application of AI tools, and we'll start
20 with Matt Such on AI Search.

21 MR. SUCH: Thank you, Jeremiah. Good
22 afternoon and good morning. We have a bit of news

1 that we'd like to share today. Just this past
2 October, on the 15th, the USPTO released its first
3 AI search capability to examiners that have
4 transitioned to our new PE2E search platform.
5 It's a functionality that we call More Like This
6 Document, and this is very exciting for us because
7 it allows examiners, as they're going through
8 their search, if they run across a document that
9 they would like to see more of, they can use this
10 capability to actually leverage artificial
11 intelligence retrieval capabilities to bring forth
12 similar references and similar documents for them
13 to consider. So, it's -- and it's totally up to
14 the user, in terms of how they use this. So, it's
15 very, very flexible.

16 The other thing that's really exciting
17 about this is we've been putting a lot of work
18 into this program, and the capability works not
19 only on our US Patents and Publications, but it
20 also works on all of the 61 foreign countries that
21 are available to our examiners, through the PE2E
22 search platform, and that's regardless of the

1 language that that -- that those documents are
2 published in. Although, I would note that we have
3 English translations that are available to
4 examiners through the search tool, which is
5 something that else has come online here, over the
6 last couple of months, as we've been making
7 improvements to improve the accessibility of Prior
8 Art for our examiners.

9 A little bit of a look ahead on this, we
10 are continuing to expand access to the PE2E search
11 platform, to the full examining core, through FY
12 '22. And as more examiners are making that
13 transition onto our new next generation tools,
14 they will also have access to the -- all the
15 features, including the foreign documents, as well
16 as this artificial intelligence retrieval
17 capability, More Like This Document.

18 And we are continuing to build out this
19 functionality. So, the next steps we are taking
20 is we are looking at incorporating actual
21 application data to help support the queries and
22 refine the options that are available to examiners

1 to be able to tune those queries and further
2 improve the results that they can generate through
3 the leveraging of these tools to assist in their
4 search. With that, I will turn it over to Nelson
5 Yang.

6 MR. CHAN: You're on. You're on.

7 MR. SUCH: Still not hearing you.

8 MR. YANG: Can you guys hear me now?

9 MS. STEPHENS: Yeah.

10 MR. CHAN: There you are. Thank you,
11 Nelson.

12 MR. YANG: Sorry about that. So, let me
13 start over again. This past fiscal year, we have
14 been evaluating the AI Auto C* models for the
15 placement of C* symbols, which is the indication
16 of CPC symbols on the application that should be
17 associated with the claimed subject matter. This
18 has included the integration of Auto C*s with our
19 existing business processes to monitor quality.
20 As part of this effort, we have been implementing
21 Auto C*s for a portion of our new utility filings
22 to determine the operational efficiency, and this

1 occurred back in December 2020. And we have been,
2 since then, monitoring the quality of these Auto
3 C*s to assess the readiness of the expansion to a
4 further larger subset of the applications.

5 In addition, we have been also looking
6 at the Full Classification, that is applying
7 symbols on applications using AI. And we have
8 been continuously updating the AI models and
9 assessing their readiness and abilities. As part
10 of this new fiscal year, we plan on continuing
11 this assessment of these Full Classification
12 models, which will include the exploration of a
13 pilot for Auto Full Classification. And in
14 addition, we are also looking at the business
15 processes that surround the classification effort
16 to see how we can leverage these business
17 processes to support Auto Classification and AI.
18 This includes looking at AI use cases for the
19 classification processes, beyond initial
20 classification, and also leveraging the data
21 streams that we currently have to evaluate the
22 quality and to assess the business impacts of AI

1 and Auto Classification, as well as to identify
2 additional opportunities that we can leverage
3 using AI and Auto Classification. And with that,
4 I will turn it back to you, Jeremiah.

5 MR. CHAN: Great. Thank you so much,
6 Nelson. All right, I am pleased to -- that we've
7 got plenty of time for our third topic, which is
8 policy updates. Charles, would you give us update
9 on that? There's been a lot of activity, and so,
10 I'll hand it to you, Charles. Take it away.

11 MR. KIM: Great. Thank you, Jeremiah.
12 All right, good afternoon, everyone. My name is
13 Charles Kim, and as Jeremiah mentioned, I'll be
14 providing a few updates regarding AI IT policy,
15 including updates relating to AI inventorship, the
16 National AI Advisory Committee, and a couple of
17 recent events on AI and IP. Next slide, please.

18 Regarding AI inventorship, the U.S.
19 District Court for the Eastern District of
20 Virginia recently issued a decision in Thaler v.
21 Hirshfeld. Before I discuss that decision, I'll
22 give a quick background of the applications that

1 were involved in that case. So, back in January
2 of 2019, two patent applications were filed,
3 naming an AI machine, DABUS, as the sole inventor.
4 One application related to a light beacon and the
5 other to a food container.

6 During the pre-examination stage, which
7 is the stage before an application is assigned to
8 an examiner, where the application is reviewed for
9 completeness, during that stage, the USPTO issued
10 a Notice to File Missing Parts because the
11 inventor was not identified by his or her legal
12 name on the application data sheet, or the ADS.

13 In response to that notice, a petition
14 was filed, requesting that the notice be vacated.
15 That petition was initially dismissed. And in
16 response to a renewed petition, a final agency
17 petition decision was issued in April of 2020.
18 The final agency decision explained that, under
19 current patent laws, inventorship is limited to
20 natural persons. The petitioner challenged the
21 USPTO's final decision, in the U.S. District
22 Court for the Eastern District of Virginia, or the

1 EDVA. Next slide, please.

2 So, in that case, both the USPTO and
3 Thaler filed cross motions for summary judgement,
4 and, on September 2nd of this year, the District
5 Court issued a decision granting the PTO's motion
6 for summary judgment. The decision found that the
7 statute is clear that an inventor must be a
8 natural person, and, thus, cannot be an AI
9 machine. Specifically, this report agreed with
10 the USPTO's interpretation of an inventor, as
11 defined in 35 USC 100. The District Court also
12 referenced the USPTO's previous AI policy efforts,
13 many of those efforts that were discussed in
14 previous PPAC meetings, including the AI
15 Conference that was held in January of 2019, the
16 two requests for comments that we issued in August
17 and October of 2019, and the AI and IP Policy
18 Report that was published in October of 2020. And
19 in referencing that October 2020 report, the
20 decision noted that many commenters disagreed with
21 Thaler's policy arguments that AI machines should
22 be recognized as inventors. The District Court

1 decision has been appealed to the Federal Circuit,
2 where it is currently pending on appeal.

3 I do want to briefly mention that
4 similar applications have been filed in other
5 countries, including, for example, the EPO, the
6 UK, Australia, and South Africa. The outcome
7 regarding AI inventorship in some of those
8 countries, specifically Australia and South
9 Africa, were different from the outcome in the
10 U.S., at least as reflected in the USPTO's and the
11 District Court's (inaudible). Next slide, please.

12 So, the next update relates to the
13 National AI Advisory Committee. The National AI
14 Advisory Committee originates from the National AI
15 Initiative Act of 2020, which became law in
16 January of this year, as part of the National
17 Defense Authorization Act for Fiscal Year 2021.
18 The National AI Initiative Act calls for the
19 Secretary of Commerce, in consultation with OSTP
20 and other agency heads, to establish the National
21 AI Advisory Committee. The duties of the
22 committee include advising the President and the

1 National AI Initiative Office on the wide range of
2 issues, such as the current state of U.S.
3 Competitiveness and leadership in AI, including
4 the scope and scale of U.S. investments in AI R&D,
5 leveraging resources of the AI Initiative to
6 streamline and enhance operation in various areas
7 of the government, and opportunities for
8 international cooperation with our strategic
9 allies on AI research activities, standards,
10 development, and the compatibility of
11 international regulations.

12 In September of this year, the
13 Department of Commerce announced the establishment
14 of the National AI Advisory Committee and
15 published a call for nominations to serve on this
16 committee. The deadline for the nominations just
17 ended on October 25th. So, the initial nomination
18 period has closed, but nominations will continue
19 to be accepted on an ongoing basis and will be
20 considered as vacancies arise.

21 Thanks to Cara Duckworth and her team,
22 the USPTO played an active role in helping to

1 publicize the call for nominations. And we played
2 an active role here because we believe that our
3 stakeholders in the IP community are uniquely
4 positioned to offer valuable perspectives on many
5 of the issues that the National AI Advisory
6 Committee will be considering. I'd also like to
7 thank PPAC for their efforts in helping to spread
8 the word about the call for nominations. More
9 information about the National AI Initiative and
10 the National AI Advisory Committee can be found on
11 the AI.gov website. Next slide, please.

12 So, the last update that I have relates
13 to two recent events on AI and IP. In September,
14 WIPO held their fourth session of the WIPO
15 Conversation. The first three sessions of the
16 WIPO Conversation, which were held in 2019 and
17 2020, discussed the impact of AI on IP policy.
18 The fourth session focused on "Data - Beyond AI in
19 a Fully Interconnected and Increasingly Digitized
20 World". The fourth session included several panel
21 discussions covering a wide range of issues, such
22 as the economic characteristics of data,

1 regulatory frameworks, how innovators and creators
2 are using data, and how data fits into the current
3 IP system. The recording for this event can be
4 found on the WIPO website. Next slide, please.

5 Last month, the USPTO and the U.S.
6 Copyright Office held a joint conference on
7 copyright law and machine learning for AI. There
8 were three panel discussions that were moderated
9 by attorneys from both the USPTO and the U.S.
10 Copyright Office. The first panel focused on the
11 concept of machine learning and how it is
12 currently being used in practice. The second
13 panel discussed how existing copyright laws apply
14 to the training of AI systems. And the third
15 panel evaluated whether the existing legal regimes
16 are adequate and considered alternative solutions,
17 such as expanded exceptions and limitations to
18 copyright law, remuneration rights ensuring generous
19 data protection. The conference was recorded, and
20 the recording will be made available on both the
21 USPTO and the U.S. Copyright Office website. So,
22 that concludes my presentation, and I'm happy to

1 answer any questions. Thank you.

2 MR. CHAN: Thank you, Charles, and thank
3 you all for those great updates. We do have a
4 little bit of time for questions, and that's not
5 by coincidence. This team is very efficient. You
6 can kind of see that. But let me start with a few
7 of the questions in the chat, and then feel free
8 to raise any others. Let's see, one is relating
9 to DOCX. And the question is, is DOCX the
10 officially filed format, so applicants are not at
11 risk of flawed conversion to PDF by USPTO's tools?
12 Rick, do you want to address that?

13 MR. SEIDEL: So, DOCX, right now, I
14 think we went out with a new FRO Notice, back in
15 June, I believe, and said DOCX will be the
16 official record. I believe that's what the
17 question is getting at. So, what is the official
18 file copy? You know, what is used for the four
19 corners of the application, as filed? I think
20 that's what the question is -- unless I'm off on
21 that. DOCX will be the official record.

22 MR. CHAN: Fantastic.

1 MR. SEIDEL: So, I mean, it was a
2 converted PDF. And back in June, we said, no, it
3 will not be the converted PDF again, based on
4 stakeholder feedback. There was concerns about
5 that. So, the notice that went out, back in June,
6 I believe, said that DOCX will be the official
7 record.

8 MR. HIRSHFELD: And, Rick, if I may
9 chime in also, we made that change that Rick is
10 referring to responsive to feedback from the
11 public that it would be better to have the DOCX be
12 the official document of record. When I mentioned
13 in my remarks the PDF filing, that was simply
14 because we're hearing feedback now that, in case
15 there's a problem with the DOCX because it's new
16 to some people, that they want to be able to show
17 what was filed. They don't want to have any
18 inadvertent mistakes that don't get noticed and
19 then an applicant loses rights. For example,
20 let's say a formula didn't come out in DOCX
21 because people are used to reviewing the PDF
22 version, so.

1 So, Rick is entirely correct. We
2 switched to the PDF, based on the public feedback.
3 My -- I'm sorry, we picked -- we went to the DOCX.
4 I know, I'm going to confuse you here. We went to
5 the DOCX, based on the public feedback. My
6 reference to the PDF is because we're looking for
7 a way to give everyone the confidence that in case
8 there is a problem, again, don't anticipate, I
9 don't -- I hope there's no problems, but in case
10 there is a problem with the rendering, there would
11 be a way to go back to the PDF to say, okay,
12 here's what was actually filed, and so, the
13 applicants are safeguarded in that respect. But
14 more information on --

15 MR. CHAN: So, essentially a belt and
16 suspenders approach. And I do think --

17 MR. HIRSHFELD: Yeah.

18 MR. CHAN: -- again, it's just a
19 reminder to folks, how responsive the PTO has been
20 to feedback. So, please keep it coming. Thank
21 you, Drew. Thank you, Rick. That's terrific.
22 Let's see, there's another question relating to

1 Auto Classification AI tool. Can you please
2 explain the difference between the Auto C* model
3 and the referenced models for Full Classification
4 picture? Nelson, would you take that?

5 MR. YANG: Sure, so, sure, absolutely.
6 So, basically, what the Auto C* models are doing
7 is that they're actually taking the classification
8 that's already on the application and then
9 identifying which of those symbols should be
10 associated with the claimed subject matter,
11 whereas for the Full Classification models, what
12 we're doing is we're taking a look at the entire
13 classification scheme and seeing which of those
14 symbols belong on a particular application. And
15 so, you can see that the level of effort between
16 the two models is slightly different, perhaps on a
17 magnitude difference.

18 MR. CHAN: Thank you, Nelson. This one
19 is for Matt. Is China among the 61 foreign
20 countries that you referred to?

21 MR. SUCH: Yes.

22 MR. CHAN: Yes. Great. And then, the

1 -- there's another one for you, as well.
2 Regarding AI searching capabilities in PE2E, are
3 there any quality metrics available, such as the
4 percentage of "More Like This" searches that
5 reveal references that are then used in
6 rejections?

7 MR. SUCH: Excellent question. So, as I
8 mentioned, we just released that to the Corps, and
9 one of the things we're going to be taking a look
10 at over the course of the year is effectiveness.
11 So, a metric like that is exactly a piece of
12 information that's part of those considerations.
13 So, as we go forward, we'll be monitoring that.

14 MR. CHAN: Great.

15 MR. CALTRIDER: Jeremiah, I had a
16 question from one of these -- up on the big
17 screen, being the featured speaker, if you don't
18 mind?

19 MR. CHAN: Of course.

20 MR. CALTRIDER: And that is the
21 description of the references that are included in
22 the More Like This, then, does that include the

1 nonpatent literature, as well?

2 MR. SUCH: No. Right now, it's the U.S.
3 patent documents and the 61 foreign countries that
4 we have loaded. It does not query nonpatent
5 literature, at this time.

6 MR. CALTRIDER: Is there a plan to
7 expand into the nonpatent literature, as well, in
8 due course, or what's the plan for nonpatent
9 literature?

10 MR. SUCH: I think this is an area that
11 we would like to be able to get into. I would
12 note that there is some -- there's a number of
13 challenges in order to get us to that point. So,
14 that's an issue that needs to be worked on very,
15 very carefully, as we go forward. I would note
16 that the kind of longstanding vision for this, in
17 the far out future or into the future, is that we
18 would have a unitary search capability with AI
19 that would be able to sweep in references from
20 many, many, many different sources and to the
21 extent that we find ways to solve those technical
22 challenges to bring NPL into the fold there. That

1 is certainly something that is of interest to us.
2 But we do not have a mechanism for doing that, at
3 the moment.

4 MR. CALTRIDER: Thank you.

5 MS. MAR-SPINOLA: This is Julie.

6 Jeremiah, if I can ask a question? Matt, stay on
7 screen. You're very popular. So, one comment to
8 -- on a follow -- as a follow on to Steve's is,
9 could -- would it help to have -- and I don't know
10 much about the tools that the Copyright Office has
11 for nonpatent references, but certainly they --
12 they're massive. They have a mass of resources
13 that may be looking to a joint type of
14 relationship or a program where you can use -- the
15 Patent Office can use their tools to be able to
16 search certain publications, as well. It's just a
17 thought, rather than to, you know, reinvent the
18 wheel on that, if you will. My question goes to
19 the AI search tool, that I think you said launched
20 in October, for the examiners, right? Is that
21 something -- is that ready for primetime to
22 provide, maybe in the next meeting, or sometime in

1 the near future, a demo of how that works? Is
2 that something that can be shown publicly? I
3 think the -- I'm very much a visual person. So, I
4 think seeing those things in action could be
5 helpful.

6 MR. SUCH: Yeah, it's -- certainly, we
7 can give a demo of that. Fortunately, it's, I
8 think, a very simple tool to use. So, it will be
9 a very simple and straightforward demonstration.

10 MS. MAR-SPINOLA: Great. Great. And
11 has there -- has the Patent Office performed or
12 will perform a -- I sound like I'm giving a
13 deposition, sorry, getting -- but has the Patent
14 Office performed or will perform a comparison of
15 this new tool versus the -- what was used before
16 to see if the results are that much different, you
17 know, a differential?

18 MR. SUCH: So, I -- so, let me answer
19 the question this way. We've provided the
20 capability as part of a suite of tools that
21 examiners have at their disposal for doing a
22 search. We certainly value, very much, the tools

1 that have been longstanding search mechanisms for
2 ourselves. So, that includes patent
3 classification, that includes Boolean operators,
4 using Boolean text searching and keyword
5 searching. This is another tool in that toolbox
6 for us. So, while we go through and we understand
7 the effectiveness of how AI search is at bringing
8 forth those important references and ensuring that
9 the references the examiners have at their
10 disposal for considering patentability questions,
11 we are certainly looking at that -- how that plays
12 together. I don't think that it's necessarily
13 something that we're looking to replace, the --
14 those longstanding, well-worn, excellent tools
15 that are in place, but we do want to understand
16 how they compare to one another. And so, that is
17 certainly something that we'll be looking towards.
18 But I wouldn't necessarily say we're going to
19 necessarily compare one to another, directly, just
20 because we want to make sure that we're providing
21 support for our examiners to be able to have
22 multiple avenues to access the Prior Art.

1 MS. MAR-SPINOLA: Yes. I did not assume
2 that it -- that this tool would be -- would
3 replace the others. But I think to be able to
4 assess the strength of existing tools and a new
5 tool, what does that give us, and so, is there
6 added value is, I guess, what I'm saying, and I'm
7 sure that there is. Anyway, let me turn it back
8 to -- thank you, Matthew. Let me turn it back to
9 Jeremiah. And, Jeremiah, we will move onto
10 legislative, unless you have a little bit more to
11 go.

12 MR. CHAN: No. I think we're a tad over
13 time. I will just flag that there was a comment
14 that there appear to be a number of open issues
15 listed on Patent Center and DOCX idea scale. And
16 the question was, is there a plan to address
17 these? And I will just say, we will follow up.
18 We'll take a look at those offline and follow up.
19 With that, I'll give it back to you, Julie, and
20 Judge Braden, and Professor Brown.

21 MS. MAR-SPINOLA: Thank you. Thank you.
22 So, let's turn it over to Legislative

1 Subcommittee.

2 MS. BRADEN: Yes, thank you, Julie. I'd
3 like to begin, basically, by thanking Acting
4 Director Hirshfeld for his stewardship during this
5 transition time and his keen interest in helping
6 the agency navigate through a very active Congress
7 that's interested in the oversight not only of the
8 Patent Office, but in all aspects of legislation
9 concerning intellectual property law and patent
10 law.

11 And, Julie, hats off to you. You've
12 been a great captain of our ship on the PPAC, and
13 we wish you smooth sailing in the future. I also
14 need to shout out a little bit to my co-chair,
15 Professor Daniel Brown, at -- from Northwestern.
16 Not only has he given us the insights that -- of a
17 someone who knows the patent law, left and right,
18 but I point out that he is also now recently
19 become a TV star. He was featured recently on FOX
20 News, on a feature that talked about U.S. patent
21 owners and the products that are being made with
22 those patents in the United States, the

1 manufacturing of it. And so, we look forward to
2 seeing you at the Emmys, Dan.

3 The Congress, as you know, has been --
4 expressed a great deal of interest in the
5 oversight of the Patent Office and the -- and
6 legislation. We will hear from the staff that's
7 been responsible for answering numerous letters
8 and attending numerous hearings, both in the
9 Senate and the House, on that. Out of all that
10 work, in the Annual Report, our committee had
11 three recommendations.

12 The first was for the USPTO to continue
13 to inform and engage both government and
14 nongovernment stakeholders and policymakers to
15 ensure that any proposed legislation or
16 administrative changes not adversely affect the
17 Patent System that made the United States the most
18 innovative and economically prosperous country in
19 the entire world. We only need to look at the
20 recent experience and the extraordinary success of
21 the Patent System, in attracting decades of
22 private investment that are involved -- that

1 resolve in the vaccines that have allowed the
2 world to combat this new virus.

3 In addition, the PPAC Legislative
4 Committee recommends that the USPTO continue to do
5 -- be proactive in analyzing all suggested
6 legislative proposals. The full range of those go
7 from patent eligibility to TPAC, TTAB post-grant
8 review proceedings, and efforts to interfere or
9 divest previously held patent rights. That's so
10 important. We support the efforts to increase
11 patent membership, including women and more
12 minorities in the Patent Bar, so long as their
13 professional and technical expertise is
14 demonstrated, and we've been successful in doing
15 that.

16 Finally, we applaud Chairman Leahy's
17 appropriation bill, which recommends the release
18 \$68 million in fees that the USPTO already has
19 collected. These user fees are urgently needed to
20 improve patent quality, durability, and
21 enforcement to support inventors and to promote
22 the issues of diversity that Congress has

1 identified and which we strongly support.

2 Now, let me turn to our -- the dynamic
3 duo of our Legislative Staff at the USPTO. First,
4 we'll hear from Kimberley Alton, who will go
5 through a litany of all the different legislative
6 initiatives that she has been following with her
7 comrade in arms, Tamara Foley. They have worked
8 tirelessly to keep the leadership at the USPTO up
9 to date, present, current, and on top of the
10 action going on in the Senate and in the Congress.
11 Kim, to you. Thank you.

12 MS. ALTON: Thank you. Thank you so
13 much, Judge Braden, for that kind introduction.
14 As you noted, it's been a busy year in the
15 Government Affairs Shop, lots going on, on Capitol
16 Hill, related to intellectual property. So, we
17 will take this time, Tammy and I, to just go
18 through recent developments that we'll share and
19 happy to answer any questions. Can we go to the
20 next slide, please?

21 So, we will start with the big
22 announcement that was made, just last month, by

1 the White House, and that is the nomination of
2 Kathi Vidal to serve as the next Director of the
3 USTPO. Just quickly, I -- just as a matter of
4 background, I'll provide sort of an overview of
5 next steps and what will happen in this process,
6 now that that nomination has been made by the
7 President.

8 The first step is really a hearing in
9 front of the Senate Judiciary Committee. We are
10 waiting, now, to find out when that nomination
11 hearing will be scheduled. But that's certainly
12 the first step. After that hearing, the Senators
13 are allowed to submit questions for the record,
14 QFRs, and the nominee will be asked to respond, in
15 writing, to those questions for the record. After
16 those questions and responses are submitted, the
17 nomination will then advance for a vote within the
18 Senate Judiciary Committee. There is a practice
19 within the Judiciary Committee that would allow
20 for a vote to actually take place within two weeks
21 of the nomination being placed on the agenda for a
22 vote. So, we will sort of wait and see, in terms

1 of the timing of that. And then if the nomination
2 is approved by the committee, it would then move
3 to the entire Senate, the full Senate, all 100
4 Senators, for a vote.

5 So, I just wanted to give you all just
6 that high-level overview, in terms of the steps
7 and the process that are all part of this
8 confirmation process. Still waiting to hear more,
9 in terms of timing and when the hearing will be
10 scheduled. So, happy to keep you all posted as we
11 learn more about timing and next steps. Next
12 slide, please.

13 All right, this is a slide that really
14 covers some of the more recent legislation that's
15 been introduced, and, with that, I will turn it
16 over to my counterpart, Tammy Foley.

17 MS. FOLEY: Thanks, Kim. Can everyone
18 hear me okay?

19 MS. ALTON: Yes.

20 MS. FOLEY: Okay, excellent. So, I'm
21 going to talk about quite a few pieces of
22 legislation, but we're going to start on the

1 Senate side. The first is the Restoring the
2 America Invents Act. This was introduced by
3 Senator Leahy, last month. There are a lot of
4 provisions. I'm just going to touch quickly upon
5 the ones in the first slide.

6 So, the first is the bill provides for
7 limiting on the Director's discretion to institute
8 IPRs and PGRs, so, only those situations in which
9 the same or substantially the same Prior Art are
10 arguments were previously presented to the Office.
11 The next provision, the Director -- it's for -- it
12 regards Director reconsideration. It essentially
13 codifies existing PTAB procedures that provide for
14 all out -- provide the Director may, on his or her
15 own initiative, or at the request of the party,
16 reconsider, modify, or set aside a final written
17 decision. The bill also adds additional grounds
18 for IPRs, including 102 or 103, or Statutory or
19 Obviousness Type double patenting, on the basis of
20 admissions in the specification, drawings, or
21 claims, or patents, or printed publications.

22 The bill also changes -- makes changes

1 to the amendments practice at PTAB. It places the
2 burden on the patent owner to prove patentability
3 of any substitute claims, and it also requires the
4 Board to examine or a cause to examine the
5 substitute claims. It also makes a number of
6 changes to the estoppel provisions in the AIA.
7 Specifically, it aligns the effective dates of the
8 petitioner and patent owner estoppels by
9 essentially changing the timing of the petitioner
10 estoppel, until after the time for appeal has
11 expired or any such appeal has been terminated.
12 It also creates a new section that provides for a
13 statutory estoppel for patent owners, consistent
14 with the current practice. It limits the
15 application of petitioner estoppel in litigation
16 to only unsuccessful petitions, and it adds a new
17 section that changes the estoppel for a joining
18 party to apply, to the same extent as the first
19 petitioner is estopped.

20 The bill also clarifies that one year --
21 the one- year time bar for IPRs would not apply to
22 joint or requests, if the complaint is dismissed

1 without prejudice, or it's a new or amended claim
2 issued from reexamination, after the complaint is
3 served. And it also removes the time bar if a
4 declaratory judgment complaint in a civil action
5 is dismissed without prejudice. And then the bill
6 also adds specific factors for District Courts to
7 consider when they're considering whether the
8 grant stays, in light of IPRs. Next slide,
9 please.

10 And then, there's obviously several more
11 changes that, in the interest of time, I won't go
12 into detail over, but they're listed. Next slide,
13 please. And so, the next piece, the next piece of
14 legislation, I'm going to talk about is the Pride
15 in Patent Ownership Act. This was introduced by
16 Senators Leahy and Tillis. It creates -- it has
17 two new provisions. The first is that it creates
18 a new Section, 124, which essentially requires
19 disclosure of government funding, whether U.S. or
20 foreign, for patent applications and for
21 maintenance fees. And then, in addition, it also
22 amends Section 261. It requires the Patent Chief

1 to record the assignment, grant, or conveyance of
2 certain rights or interests with the USPTO on its
3 database, within 90 days of the effective date of
4 the assignment. Within 60 days of this request,
5 the USPTO must either record that interest or
6 notify the patentee of any error in that request.

7 Any failure to comply with the request
8 to record the assignment will result in the loss
9 of increased damages, under Section 284, during
10 the period beginning on that 91st day, after the
11 effective date of the assignment, until the date
12 on which the assignment is properly requested to
13 be recorded. Next slide, please.

14 Then, in the last piece of legislation
15 on the Senate side, we want to touch upon is the
16 Unleashing the American Innovators Act, which was
17 also introduced by Senators Leahy and Tillis.
18 This seeks to establish additional satellite
19 offices for the USPTO. It also seeks to establish
20 community outreach offices. It expands the
21 USPTO's Pro Bono Program. It also requests that
22 the USPTO establish a pre-prosecution

1 patentability assessment pilot program for first
2 time applicants. And then it also provides for a
3 few reductions for small and micro entities.

4 And then, on the House side, there are
5 just three bills I wanted to flag, they are hot
6 off the presses, we don't, unfortunately, have
7 slides for. But the first is a bill from
8 Representative Issa. This is the Conducting
9 Legally Efficient Administration and Resolution of
10 Patents Act. This essentially states other
11 Federal proceedings, such as an ITC action, if an
12 IPR or PGR is instituted at the PTAB on the same
13 claim.

14 The second bill I wanted to flag for
15 everyone is Representative Massie's Restoring the
16 America's Leadership in Innovation Act of 2021.
17 Representative Massie reintroduced this bill this
18 Congress. This restores the first inventor to
19 file. It abolishes PTAB and IPRs and PGRs. It
20 establishes the revolving fund for the PTO, makes
21 amendment to Section 101. It pulls a patent term
22 during validity challenges. It -- and automatic

1 publication of patent applications, and it
2 essentially overturn (inaudible) presumptively if
3 infringement is found, instituting an injunction.
4 And then it restores the best mode requirement.
5 And finally, the last bill I wanted to flag was
6 from Representative Jeffries. This is the Patents
7 for Humanity Act, and it codifies the USPTO's
8 Patent for Humanity Program. Next slide, please.

9 And lastly, we just wanted to flag, last
10 month, the Senate Judiciary Subcommittee on IP
11 held a hearing on the Pride in Patent Ownership
12 Act that I had flagged earlier. As you can see,
13 the witnesses came from corporations, from small
14 startups, and professors, and our former Director,
15 Dave Kappos. Both the members and witnesses had
16 agreed that full transparency of patent ownership
17 was definitely desired, and I think that the goal
18 with the legislation was something that everyone
19 could agree to. But there are certainly concerns
20 raised. And it seems that there will be
21 continuing discussions on the legislation, and to
22 the extent that the USPTO can provide any

1 technical assistance on that, we will continue to
2 do so. And that's all I have.

3 MS. ALTON: Thanks, Tammy. That
4 concludes our presentation, and we are happy to
5 answer any questions. Okay, well, just as we sign
6 off from the Government Affairs Team, I want to
7 thank Julie for her service and the other
8 departing members from PPAC. Thank you all so
9 much for your service. It's been great working
10 with you all.

11 MS. BRADEN: Thank you. Thank you, Kim.

12 MR. CALTRIDER: Kim, I was unable to get
13 my mute off in time. If I can ask a question,
14 still?

15 MS. ALTON: Yes.

16 MR. CALTRIDER: In the Pride in
17 Ownership Act, the consequences of failure to
18 identify government funding, did I -- I know what
19 the consequences you -- you shared what the
20 consequences were, if you failed to assign a
21 recorded assignment in the time period. But if
22 you fail to identify government funding, do you

1 recall what the consequences are of not doing
2 that?

3 MS. ALTON: It's the -- the legislation
4 actually didn't lay out any consequences. They
5 left that to the PTO to determine.

6 MR. CALTRIDER: All right. Thank you.

7 MS. FOLEY: Thanks.

8 MS. MAR-SPINOLA: Judge Braden, do you
9 have any closing remarks?

10 MS. BRADEN: I do not, other than just
11 to thank the staff, and I'm sure it's going to be
12 a busier year ahead than it was last year, so.

13 MS. MAR-SPINOLA: Okay, great,
14 appreciate it.

15 MS. BRADEN: Go get the money.

16 MS. FOLEY: We're on it. All right,
17 thank you all.

18 MS. ALTON: That's for sure.

19 MS. MAR-SPINOLA: Thank you. Thank you,
20 Tamara and Kim, for that presentation. I think I
21 agree with everybody that legislation is going to
22 be very active in the patent space, and I

1 completely agree with Judge Braden that the Patent
2 Office has -- is in the best position and with the
3 strongest voice to share their input on this, and
4 we would all encourage and look to see that
5 happen, in connection with each and every
6 legislation that could impact patent rights or IP
7 rights. So, thank you for that.

8 I think we're either on time or we're a
9 little bit ahead, which allows us to have a little
10 bit longer break. If we can take a break for now
11 and return at, and I'm going to give three time
12 zones now because we've grown that way, 1:10 p.m.
13 Eastern, 12:10 p.m. Central, and then 10:10 a.m.
14 Pacific. See you all back in a few minutes.

15 (Recess)

16 MS. MAR-SPINOLA: Okay. Welcome back,
17 everyone. Thank you for staying with us. We're
18 going to now move to the Finance Subcommittee.
19 Barney?

20 MR. CASSIDY: Thank you. I am Barney
21 Cassidy. I am one of the departing PPAC members
22 and if you would indulge me for just a minute or

1 two, I would like to express my thanks to three
2 groups of people. One is the rank and file of the
3 agency of the patent office who have been
4 unfailingly impressive. This is an organization
5 that has a real bias towards transparency, towards
6 helping others and towards telling the truth in a
7 way that is pleasant and accessible to non-experts
8 and it has really been a delight to work with
9 everyone at the patent office.

10 The second group is the leadership at
11 the patent office, the people who enable the rank
12 and file to be so helpful and to demonstrate such
13 responsiveness. My experience of working with the
14 leadership is that they are highly capable and
15 dedicated folks. Not only are they immersed in
16 the details but they are also capable of
17 delegating and enabling others on their teams but
18 without losing sight of the big picture why we are
19 all here and how their efforts can contribute to
20 the advance of the useful arts. It has really
21 been a delight to work with all of you and I
22 appreciate all the help that you have given me

1 during my time at PPAC. And third I would like to
2 thank my fellow PPAC members past and present. I
3 want to express my gratitude and my admiration for
4 your hard work, your dedication, for your kindness
5 in welcoming me to committee and supporting me in
6 my efforts. I will always be grateful for your
7 kindness and always admire the work you have done
8 and the work we have been able to accomplish
9 together. It has been truly an amazing experience
10 and I look forward to keeping in touch with all of
11 you in the years to come.

12 Now on to the money questions. So the
13 Finance Subcommittee has been very busy this year.
14 We are pleased to report that the patent office is
15 solvent, is in actually very good -- in a very
16 good situation financially. Just as a reminder to
17 listeners that the office is entirely funded by
18 user fees. This is not taxpayer money. This is
19 money submitted voluntarily by people who expect
20 services and rights in return for their
21 investment. This finance team has done excellent
22 job of (inaudible) those resources. At the

1 beginning of the pandemic there were a lot of
2 questions about whether there would be a drop-off
3 in revenue and what the office would do about
4 that. And I have to tell you that I am impressed
5 by how adjointly and carefully the revenue has
6 been managed by the team. There are a couple of
7 issues that I learned about during this past year.
8 One is the delta between the OMB's request for
9 budget, the President's budget, which requested
10 that the amount allocated for use fund patent
11 office be limited to the spending projection
12 versus the fees collected. This is about a
13 64-million-dollar delta and has not yet been fully
14 resolved. The PPAC is strongly of the view that
15 the allocation to the patent office should be the
16 amount of fees collected, which has been the
17 practice since the American Events Act was enacted
18 and is strongly supported by the Senate
19 Appropriations Committee and its chair, Patrick
20 Leahy.

21 The other thing that we learned is that
22 there is some money left over from previous user

1 fees that have been deposited into the U.S.
2 Treasury. They total about a billion dollars and
3 they are not yet allocated. They are not yet
4 available to the patent office but the PPAC is
5 again strongly of the view that those monies
6 should be released, which we believe would require
7 an act of Congress, and we urge Congress to find a
8 way to do that so that the many programs and
9 continued efforts towards increasing quality of
10 patents and reducing pendency could be fully
11 supported by the users who have paid those fees
12 for those purposes. So, with that I would like to
13 turn it over to Jay Hoffman and personally thank
14 Jay for his strong support of the PPAC Finance
15 Subcommittee and Jay, take it away.

16 MR. HOFFMAN: Wonderful. Thank you
17 Barney for that introduction and thank you for
18 your service chairing the PPAC Finance
19 Subcommittee. It has been a pleasure working with
20 you this year. Julie, thanks to you for your
21 leadership of the PPAC. I enjoyed working with
22 you and for all the other members that this is

1 their departing meeting.

2 My name is Jay Hoffman. I am the Chief
3 Financial Officer of the USPTO. We will dive
4 right into today's presentation. I've got a fair
5 amount of material I want to try to get through.
6 Please advance to the next slide.

7 So, I am going to spend the majority of
8 my time giving you a recap on where things landed
9 for the fiscal year 2021, which ended on September
10 30th. For those, just as a reminder, for those of
11 you who are not aware that the government operates
12 on a fiscal year that goes from October 1st until
13 September 30th each year. I will then shift the
14 transition to talk briefly about our FY 2022,
15 planning assumptions, the fiscal year 2022 is
16 already underway, and lastly I will just give you
17 a couple of quick hits on our FY 2023 budgets
18 process to keep you informed on that. Next slide
19 please.

20 So let's spend a few minutes on the
21 financial results of the fiscal year 2021.
22 Looking at the chart here on the right-hand side

1 of the page you will see there are blue bars from
2 fiscal year 20 and fiscal year 2021. These bars
3 represent the aggregate fee collections at the
4 USPTO for each of their years. The green dots
5 represent the level that the agencies appropriated
6 and, as Barney just said, while the agency does
7 not receive taxpayer dollars in forms of an
8 appropriation we require an appropriation to
9 authorize us to spend the user fees that we do
10 collect. So that is why those levels are
11 important. You will see that in fiscal year 2020,
12 we actually exceeded the level that we were
13 appropriated and that resulted in about 232
14 million dollars flowing into the patent and
15 trademark reserve fund that is (inaudible) in the
16 AIA. In fiscal year 2021, we collected slightly
17 less than our collection estimate that Congress
18 appropriated to us and again that was expected as
19 a result of the timing of our fee roll that went
20 into effect last October.

21 So, let's go ahead and take a look at
22 the next slide I think that illuminates this. So,

1 understanding how the fiscal years 2020 ended,
2 more than a year ago, is an important context to
3 understanding the fiscal year 2021 results. The
4 agency implemented the fee change in the patent
5 organization on October 2, 2020. This was the
6 second day of the new fiscal year 2021. As you
7 can see from this chart on the right, what this
8 shows is that this is a 5-day moving average of
9 the agencies fee collection, and you see a large
10 spike that occurs right before October 1st. What
11 you are seeing here is customers of the USPTO for
12 the most part paying their maintenance fees in
13 advance of that fee increase going into effect.
14 Essentially taking advantage of the lower cost of
15 paying their patent maintenance fees. Those
16 revenues are not extra revenues. They are not, you
17 know, additional savings from the agency. They
18 are simply fees that were paid early that
19 otherwise would have been paid sometime in October
20 or November most likely. So, this resulted in a
21 fairly large spike in revenue right before the
22 change over in fiscal year and this is what caused

1 the deposit into the Patent and Trademark fee
2 reserve fund in fiscal year 2020. Now we
3 subsequently requested reprogramming through the
4 congressional process. That reprogramming was
5 approved and those funds were ultimately made
6 available to the agency this fiscal year for use
7 to finance operations, and, of course, we are
8 counting on that money in 2021, again because
9 these were early payments not additional payments.
10 Next slide please.

11 This chart shows the patent aggregate
12 fee collection. I have briefed this chart to you
13 before but for those of you who have not seen it
14 (inaudible) acclimation, the Y axis on this
15 slide is in millions of dollars. The X axis is
16 in months of the fiscal year. The blue line that
17 you see at the 25-day with the average of the
18 aggregate revenue rate for the agency, you will
19 see a horizontal sort of fuchsia colored line.
20 That is our internal planning estimate for the
21 year. We had predicted that we would collect
22 about 3.098 billion dollars in patent revenues.

1 The green horizontal line that you see running
2 across the top, this is a (inaudible) Congress
3 appropriate. Congress had appropriated 3.251
4 billion dollars. So, you see here based on the
5 aggregate rate of the blue line, we were pretty
6 close to our internal projection. We actually
7 ended the year 30 million dollars above the
8 internal projections, so about 1 percent for total
9 collections at 3.1 to 8 billion dollars. Because
10 we were below the appropriated level, all of the
11 funds that we collected were available to us.
12 None of the monies that we collected flowed into
13 the Patent and Trademark fee reserve fund. Let's
14 go to the next slide please.

15 This is a recap of our financial results
16 for fiscal year 2021. As I mentioned before, our
17 internal estimate for fee collection is the first
18 number that you see here at the table was 3.144
19 billion dollars. We actually collected 3.183
20 billion dollars. That includes some other income
21 and so this is why there is discrepancy from the
22 prior slide to 39 billion dollars in excess of

1 plan. Next we had planned to spend 3.415 billion
2 dollars or more than we collected and that is
3 because of the difference in timing of fee
4 collections. We actually spent 3.319 billion
5 dollars. So we were 96 million dollars below what
6 we had planned to spend. I would point out that
7 not all of that 96 million dollars is savings,
8 however. Some of that 96 million is simply funds
9 that the agency didn't execute prior to the end of
10 the fiscal year on September 30th. Contracts were
11 delayed, perhaps they weren't ready, and that
12 money will ultimately be executed in the current
13 fiscal year.

14 I would also note that we made 492 of
15 the 500 planned hires in the patent examiner core,
16 but, of course, all of those weren't filled for
17 the entire year and that also explains some of the
18 difference between our plan and actual. The
19 bottom line though is that we had a net result of
20 135 billion dollars that was rolled over into the
21 operating reserve at the end of the year. This is
22 an excellent result and I think proved that we

1 continue take a very conservative and deliberate
2 approach in the agency setting. Next slide
3 please.

4 So, I have also shown you this slide
5 before as well. This is a representation of the
6 patent operating reserve balance over the course
7 of the last couple of years to 25-days of the
8 average. The horizontal black line that you see
9 going across the middle of the slide is the
10 minimum balance that we try to hold that operating
11 reserve at, 300 million dollars. A couple of
12 points I would like to make. Number one, we ended
13 the year with a patent operating reserve balance
14 of 476 million dollars. This is the highest level
15 that the patent operating reserve has been at in
16 any year since the AIA was enacted. Arguably the
17 strongest financial position the agency has been
18 in that time period.

19 The other point that I would make here
20 is that you will see there is a lot of variability
21 in the operating reserve. There is -- if you look
22 around the November time frame you will see a

1 peak, it wasn't really a peak but close to a peak
2 of about 450 or 460 million dollars. And then 4
3 months later in March 2021, the operating reserve
4 was down at 150 million dollars. You say, well
5 why is that? Why would your operating reserve
6 vary so much? Well, it's not really your reserve.
7 The seasonality of our fee collection is different
8 than the seasonality of our spending. And we see
9 a lot of variability throughout the year. The
10 agency has very high cash (inaudible) payroll is
11 nearly 100 million dollars every 2 weeks. And
12 that is why you see a lot variability at that
13 balance is why we think about it if the aggregate
14 year- over-year as opposed to an amount
15 day-to-day. Let's go ahead and go to the next
16 slide please.

17 Okay. We had talked about the deposit
18 into the Patent and Trademark fee reserve fund at
19 the end of that 2020 resulting from those early
20 maintenance fee payments. This chart shows how
21 those funds flow across the fiscal year putting
22 together both operating reserve and the Patent and

1 Trademark fee reserve fund. The way you look at
2 this chart is that the blue bars in the chart,
3 they represent the outgoing reserve balance. The
4 red portion of the bar that sits on top of the
5 amounts that were falling into the Patent and
6 Trademark fee reserve fund, those amounts
7 (inaudible) appropriation and then via the
8 reprogramming process that crosses fiscal years
9 those red amounts essentially get poured into the
10 blue amounts in the subsequent year. You can see
11 how that happened in fiscal year 2021. The
12 take-away here is the green dash line that is
13 going through this chart is our minimal of
14 operating reserve. The purple dash line that you
15 see is our optimal level. The officers like to
16 operative a little closer to the purple if we can
17 but certainly keeping it above the green, and in
18 all the years we have been able to do that. Go to
19 the next line please. Talk a little bit about
20 fiscal year 2022.

21 So, shifting gears. In fiscal year
22 2022, which started on October 1st, we put

1 together our plan. We are forecasting patent fee
2 collections this year of about 3.6 billion
3 dollars. This is driven in part by a 1.4 percent
4 increase in (inaudible) filings in FY2022 and we
5 see that going to a 2 percent growth rate in FY
6 2023 and beyond. Renewals. Because fees have
7 largely recovered from the down-tic that we saw at
8 FY 2020. We have projected spending in FY 2022 of
9 about 3.55 billion dollars. This will support a
10 2.7 percent pay increase for our 13,723 employees.
11 We plan to hire 500 new examiners. We will send
12 that increase of 113 examiners over the prior
13 year. The agency is very information technology
14 incentive organization. We plan to spend 759
15 million dollars in IT this year with key emphasis
16 on artificial intelligence, infrastructure
17 upgrades, cloud and resiliency, and I am sure you
18 will be hearing more from (inaudible) investments.
19 I would note that the current operation reserve
20 balance was to here -- is actually above what our
21 planning expectation is. Our planning expectation
22 when we put our plan together was for an operating

1 reserve balance of 341 million dollars. We are
2 obviously starting the year on stronger position
3 than that.

4 And then lastly, the way the budget is
5 designed is we do expect a deposit in the Patent
6 and Trademark fee reserve fund of 58 million
7 dollars, but that is entirely dependent on what
8 level Congress ultimately appropriates the agency
9 and Congress has not enacted a final year
10 appropriation for us at this time. Next slide
11 please.

12 In terms of, let's see -- this is our
13 planned patent to define fees and spending a
14 side-by-side comparison so the pie chart on the
15 left, this is a breakdown of the fees we
16 collected. So, 50 percent approximately of all the
17 fees we collected are going to be in maintenance
18 fees. First stage, second stage, third stage
19 maintenance fees that will account for more than
20 1.8 million dollars of the 3.6 billion that we
21 collect. Filing fees is the next biggest category
22 at 904 million dollars. If you look at the pie

1 chart on the right, ample money gets spent. I
2 like to say that we are a people driven agency.
3 Active examiners are what gets the job done and
4 not surprisingly 69 percent of every dollar that
5 we spend is on people. It is on compensation, the
6 salary and benefits to pay for the staff examiners
7 and those who support them. Next slide please.

8 Now as I mentioned, Congress is still
9 deliberating on a final appropriation for all the
10 government. They have not enacted a full year
11 appropriation. Again, we are not waiting for
12 appropriated taxpayer dollars. We are simply
13 awaiting a level of fees that we can collect and
14 then subsequently spend. But under the CR the way
15 this works is the CR gives the agency the
16 authority to spend appropriate portion of the fees
17 we collect starting on October 1st, based on last
18 years appropriation. So what you see here is
19 based on that formula. We can spend up to 569.6
20 million dollars in fees we collect between October
21 1st and December 3rd, but not to worry. In
22 addition to that we can also spend the entire

1 operating reserve balance if we needed to, we
2 don't need to, 457 million dollars, and then we
3 have some other income, 7-1/2 million. The bottom
4 line is we have 1.034 billion dollars available to
5 the agency to spend on operations which is more
6 than sufficient to continue uninterrupted and to
7 continue with resolution and if the CR was
8 extended for some reason a number of weeks or even
9 months I don't foresee any operating issues at
10 this time. Next slide please.

11 So I had hinted at the status of the
12 appropriation. We are still waiting on a final
13 number from the Congress yet to be enacted. The
14 House has recommended an appropriation level of
15 3.994 billion dollars. This is the same level that
16 we had requested in terms of spending
17 requirements, the amount that we plan to spend in
18 the budget. The Senate has recommended an
19 appropriation level of 4.058 billion dollars,
20 slightly more, and this corresponds with the level
21 of fee collections that we anticipated FY 2022.
22 Congress will work out that difference in their

1 conference process and so we will await what their
2 final number and final decision is. Next slide
3 please.

4 Lastly, the budget cycle never ends. We
5 are already hard at work on our fiscal year 2023
6 budget. As you know, we submitted a budget request
7 to the White House via the Office of Management
8 Budget on September 13th. We are in the process
9 of estimating our revised work loads for next
10 year. We will submit updates to that budget soon,
11 and ultimately as part of the President's request
12 that goes forward in February, we will submit that
13 budget to the Congress and I would expect that
14 sometime in the spring there will be a combination
15 of meetings with the appropriators, as well as
16 potentially even hearings where we can discuss and
17 defend our budget proposal. So, I think I am
18 right at time so I will stop there and turn it
19 back over to Barney and Julie. I thank you for
20 your attention and again thank you for your
21 service to the PPAC.

22 MS. MAR-SPINOLA: Are there any

1 questions Barney?

2 MR. CASSIDY: I haven't received any
3 questions. I would like to thank Jay for the
4 presentation. It was very clear as usual and
5 helpful to understand the dynamics of the revenue
6 and spending at the agency.

7 MS. MAR-SPINOLA: Thank you for that. I
8 agree. I mean the explanations, while I often
9 times struggle with these numbers or even these
10 types of presentations, he made it very clear
11 today and easy to understand. One thing that I am
12 amazed and take-away is that as challenging as the
13 pandemic has been and certainly as it has been
14 protracted, it is amazing, but maybe not
15 surprising, that the Patent office has been able
16 just to carry on and not even be at status quo but
17 to be profitable in a sense and it has the funds
18 to not only operate and continue to hire so many
19 people, but also to be able to fund all these
20 programs that Barney and the folks in IE
21 Subcommittee has mentioned, as well as to make
22 spending -- to modernize our infrastructure in the

1 system with AI and IT tools. So, thank you very
2 much for that. The leadership from Drew and Jay
3 and Jaimie and everybody else, I apologize for not
4 naming everybody, but I do want to thank you for
5 that. Very impressed. Very impressed. And
6 Barney, thank you. I look forward to working with
7 you in another capacity. With that, let me just
8 ask Steve, Steve are there any questions before we
9 move on to Outreach?

10 MR. CALTRIDER: There are no questions
11 received.

12 Ms. MARS-SPINOLA: Thank you so much.
13 So let's go ahead and moved on to Outreach.
14 Tracy.

15 TRACY DURKIN: Thanks Julie. And let me
16 too add my congratulations and thank you for your
17 stewardship this year. You are leaving really big
18 shoes to fill and maybe high heels on top of that.
19 I want to bid farewell to Jennifer and Barney. I
20 am sad we cannot do this in person but I look
21 forward to seeing you in the chat maybe in the
22 future PPAC meetings or, better yet, maybe we will

1 all be in the room together in person at some
2 point. So I am Tracy Durkin. I'm the chair of
3 the Outreach International Committee. That
4 includes not only the work of the Office of Policy
5 and International Affairs, OPIA, but also the
6 Office of International Patent Cooperation, OIPC,
7 and also the work of the USPTO Regional Offices.
8 And so I am going to cover some highlights from
9 the PPAC annual report. I am going to start with
10 the regional offices. So those offices are
11 located in Detroit, Dallas, Denver, and San Jose,
12 as well as an eastern regional outreach office
13 which is at the USPTO headquarters in Alexandria.
14 The mission of those offices is two-fold. It's
15 first to recruit, hire and retain top talent for
16 the office and second to serve IP stakeholders
17 across the nation. In the short time since the
18 regional offices were created, they now conduct a
19 significant amount of the overall IP education and
20 training conducted by the office. This includes
21 more than 500 training sessions reaching more than
22 40,000 stakeholders spread across the U.S. On

1 the office published a report which looked at
2 factors that have influenced a high rate of
3 Chinese patent and trademark filings. Beyond the
4 usual market factors that drive IP filings, the
5 report found that a number of non-marketing
6 factors are influencing these filings such as
7 subsidies and government mandates. As we'll hear
8 today, the office has been working to identify
9 ways to mitigate the effect of delays the pandemic
10 has created and processing times for providing
11 certified and legalized documents from the office
12 and from the Department of State. And finally in
13 2020, the IP attaché positions at the U.S.
14 Embassies in New Delhi, Mexico City, Beijing, and
15 the U.S. Mission to the European Union in Brussels
16 were all elevated to the diplomatic rank of
17 councilor. This important elevation provided
18 these officers with greater access to senior
19 government officials and ambassadors and enabled
20 them to accomplish U.S objectives more
21 effectively.

22 The PPAC applauds the office for the

1 stride it has made despite the challenges to
2 international engagement created by the pandemic,
3 and particularly appreciates the efforts to assist
4 applicants and right holders in mitigating the
5 unanticipated effects of the pandemic on global
6 patent procurement and enforcement.

7 With that I am going to turn it over to
8 David Gerk who is the principal council and
9 director for patent policy in the Office of Policy
10 and International Affairs and he is going to start
11 by giving us an update on the WIPO general
12 assembly meeting and its new leadership. David.

13 MR. GERK: Thank you Tracy for that
14 introduction and thank you for your work over the
15 past year and I will echo what you said as far as
16 congrats and thanks to all the PPAC members that
17 may be moving on. Excellent work over the year.
18 We have enjoyed these discussions. Mary Critharis
19 the Chief Policy Officer and Director for
20 International Affairs had hoped to be here but
21 right before this got pulled into an urgent
22 matter. So, you know, obviously I am a familiar

1 face so hopefully you will feel you are in good
2 hands as well. As was eluted to by Julie and
3 Tracy, despite the pandemic and all the different
4 potential obstacles thrown in the way
5 international work is going on as vibrant and as
6 intensely as ever, and today we are going to hit a
7 couple of items just as a preview or give a short
8 recap of the WIPO assemblies, which is the
9 decision making body for the WIPO institution and
10 so a lot of the decisions that effect, whether it
11 be registration systems like PCT, Hague, Madrid or
12 just other engagement on international IP issues
13 come out of that body. We will also talk about
14 the ID5 annual meeting which is a meeting on
15 industrial designs or design patents by the 5
16 largest office. We will also give a quick
17 overview of some developments on legal
18 jurisdictions in a number of key markets. Keep you
19 up to date on that, what has happened over the
20 last year. And then finally, I think this is what
21 Tracy was highlighting, give you an update on what
22 is the status of insuring legalizations and

1 certified documents are moving efficiently,
2 quickly and so everyone can either perfect their
3 filings abroad or have whatever form of authentic
4 documents in court situations that they need.

5 Next slide please.

6 So the WIPO general assemblies, the WIPO
7 assemblies was held on October 4th through 8th
8 this year. This was the 62nd series of meetings,
9 so obviously we have been doing this for quite
10 some time. One notable initial aspect of this
11 meeting was that it is the first led by Darren
12 Tang who is the new Director General of WIPO and
13 took his position on October 1, 2020. His prior
14 position was as the Chief Executive Officer for
15 the IP office of Singapore. Next slide please.

16 And being his first meeting he did lay
17 out his vision and WIPO's vision under his
18 leadership for where they would like to go over
19 the next four or so years. In particular, you can
20 see on your screen, but the vision is for a world
21 where innovation and creativity from anywhere are
22 supported by intellectual property for the good of

1 everyone. And so, this gives you some sense as to
2 where his head is on intellectual property, as
3 well as it's role in the world. Now WIPO serves a
4 lot of different roles. They serve obviously to
5 support the development of the global intellectual
6 property system, which, as we are well aware, is
7 critical for promoting innovation and tackling
8 many of the challenges we have in the future. So,
9 these are tied into his vision and mission
10 statement. So hearing from him, obviously, the
11 Chief Executive has a lot of impact on steering
12 the direction of the WIPO so we can look that to
13 try and see where WIPO may be going over the next
14 few years. Next slide please.

15 More concretely some of the outcomes
16 from the assemblies of note is, as mentioned, the
17 decision bodies of the PCT, the Hague, which is
18 industrial designs and the Madrid for trademark,
19 those decision bodies met and the proposed rules
20 to make the systems more modern, more efficient
21 that took place in the working bodies, working
22 groups over the year were all adopted. A couple

1 of different things. Things like more time to
2 file propriety claims, as well as approving
3 standards like, you can see below there, the ST-26
4 standard which will be used and go into effect
5 July 1, 2022. That has to do with nucleotide and
6 amino acids sequence listings and patent
7 applications. A bit technical but important if
8 you are filing, obviously, in those technologies.
9 Also, the PCT decision body, the PCT union
10 approved the (inaudible) patent organization as an
11 ISA, IPA or international search authority and
12 international preliminary examining authority.
13 Additionally, the assembly renewed the mandate for
14 the IGC so the discussions in that body can
15 continue. That is one where the mandate needs to
16 be updated and approved each session. And then
17 finally one of the treaties, potential treaties I
18 should say, that is closest to agreement is the
19 design law treaty. That discussion has been doing
20 on for quite sometime and discussions did continue
21 but unfortunately no agreement was reached, but
22 that was taken up here at this session. Next slide

1 please.

2 So that takes us to ID5 and again the
3 ID5 is an important forum for advancement and
4 modernization of industrial design practice across
5 the globe and the U.S., as many of you know,
6 implement industrial design protection through
7 design patents. The five largest offices USPTO,
8 CNIPA, UIPO, EPO and JPO gather together.
9 Depending on the year they can be responsible for
10 between 70 and 90 percent of the worlds industrial
11 design filings and this years annual meeting was
12 held November 1st through 2nd. It was held
13 virtually and hosted by CNIPA and we have been
14 rotating through since 2015, so now we are on to
15 six on to seven iteration and quite a bit of work
16 has been accomplished. Next slide please.

17 Now when I saw quite a bit of work has
18 been accomplished, it was been focused on some of
19 the most important areas in the industrial design
20 space, so studies and analysis over that time
21 period, the six or so years of work, has been
22 focused on important issues such as grace period,

1 partial designs and, most recently and perhaps
2 importantly in today's markets, new and emerging
3 technologies. This is study and analysis not just
4 to do the studies and analysis, but they have real
5 impacts in that they were helpful in allowing
6 partner offices. Four of the 5 partner offices
7 now as a result, at least in part of these
8 discussions, have an aligned 12-month grace period
9 at least in number, which was something that was
10 important for stakeholders. The five partners now
11 with, and you'll hear a little bit more about
12 China in a few slides with them updating their law
13 now all five partners provide protection for less
14 than -- for design for less than a whole product
15 or referred to globally as partial designs, which
16 is another important thing stakeholders have been
17 interested in seeing. And on the digital
18 environment and new tech front, all five partners
19 do provide protection in digital environments, but
20 there is quite a bit of difference in how they do
21 that and that is something we continue to discuss.
22 Countries like Japan and Korea and even China have

1 been updating their practices in this space, so
2 these discussion continue as we learn from each
3 other in the area of best practices, etc. All five
4 offices have implemented WIPO DAS and we are
5 actually going to be issuing a quick reference
6 guide for users to better utilize those systems,
7 and we even came out with an ID5 joint
8 recommendation on the design formalities practices
9 since the design law treaty was stalled at WIPO.
10 The more aligned in thinking ID5 offices were able
11 to bless those practices to try to move the
12 discussion forward. Next slide please.

13 In looking ahead these are four projects
14 that the US has been leading and many of them are
15 close to conclusion and again these discussions
16 are to help gather information, see what practices
17 are abroad and also to sort of compare what's
18 working, what's not working in different
19 jurisdictions. So remedies and relief for
20 industrial design infringement, the term or
21 protection which includes things like deferment
22 and payment of fees associated with those timings,

1 deferment of publication, also an important issues
2 that stakeholders continue to be interested in
3 seeing some, I would say harmonization or
4 convergence practices with regard, and then a
5 five-year-review to make sure all our work is
6 correct. Next slide please.

7 So that leads us into an update of what
8 is going on internationally. Some real notable
9 updates in practice. We are going to hit a couple
10 of the big jurisdictions and we will start off in
11 South America with Brazil. In Brazil,
12 particularly of note for those interested in the
13 pharmaceutical space, there was previously what is
14 referred to as a prior consent regime in place in
15 which Brazils health regulatory authority had to
16 review all pharmaceutical patents before
17 examination could begin at Brazils IP office and
18 not surprisingly that often led to delays or
19 lengthier pendencies. Also sometimes could led to
20 things just not ever even getting out the door,
21 but with removal of this requirement this has
22 addressed some long standing USG and industry

1 concerns in that making sure that the patent
2 examination process was really focused on
3 patentability and patent focused issues and
4 keeping sort of the health and regulatory space
5 distinct from the patent process. Additionally,
6 there was a proposal in the legislative body
7 there, Congress of Brazil, about having some
8 compulsory licensing reform. I think, in part at
9 least, was brought on by the COVID-19 concerns.
10 There were some provisions about forced tech
11 transfer in certain qualifying health technology
12 spaces, but as that discussion progressed those
13 provisions fell by they wayside and the issuing
14 legislation did just sort of set more generally
15 the potential grounds for issuance of a compulsory
16 license in Brazil. Compulsory license is a part
17 of the -- one of the flexibilities in the trips
18 agreement but there is a number of requirements in
19 several, you know, safeguards in regard to that
20 practice to make sure it is for certain instances.
21 Next slide please.

22 Next, I guess alphabetically we would

1 move over to Asia and China. China has passed
2 quite a few amendments to their patent law. Just
3 recently they took effect in June against staying
4 in the Pharma space. They have introduced an
5 early dispute resolution system for pharmaceutical
6 related patents. Additionally, patentees can now
7 initiate infringement actions against generics and
8 biosimilars either at the courts or at CNIPA. And
9 then this new law establishes a drug patent
10 registration platform at the National Medical
11 Products Administration (inaudible) concepts going
12 on. A lot of these practices probably sound
13 familiar because we have some of these similar
14 sort of attributes in US practice. Patent term
15 compensation was also introduced for both patent
16 office and regulatory approval delays. Something
17 to note there. China is expected to join the
18 Hague agreement for industrial design, which again
19 is the system like the PCT for patents and the
20 Madrid System or trademarks and in doing so they
21 have updated their law to allow protection for
22 partial design, as I mentioned, and they have

1 one notable update and that has to do with the
2 injunction law in Germany. Previously, prior to
3 August 18, 2021, it was automatic essentially to
4 get an injunction for patent infringement.
5 Sounded much like our prepay sort of construct but
6 after that time there is now a little bit of a
7 softening on that at the parties that sought to be
8 join may now may move the court to deny the
9 injunction on the grounds that an injunction would
10 cause them a disproportionate level of harm and in
11 doing so that gives the court some discretion in
12 limiting to monetary compensation in that regard.
13 Next slide please.

14 And then here lastly alphabetically
15 concluding with Japan as our last jurisdiction of
16 interest. A couple of updates to mention there.
17 First off, Japan is introducing as of April 1,
18 2022 an amicus brief system which will allow third
19 parties to submit amicus briefs in (inaudible)
20 litigations. Admittedly I work in international
21 affairs and I did not know that Japan did not have
22 this system. So this is certainly notable and

1 obviously brings it probably closer to what we
2 have in our practice, so it is certainly of note.
3 Additionally they, you know, I think using the
4 challenges of the pandemic and other modernization
5 impetus they have taken a look at some of their
6 patent practices concerning how they operate,
7 their procedures and they made a move to digitize
8 procedures and have other enhancements to maybe if
9 this sort of difficult situation arises again to
10 be ready to deal with it flexibly. You might ask,
11 well what are some of the examples here?
12 (inaudible) or proceedings. Also payment being
13 able to use credit cards and bank transfers rather
14 than more traditional payment methods and other
15 things like that they have gone into in that
16 regard. Next slide please.

17 I think that might actually wrap it up
18 but I will talk -- I don't have a slide for the
19 legalization aspects but I will just talk to those
20 points and to say -- as we have had these
21 discussions on legalization and some challenges
22 that were being encountered most particularly

1 because of delays at State Department. There were
2 really two issues so as USPTO if you were
3 interested in a certified document or a
4 (inaudible) file at one point there was a little
5 bit of a slowing from the norms and how quickly we
6 were able to get that. In talking with
7 stakeholders, I know we heard earlier this week as
8 well as talking with folks internally I think we
9 have been successful in mitigating that for the
10 most part and bringing times more aligned. On the
11 State Department side, the side which we do have
12 less control, obviously, there remains these
13 delays but as we have spoken about before we have
14 taken a number of steps to try and do what we can
15 to again mitigate the effects here. For example,
16 we have our attaches in various regions that were
17 identified to try and see what flexibilities these
18 offices have in accepting documents or accepting a
19 nonlegalized version for a time being until the
20 legalized version can be provided. Of note, to
21 sort of highlight in this particular incidence we
22 had most recently in China an example and this

1 might serve as some of the flexibility sometimes
2 we can help assist with or others can try and look
3 for is the company was in a litigation and they
4 were having trouble getting the document which was
5 needed to start a litigation or filing there and
6 they went to the local Chinese consulate in a
7 state that they were, not State Department but one
8 of the 50 states and the Chinese consulate there
9 was able to review and approve and put whatever
10 certification on that document and then it was
11 able to be used and it did pass the muster for the
12 procedures that it was needed for in China. So, we
13 are going to continue -- we continue to want to
14 hear from you all about what you are seeing on the
15 ground. We understand, you know, things are
16 improving, at least particularly in the USPTO
17 sides. We appreciate that feedback and are very
18 happy to hear that. But any further information
19 you all can provide we can continue to try and
20 nimbly react to that and do what we can given it
21 is not completely in our control obviously to do
22 that. I know we are coming up on time, but I will

1 take 30 more seconds just to say I realize I
2 skipped it when I was talking about the WIPO
3 assemblies. For those who want more information
4 obviously you can go to the WIPO website and other
5 places, but we will be -- we are in the last
6 stages of putting t's and I's (inaudible) get it
7 up on the website. We will have a bulletin that
8 summarizes the WIPO assemblies outcomes on the IP
9 policy page. So, look for that in the coming days
10 if you want to see a little bit more of -- it is
11 still a summary but it has a little bit more
12 detail on the WIPO assemblies of 2021. I will
13 stop there Tracy and everyone and turn it back to
14 you.

15 MS. DURKIN: David thank you. That was
16 an excellent summary of a lot that has been going
17 on. Are there any questions? I didn't see
18 anything come in the chat.

19 MR. CALRIDER: Tracy I don't have a
20 question, but I will echo the voice of gratitude
21 on the State Department and legalization of
22 documents. Yes, you only control the portion that

1 the patent office controls, but your conversation
2 with State Department I think also made a
3 difference. It is my understanding with feedback
4 I tried to gather is that it has greatly improved.
5 So, thank you very much for that.

6 MR. GERK: Thank you Steve for that. We
7 really do appreciate you mentioning that and
8 hearing that back. That is nice to hear and I
9 will pass that along to the team and also we do
10 keep -- we speak regularly every week or two with
11 State Department so we will keep our ears to the
12 ground and keep you guys informed. So thank you
13 again.

14 MS. MARS-SPINOLA: Great. Okay. Thank
15 you Tracy and David. Thank you for that
16 presentation. I echo the compliments about the
17 presentation and I appreciate very much that you
18 were able to jump in and make the full
19 presentation for us. So we are actually on time
20 and I would like to be able to keep that and I
21 thought we would now turn to PTAB Subcommittee.
22 Steve. Steve you are on mute. You are still on

1 mute Steve.

2 MR. CALTRIDER: Am I off mute now?

3 Sorry about that. I'll get the hang of it
4 someday. By the time we go back to live meetings
5 probably. I am Steve Caltrider. I am chair of
6 the PTAB Subcommittee and we have a full report
7 today from the PTAB so I am going to keep my
8 comments short. I would also encourage everyone
9 to read the PTAB section of the annual report
10 which highlights the accomplishments and progress
11 in far more details. Some of the notable
12 highlights. The PTAB continues to make progress in
13 reducing the number of (inaudible) appeals and the
14 pendency of the appeals. I won't go into the data
15 now but it can be found on the PTAB statistics web
16 page. But a notable point in the statistics
17 regarding workload is a breakdown in the
18 proceedings. Ninty-three percent of the trial
19 proceedings are IBRs and 7 percent of the trial
20 proceedings are PTRs. I know from my perspective
21 I would never have guessed that when the American
22 Events Act was passed. The institution ranked by

1 petition for fiscal year 2021 is 59 percent
2 compared to 56 percent in 2020 and is slightly
3 lower numerically but roughly on par with fiscal
4 year 2019, so we have been fairly constant in the
5 institution rating. PTAB also should be commended
6 for the interim procedure (inaudible) director
7 review following Arthrex. The (inaudible) of that
8 procedure was extraordinarily timely and very
9 workable. We recognize the procedure is still in
10 interim status and may change based on further
11 input from the public and the experience between
12 now and when those rules are made final. Next, we
13 reported in prior PPAC meetings, PTAB in the past
14 has collaborated extensively to improve the
15 quality of the granted patent. Most notably when
16 placing feedback loop that shares data information
17 to (inaudible) and search and training which
18 otherwise improves the examination, progress in
19 this regard has been very significant. It is not
20 quite ready for prime time, but it remains a high
21 priority for the PPAC office. Of course, the
22 applicant adds an important role in the overall

1 quality of the system and the PTAB has playing its
2 part in putting in place the number of programs to
3 train external stakeholders. Notably in the
4 monthly foresight chats and the lead program which
5 we have already discussed. In addition to
6 practitioners, the board also hosts monthly and
7 dinner hour webinars to cover a variety of topics
8 of interest to inventors. Finally, PTAB has
9 designated a number of opinions Presidential
10 during the year including (inaudible) last year.
11 These presidential opinions are important to
12 practitioners as they provide a higher degree of
13 predictability and this has also contributed to a
14 steady downturn trend (inaudible) over the last
15 fiscal year. With that, I think I will turn
16 things over to Chief Scott Boalick.

17 MR. BOALICK: All right. Well thank you
18 Steve and thank you too PPAC for the report and
19 your recommendations. I would also like to join
20 others who throughout PPAC today have given thanks
21 for outgoing members.

22 MS. MAR-SPINOLA: I'm sure most people

1 already know this, but just as background
2 Arthrex-- the Supreme Court issued Arthrex back in
3 June. And as part of the decision, it provided a
4 new tailored remedy to ensure that ABJ's function
5 as (inaudible) officers. And the Supreme Court
6 said, as a result, that the Director may review
7 file final PTAP decisions, and upon review may
8 issue decisions him or herself, on behalf of the
9 board. So shortly after Arthrex, the office
10 kicked it into gear and provided a new interim
11 procedure that allowed the Director, without
12 authority to unilaterally review a PTAB final
13 decision in IPR by rehearing. Under this new
14 process, the Director review may be initiated to
15 sui sponte by the Director, directly or it can be
16 requested by ex parte an AIA proceeding seeking
17 rehearing of a final decision. Let's go to the
18 next slide, thanks.

19 So right now, this current director
20 review process is an interim process. We put it
21 in place so that we could have something that
22 would happen right away, but it was anticipated

1 that that might change, based on input from the
2 public, based on experience that we have with
3 direct reviews, and any thoughts of our new direct
4 review, still coming. And what you can see here,
5 anyone can send suggestions about the process to
6 this Direct Review suggestions mailbox. So that's
7 anybody in the public. And also listed here are a
8 few Websites that you're going to want to know
9 about if you want to learn about Arthrex, and the
10 Direct Review Process. We have an Arthrex
11 information page, Arthrex Q and As. This in
12 particular is a great source, for the latest and
13 greatest about what we're doing. It's just a lot
14 of weeds there if you're interested. And also,
15 right after we put the process in place, there was
16 a board side chat that includes Drew Hirshfeld, so
17 you'll see there's video and slides there that
18 talk about the process. What was intended in this
19 interim process for now.

20 So I thought that we could talk a little
21 bit about how the direct review process works. So
22 if the Directors initiates to Sui sponte Review,

1 the parties will be given notice, and they may be
2 given the opportunity to brief. The Director has
3 an option at any point before the filing of the
4 Notice of Appeal, or before the time for filing a
5 Notice of Appeal has passed. As a general matter
6 these reviews, the Direct Review may address any
7 issue, including issues of facts or law. And the
8 review will be De novo. It's important to note
9 however, even though the review is De novo, the
10 request isn't an opportunity for a party to make
11 new arguments, or submit new evidence. So the
12 Director themselves may choose to request
13 additional briefing, or under certain
14 circumstances may provide a party to submit new
15 evidence. But that's at the discretion of the
16 Director. A party may request Direct Review of a
17 final written decision in an IPR PGR by doing 2
18 things at the same time: By filing a request to
19 return by the Director, this is what's entered
20 into our system, and also submitting notification
21 of the request, by email, to a mailbox expressly
22 for that purpose, copying all counsel for the

1 parties.

2 Basically, parties can request either
3 Director review or a re-hearing by the original
4 panel, but they can't do both. If they do both at
5 the same time, it will be construed by the office
6 as a request for Director Review.

7 Now other requirements and things to
8 keep in mind, a party can request a Director
9 review within 30 days of a final written decision,
10 although if need be they can ask for an extension
11 before that date for a good cause. And once
12 that's done, once that request is filed, it resets
13 the clock for a notification circuit. The page
14 limit for these requests is 15 pages, absent
15 authority to do otherwise. This is the same as
16 our regular request for hearings. There's no fee
17 to do so, and third parties can not file requests
18 for direct review. That's important. Only
19 parties can do that.

20 So what is the status of Director Review
21 requests today? Or at least as of 2 days ago, I
22 can tell you. Acting Director Hirshfeld, he

1 discussed this a little bit this morning.
2 Following the Arthrex decisions in June, and as of
3 2 days ago we've received 126 requests for Direct
4 Review. Seventy-three of those are pending, and
5 53 have been decided. And 1 has been granted. So
6 in the 1 that's been granted, this is in case
7 anybody wants to look it up, the IPR 2020-00349,
8 this is ASSEN performance materials versus
9 Samsung. And in this particular case, the order
10 granting the patent owner's request for Direct
11 Review, it vacates the Board's final written
12 decision, which found claims unpatentable. It
13 remands the case back to the Board to address
14 whether 2 dependent claims are entitled to an
15 earlier priority date. This is the priority date
16 of the provisional. Because it turns out the
17 final written decision didn't specifically address
18 priority of those 2 independent claims. So it's
19 been remanded to the Board to address that issue
20 about whether they're entitled to priority, and
21 also address whether the claims are patentable in
22 view of that record.

1 It also happens to deny 3 other
2 arguments the Patent owner had raised, 4 total
3 arguments in the request, in that the order denies
4 review of the other requests, which are basically
5 relating to the Board's determination about,
6 obviously, what's on the other claims.

7 Now one thing to keep in mind, because
8 people ask and I know that Mr. Hirshfeld, he
9 covered this, but the POP review process still
10 exists, and if you're interested in that you can
11 see standard operating procedure too, which is on
12 our Website for all the details. And 1 thing to
13 note, that in relation to Direct review, only the
14 parties can request Direct review of final written
15 decisions. The POP requests aren't so limited,
16 meaning that parties may request it for relation,
17 for example, to decisions on institutions or
18 parties may appeal decisions. Interestingly, and
19 this was noted earlier today, following the
20 Arthrex decision, and establishment of the Direct
21 review process, we received a higher than normal
22 number of requests for POP reviews too. We've had

1 40 in the last 4 and a half months. And right now
2 14 are pending, 1 request has been granted and the
3 remainder have been denied. And the particular 1
4 that has been granted, this is an IPR 2021 00330
5 this is Toshiba versus Monument Peak ventures, and
6 this 1 was intended to resolve an issue relating
7 to institutions. In that case a PTAB panel denied
8 the Institution originally, because it determined
9 the petitioner had not paid the fee before the
10 expiration of its 1- year borrower window. And
11 the POP granted review on the issue of whether a
12 Fedwire confirmation of payment constitutes
13 sufficient evidence of payment for the purpose of
14 receiving the petition filing date. Obviously
15 briefing was authorized, the parties completed
16 their briefing in early November, and that case is
17 pending right now.

18 Just a last bit of information,
19 sometimes people ask us, "How does the process
20 actually work at the office itself?" And again,
21 there's lots of information about this in the Q&As
22 that I mentioned earlier, on our Website. And 1

1 thing that it talks about is right now in the
2 interim process, requests to the Director's review
3 are evaluated by an advisory committee that's set
4 up by the Director. This advisory committee
5 advises the Director on their views on whether the
6 decisions merit review. Right now that advisory
7 committee, it has members from various business
8 groups, such as the office of the Undersecretary,
9 PTAB, the Office of the Commissioner of Patents,
10 Office of General law, including for example the
11 people from the Solicitor's Office, and the Office
12 of Policy International Affairs. But regardless
13 of that feedback, the director ultimately
14 determines whether review is granted or denied.

15 Now another question that people ask is,
16 is the criteria for Direct Review versus POP
17 review, because both are (inaudible) hearing? For
18 Direct Review, although there's no exclusive
19 request for criteria, a final written decision may
20 warrant Direct Review if they include, for
21 example, material errors of fact or law, matters
22 that the panel misapprehended or overlooked,

1 that's a normal standard for rehearing, novel
2 issues of law or policy, issues in which the board
3 panels are split, issues of particular importance
4 to the Office of the Patent community, or anything
5 that may inconsistent with office procedures
6 guided the decisions.

7 So POP review is actually quite similar.
8 But it is generally used to establish binding
9 precedent concerning major policy or procedure
10 issues, or other areas of exceptional importance.
11 So, for example, POP review may be used to address
12 Constitutional questions, important issues
13 regarding interpretations of statutes, rules and
14 regulations, important issues relating to binding
15 or Presidential case law, or issues of broad
16 applicability to the board, or to resolve
17 conflicts of board decisions to promote
18 (inaudible) inconsistencies. So POP may be less
19 likely to take a case simply because there was an
20 error by a panel, but Direct Review could, in
21 theory. For example to remand a case to the
22 original panel with instructions. This is the

1 kind of thing we saw in the recent grant review
2 order. So again, that's just a quick synopsis of
3 what's going on today, and what the process is
4 today. But again, this an interim process, we
5 welcome feedback, and we wanted to make sure that
6 everybody had the Web site that we have listed
7 here. If you have any more questions or
8 suggestions for us.

9 MR. CALTRIDER: All right, well thank
10 you Jackie, next we're going to move on to a topic
11 that we're very excited about, and Drew mentioned
12 this in his opening remarks this morning,
13 something that we've been working on for some time
14 and it is starting to come to fruition, namely the
15 PTAB pro bono pilot program, and for that
16 discussion I'm going to turn it over to Vice Chief
17 Judge Janet Gongola and Lead Judge Stacy White.

18 MS. GONGOLA: Thank you Scott. Good
19 afternoon everyone. Very good, we're at the next
20 slide. So I'm going to talk a little bit about
21 the background of how we came to set up our PTAB
22 pro bono program, and then turn things over to

1 Lead Judge Stacy White, who will share more of the
2 details as we presently have them set up.

3 So you probably all remember 10 years
4 ago, when the AIA was passed, 1 of the provisions
5 required the office to collaborate with the
6 stakeholder community to establish a patent pro
7 bono program. This patent pro bono program was
8 designed to aid under-resourced inventors, and
9 filing and prosecuting a patent application. Now
10 we had always hoped to extend that pro bono effort
11 into the PTAB for appeals, and AIA trial
12 proceedings. Following President Biden's
13 Executive Order on Economic Recovery, we initiated
14 this effort full steam ahead. In the Spring, we
15 convened a steering committee comprised of various
16 members of the public, and the Board, to talk
17 about the structure and operation of a PTAB pro
18 bono program. Several members of our steering
19 committee were part of that original group, who
20 helped to set up Patent Pro Bono: Dave Kappos,
21 Jim Patterson, Kevin Rhodes, Candy Goodman, just
22 to name a few. With their experience in

1 establishing Patent Pro Bono, we thought it was a
2 very, very natural fit to call upon them again for
3 their wisdom to aid us once more in establishing
4 PTAB pro bono. Additionally, this Fall, we
5 brought on a Detailee, Grant Corboy, he's in the
6 Office of Enrollment and Discipline. A Detailee,
7 is an employee who is sent on a temporary
8 assignment from their normal job into a different
9 area of the office. Grant was very instrumental
10 in helping to establish Patent Pro Bono, and he
11 has been working on it ever since. So he has
12 already been helpful in sharing best practices,
13 based upon his years of experience with the pro
14 bono program. Now I'm going to turn things over
15 to give you some more detail, with Lead Judge
16 Stacy White. And she'll talk about our progress
17 and what we've set up so far. Over to you, Lead
18 Judge white.

19 MS. WHITE: Thank you Vice Chief
20 Gongola, and I bring you greetings from the Texas
21 Regional Office, I'm 1 of the Lead Judges out here
22 in Dallas. As Acting Director Hirshfeld mentioned

1 this morning, and as I was generously introduced
2 by Vice Chief Gongola, the PTAB is working in
3 conjunction with our stakeholder community to
4 develop a PTAB pro bono program. This program
5 will help under resourced parties obtain counsel
6 for proceedings before the PTAB. We're going to
7 be working in collaboration with the PTAB Bar
8 Association, which has agreed to be the
9 clearinghouse for the program. In its role as the
10 clearinghouse, the PTAB Bar Association will help
11 bring together potential pro bono clients and
12 volunteer patent practitioners. So that they can
13 have appropriate counsel for proceedings before
14 us.

15 The PTAB pro bono program will begin,
16 like so many of our programs, as a pilot. This
17 program will be limited, in its pilot stage, in
18 size and scope. During the initial phase of the
19 pilot program, we will be limited to just ex-party
20 appeals, and the program will also be limited as
21 far as the number of participants in the first
22 year. That's not going to be the end, of course.

1 It's anticipated that the program will grow over
2 time, to include more pro bono clients, and to
3 reach our other areas of jurisdiction, including
4 AIA trials. Work with the PTAB Bar Association is
5 ongoing, and more information will be available in
6 the future, as we firm up the dates on our launch
7 date, and other information.

8 So we're very excited about his program,
9 and it's something that we look forward to, to
10 really aid our stakeholder community in overcoming
11 any sort of financial hurdles that could be
12 getting in their way of fully participating in
13 PTAB proceedings. So thank you again for this
14 opportunity, and Vice Chief Gongola will take it
15 from here.

16 MS. GONGOLA: Thank you Stacy. I will
17 turn to the next slide and continue talking about
18 some of our efforts with the inventor community.
19 We have not historically had strong relationships
20 with the inventor community, so we are working to
21 forge inroads into the community, reach inventor
22 groups, engage with them and educate them both

1 ways on our proceedings.

2 So we've done a couple of different
3 things to try to reach the inventor community.
4 First of all, we launched an Inventor Hour Webinar
5 series. This is a once a month Webinar on the
6 last Thursday of the month, the content is geared
7 towards those who are new to the Board. We
8 devised it to be short, 10- minute segments on a
9 variety of different topics so that when you walk
10 away from this program, you will learn something
11 about all aspects of practice before the Board.
12 So we have segments on appeals, segments on
13 trials, you meet different judges and members of
14 the Board's Operations Division during the course
15 of the Webinar. It is not a deep dive into any
16 particular issue. We cover deep dives in our
17 Board-side chat Webinars. These Webinars are
18 intended to give you kind of that broad-based
19 exposure. So we hope you will tune in on the last
20 Thursday of every month. We're currently on a
21 little hiatus for the upcoming Holiday season.
22 But we will be resuming those programs in the

1 month of January.

2 Next, we publish a monthly article in
3 Inventor's Digest about our Board proceedings. So
4 we talk, in very plain language, about our
5 appeals, our trials, things that those new to
6 practice before the Board would want to know. And
7 so you check out our 1-page article each month,
8 this is something we just started in October, and
9 are looking forward to continuing it through this
10 upcoming calendar year.

11 And then, finally, we created some time
12 ago, a new to PTAB Website. This Web site, like
13 Inventor's Digest, is written in plain language
14 for those new to the Board. We want to, again,
15 talk about our proceedings at basic levels so if
16 you find yourself in front of the Board for an
17 appeal or an AIA trial proceeding, you will have
18 some expectation of the process, the timing, how
19 the Board operates. You won't be caught off
20 guard, you'll know what to expect.

21 One feature in particular that I want to
22 call out is an appeal brief tool. This is a

1 2-part document. One is a template for preparing
2 an appeal brief, and the second is an example
3 document showing you what the different parts of
4 an appeal brief look like, and how to write it up
5 to comply with statutes and rules governing
6 appeals briefs. We wanted to provide this tool to
7 make it easier for those who are appearing in
8 front of the board in an appeal, and not
9 represented by an attorney, to effectively argue
10 their case. This calendar year, we're going to be
11 developing a similar tool for petitions and patent
12 owner preliminary responses needed for our AIA
13 trial proceedings.

14 So we welcome input on all of these
15 efforts, and look forward to continuing the
16 dialogue with the inventing community. Back to
17 you, Chief Judge BOALICK.

18 MR. BOALICK: All right, well thank you
19 Janet, and thank you Stacy for your explanation of
20 our new program and our inventor outreach efforts.
21 If we could turn to the next slide, we're just
22 going to go over a couple of updates, a few things

1 that have been happening around the Board.

2 Starting with our virtual hearings,
3 which is something that, as you recall back at the
4 beginning of the Pandemic, we were operating with
5 in-person hearings on a Friday, and on Monday we
6 opened up with all virtual hearings and we've been
7 doing all virtual hearings ever since. We've had
8 quite a number of those, so to date we've had
9 1,145 ex parte hearings, 756 AIA trial hearings,
10 30 re-exam and 2 reissue hearings, all completely
11 virtual with the panel, the parties and the court
12 reporter. All virtual and we've also been able to
13 make these hearings available to the public, and
14 if any member of the public wants to attend 1 of
15 these hearings, and they've been able to request
16 the link, it was originally an audio link, we have
17 just recently gotten to the state where we are
18 offering video links into hearings as well. And
19 we've had 464 total hearings for a public audio
20 link, request was granted. We've had a handful of
21 denials, mainly either because there was
22 confidential business information being discussed

1 in the hearing, or the request came too late. But
2 we've been able to accommodate the vast majority.
3 Only 18 out of that whole period were denied.

4 We've also had 82 hearings with leap
5 practitioners in there. Which we'll be getting to
6 the Leap program here in just a little bit. We've
7 had quite a few. And we're still in the max
8 telework posture, so virtual hearings are
9 continuing. If the agency reaches a point where
10 it's going to be transitioning back, I should say,
11 if and when because we know the day will come. We
12 just don't know the particular day yet. But I
13 will provide information about a transition to an
14 in-person hearing as that day comes. And we'll
15 give everybody plenty of notice about what to do,
16 and how to request that. At least at present, we
17 do intend to continue to continue offering a
18 virtual hearing option, because we've gotten a lot
19 of feedback from parties and counsel that, at
20 least in certain situations, a virtual hearing has
21 been advantageous to them. And so for those that
22 still want that, we'll continue to offer it.

1 So now I'd like to talk a little bit
2 more about some pilot programs, and their status,
3 and the first one we'll address is our Motion to
4 Amend pilot, and I'll turn it back over to Deputy
5 Chief Judge Bonilla to talk about our Motion to
6 Amend Pilot.

7 MS. BONILLA: Thanks Scott. And just a
8 reminder, so Motions to Amend, these are papers
9 that patent owners can file in an AIA trial, in
10 addition to their patent owner response. After a
11 trial has been instituted, they can file a motion
12 to substitute claims if they wish. And the office
13 issued a Federal Register note about a Motion to
14 Amend Pilot back in March of 2019, indicating that
15 it applies to AIA Trials, or it suggested that
16 date. And based on the preliminary results we
17 have so far, the Office recently expanded the
18 program for at least another year, until September
19 16th, 2022. And as noted in the Federal Register
20 about the extension, as noted in the original
21 notice, the Office may extend it again, with our
22 without changes, after that date. And just a

1 reminder for everyone who may not be familiar with
2 it, the Pilot offers patent owners 2 new options
3 they didn't have before in relations to the
4 Motions to Amend and AIA trials. The first option
5 is the patent owner may choose to receive
6 preliminary guidance from the Board on its Motion
7 to Amend, and/or, meaning it can do one or the
8 other, they may choose to file a Revised Motion to
9 Amend after receiving petitioners opposition to
10 the original Motion to Amend, and after receiving
11 preliminary guidance, if they requested it.

12 Basically, at that point they have
13 options. They can, based on a petitioner's
14 opposition of a Motion to Amend, they can file a
15 reply, they can file a Revised Motion to Amend, or
16 they can do nothing at all, and those 2 options
17 aren't related to each other at all. You can do
18 1, or both, or neither.

19 If the patenter doesn't elect to do
20 either of those options, they can pursue Motions
21 to Amend basically the same way, before we
22 implemented the Pilot. And as far as how it's

1 going today, as of the end of October, just to
2 give you some stats, the first time anybody can
3 file a motion to amend, under the pilot, was in
4 June 2019, and what we have found is patent owners
5 file Motions to Amend at about the same percent as
6 what they did before the pilot. So about 10
7 percent of the time at an instituted trial, you
8 will see a patent owner file a Motion to Amend,
9 and that number hasn't changed, before or after
10 pilot.

11 At least had almost 170 Motions to Amend
12 filed so far that qualified for the pilot. And
13 the PTAB has decided about 82 Motions to Amend on
14 the merits, to file a decision. And what we've
15 seen is that Patent Owners have elected for 1 of 2
16 pilot options in the vast majority of cases. Well
17 over 80 percent of cases. And bottom line is,
18 generally speaking, Motions to Amend have been
19 granted, or granted-in-part, with greater
20 frequency, since the pilot began. So before the
21 pilot, we either granted, or granted-in-part,
22 about 14 percent of the time, and since the pilot

1 started we're up to nearly 30 percent of the time
2 are granted or granted-in-part. So basically the
3 point is that patent owners choosing at least 1
4 pilot option are more likely to have a motion
5 granted for at least one (inaudible) claim. So as
6 far as we're concerned, the pilot is still working
7 pretty well. And we're going to plow on and see
8 how it goes, and get additional feedback, and we
9 will see how it goes, going forward. And I'll
10 pass it back to you, Scott.

11 MR. SCOTT: Sure, and so next we want
12 to give folks an update on our fast track to
13 appeal. A pilot program, recall, which was one
14 for a very low petition fee you can get a decision
15 with a target date of 6 months. I won't spoil the
16 surprise, but I'll turn it over to Vice Chief
17 Judge Gongola, to reveal the current speed at
18 which you can get an appeal decision on the pilot
19 program. So over to you, Janet.

20 MS. GONGOLA: Thank you, Scott.
21 Drumroll, 2 months. Two months. That's a really
22 fantastic number. So if you participated in the

1 fast track appeal pilot program, from the time
2 that you petitioned and are accepted in the fast
3 track program, to the point in time where you
4 receive a decision, there's a 2-month window.
5 This is very, very fast, and I think it might
6 surprise many thinking appeals take, you know, 20
7 months, 24 months. No. We have good news on that
8 front too. But under the Fast Track program, it's
9 2 months regardless of technology. And we have
10 plenty of room available. In June of this year,
11 we renewed the pilot program for a second 1-year
12 cycle. Thus far in our cycle, we've received 256
13 petitions, so we have 200-and some spaces
14 available. For those of you listening, and would
15 like to participate, please submit your petition.
16 The cost to submit is very low, and we will give
17 you a decision quickly.

18 Now an offshoot of our Fast Track Appeal
19 pilot program is our COVID Fast Track program.
20 It's built on the platform of the Fast Track
21 Appeal Pilot, with a couple different exceptions.
22 And actually it makes things a lot, even easier

1 for you to participate. First, there is no limit
2 on the number of petitions we can receive. And
3 second there is no charge to participate. The
4 only additional hurdle you have to meet is to
5 demonstrate that you have an underlying
6 application that qualified as what we call a COVID
7 application. The definition for a COVID
8 application is the same that is applied during
9 examination. We carried that definition through,
10 your invention or your method has to be subject to
11 SDA review, in short. It's probably written a
12 little bit more complicated than that in our
13 notice, but that's the way I interpret it myself.

14 Right now, we have not received any
15 appeals under the COVID Fast Track, but the reason
16 for this is because we are just starting to see
17 applications emerge from examination that meet
18 that COVID application definition. So we are
19 anticipating, in this calendar year, that we will
20 begin to see some COVID applications in our Fast
21 Track program as well.

22 I will give things back over now, to

1 Chief Judge Boalick, to tell you more about
2 appeals in general, not that are subject to our
3 Fast Track Program.

4 MR. BOALICK: All right thank you. In
5 general I'm just going to talk briefly about some
6 of our ex-party appeal statistics. These are
7 available on the PTAB Web site, and we do update
8 these monthly. So right now, our pending appeals
9 are 5,588 as of the end of October. That is down
10 significantly, those of you who recall about 10
11 years ago, will recall that our ex-party appeal
12 inventory was 26,000-plus, and heading in the
13 wrong direction, so we've turned that around,
14 we're down to a very manageable level of appeals,
15 and there's also a good news story our turnover
16 tendency of ex-party appeals are overall tendency,
17 as of the end of October was 12.8 months. That's
18 also down quite a bit from what folks may remember
19 a few years ago. And we are in efforts to try to,
20 even those tendencies across the technology
21 centers, right now some of the electrical PCs have
22 a slightly longer active tendency than, say, those

1 in the bio Pharma and mechanical business methods,
2 and chemical. But we are working to even those
3 out. So good news on both our inventory and
4 tendency. And now for our final topic, before
5 getting any questions, I'll turn it back over to
6 Vice Chief Judge Gongola to talk about our Leap
7 Program.

8 MS GONGOLA: Thank you Scott. Well we
9 have really exciting news, that Acting Director
10 Hirshfeld talked to you a little bit about this
11 morning. I'm going to elaborate a bit more, and
12 give you some more information about it. You may
13 recall that to qualify as a lead practitioner, a
14 patent attorney or an agent has to meet 2
15 eligibility requirements. Three or fewer
16 substantive arguments before any Federal Tribunal,
17 including PTAB, and 7 or fewer years experience as
18 a licensed attorney, or a registered practitioner.
19 Effective today, we are eliminating that 7 year
20 requirement. The elimination of this requirement
21 is going to make it easier for Junior
22 practitioners to qualify for Leap, and present, as

1 an actual case, part of an oral argument. Maybe
2 even the whole thing.

3 The reason we made this change is
4 because it better, we believe, it better reflects
5 Leap's focus on giving opportunities to those who
6 previously have not had any set chances. We're
7 pending your eligibility for Leap on opportunity
8 rather than years of time in practice. Our
9 original definition, we felt, might have left some
10 folks behind. Perhaps parents or caregivers who
11 took time away from practice for other
12 responsibilities. Members of the Service, who are
13 in the Reserves or on Active Duty, and away from
14 practice. Time spent as a patent agent before
15 becoming a patent attorney. And those who chose
16 perhaps a different area of the law to practice,
17 before going into patent law.

18 Another reason that we made this change
19 is because we got a lot of feedback from
20 stakeholders who had some confusion over the years
21 of experience requirements, and they advised us,
22 "Gosh it would be really nice if you took that

1 requirement off the table."

2 And then finally, we are aiming to
3 increase usage of the Leap program. We are all
4 super enthusiastic about it, but we have only had
5 82 Leap arguments since our program started 18
6 months ago. Those arguments are split a third in
7 appeals, and the balance in trials. But we really
8 love having Leap practitioners and giving that
9 opportunity to junior employers. So we hope that
10 the elimination of the 7-years requirement will
11 increase the number of Leap practitioners that we
12 see going forward.

13 Now beyond eligibility requirements, we
14 have done 4 different types of training this year,
15 mock arguments in those appeals, and trials. We
16 want to give the junior practitioners a little bit
17 of practice before the actual case. So they have
18 a chance to get comfortable with how to present,
19 being on your feet, and answering questions from
20 the judges. We've also introduced some Webinar
21 programming featuring super experienced
22 practitioners, to talk about how you prepare for

1 an argument, how you handle the questions, and we
2 look forward to continuing those programs in the
3 future, as well as offering more Leap type
4 programming for training of our junior
5 practitioners.

6 I will turn things back now to Chief
7 Judge Boalick, I believe we may be at time, but I
8 couldn't contain my enthusiasm in telling you
9 about Leap. So I hope you will pardon me.

10 MR. BOALICK: Absolutely, we're all very
11 enthusiastic about Leap, as well as our other
12 programs. So Steve, I know we are at time, I
13 don't know if there's time for questions, should
14 there be any, but thank you all for your
15 attention.

16 MR. MAR-SPINOLA: Scott, that was a
17 great presentation by you, Janet, Jackie and
18 Stacy. Thank you so much, there was a tremendous
19 amount of content that you went through. It's
20 much appreciated. If I can indulge you all, I
21 would like to ask 1 question because I don't know
22 that I picked up on the answer. The timing of the

1 PTAB pro bono pilot is something that's
2 anticipated in Q1 of the next calendar year. When
3 should people start to look for opportunities
4 there?

5 MR. BOALICK: I'll ask if Janet or
6 Stacy, yes, Stacy, why don't you maybe let us know
7 what our plans are?

8 MS. WHITE: We are working with the PTAB
9 Bar Association to finalize what the dates are
10 going to be, but right now we're anticipating that
11 we will be launching this program some time in the
12 Spring or Summer, but of course it's going to
13 depend on how everything goes in terms of us
14 finalizing the details.

15 MR. BOALICK: Thank you, and thank you
16 again for an outstanding presentation by everyone,
17 and kudos also for expanding the Leap program, and
18 being responsive to stakeholder feedback. I think
19 that will be tremendously helpful to expand its
20 breadth, I think it's a great program. Julie,
21 I'll turn things over to you.

22 MS. MAR-SPINOLA: Well thank you, and I

1 want to echo Scott. The PTAB presentation with
2 Jackie and Janet - welcome back, Janet - and
3 Stacy, was very much appreciated, a lot of
4 exciting programs. I'm very happy to hear, in
5 particular, the Fast Track pilot program, as well
6 as the Leap program opening up. I'm a little
7 surprised at how few have taken up the Leap
8 program, and definitely I look forward to that
9 ramping up, big time.

10 So we are out of time, but let me just
11 say this: Tracy had mentioned something about my
12 leaving big shoes to fill. We have Steve
13 Caltrider, who is the Vice President, General
14 Patent Counsel at Eli Lilly who will be taking
15 over, as chair, so I am fully confident that he
16 will fill my shoes, sans the heels. Physically
17 and figuratively. And I look forward to big
18 things happening next year. I will definitely
19 stay in tune, and I thank you for everybody, and
20 everybody's efforts. So with that, do I have a
21 motion to adjourn?

22 MR. CALTRIDER: Julie, you're getting

1 ahead of yourself, aren't you? Do we have the
2 Patent Quality and Penancy report?

3 MS. MAR-SPINOLA: Oh, wait a minute, I
4 am sorry. We have- I apologize, it was on the
5 second page. So Penancy and Quality. So I've
6 already given my end speech, so I won't repeat it
7 later, but let's move on, my apologies here. Yes,
8 Jeff, my apologies Jeff.

9 MR. SEARS: It's okay. I'm Jeff Sears,
10 I'm chair of the Pendency and Quality sub
11 committee. I'm going to start off our last
12 section by giving you a few highlights of our
13 annual report, and then I'm going to turn it over
14 to the office, to discuss some recent statistics
15 for FI21, projections for FI22 and a review of
16 what happens in the Central Reexamination Unit.

17 Onwards to the highlights. A number of
18 these have already been stated or alluded to, so I
19 will be brief. First, with regards to Pendency,
20 the office has made considerable progress in
21 achieving its pendency goals, whether measured in
22 absolute terms, for example the patent term

1 adjustment goals, or average term, measured with
2 respect to First Action Pendency, or total
3 pendency.

4 On quality, the office continues to
5 improve the quality of examination. It continues
6 to meet its objectives for the correctness
7 indicators. Steve also, earlier, alluded to the
8 role that applicants play in Quality. Quality is
9 not a one-way street, it is a two-way interaction
10 between the Office and applicants. And some of
11 those interactions are sketched in the end report.
12 And finally, another topic that Steve alluded to
13 earlier, the cooperation and collaboration between
14 the Patent Examination side and the PTAB side of
15 the house. Data collection, data sharing and more
16 cross-talk will lead to improved quality of
17 examinations, and will improve the robustness and
18 durability of issued patents.

19 These are just a few of the highlights
20 of the annual report. I will turn it over to Andy
21 now, for Andy and his team, for a presentation on
22 statistics and CRU. Andy, over to you and your

1 team.

2 MR. FAILE: Thanks Jeff. Before we get
3 started on our presentations, Rob and Bob and I,
4 on behalf of all the Patent Organization, would
5 like to sincerely thank Julie, Jennifer and Barney
6 for your service on PPAC through these many years.
7 We've really enjoyed working with you, you guys
8 have provided great advice and counsel on many of
9 the initiatives that we've been undergoing in the
10 Patents organization throughout the Agency. We
11 hope to meet up with you yet again on the other
12 side, so thanks again for your service on PPAC and
13 your service to the Agency.

14 With that, we'll start out with some
15 FY21 overall stats, see how we fared in FY21. You
16 heard a little bit of this from Drew this morning,
17 we've got a little bit more depth here and we had
18 a particular request on a deep dive into
19 continuation practice. So we have some slides on
20 continuations, cutting that data in different
21 ways, which we hope you find interesting. With
22 that, I'd like to introduce Assistant Commissioner

1 Remy Yucel and she'll begin the presentation, so
2 over to you Remy.

3 MS. YUCEL: Thank you. So I was already
4 listening to the great presentations, I was
5 already a little bit worried to follow all them.
6 And then when Julie decided to adjourn I was like
7 wow, "I've really got to work to make these stats
8 a little more vibrant, so they can hang in there
9 until the very last bit." I hope I'm able to do
10 that, so with that.

11 MS. MAR-SPINOLA: I'm sorry Remy you
12 still have a very big audience, and I did not want
13 to appear eager to close this down. My printer
14 ran out of paper, so the second page of the
15 agenda, which has this on there. So I'm very
16 embarrassed, but levity is a good thing.

17 MS. YUCEL: No worries at all, I mean
18 you know, being part of the Analytics group, it
19 is- Numbers are numbers and data is data, and I
20 really do hope we try to make it as engaging for
21 all of you, no matter where we are in the lineup.

22 So with that, let's get to the next

1 slide, please. So key points of interest for
2 FY21, in comparison to how ended up the previous
3 Fiscal Year of FY20, we are still on track as it's
4 been said a number of times during this entire
5 day, we are still on track for our long term
6 Pendancy Goals. We ended the year with an 83
7 percent compliance for mail actions, and an 86
8 percent compliance for our inventory. Our long
9 term goal is 90 and 90, and given that we had
10 another year under some extremely difficult
11 pandemic situations, the fact that we have been
12 able to stay on course, I think, is a good piece
13 of news here.

14 Again, as Drew alluded to at the
15 beginning of the day here, our serialized growth
16 rate was essentially flat over FY20, and our
17 attrition rate is at 5.8. Just as a reminder,
18 there are major components of the attrition rate.
19 The first is where Primary Examiners are promoted
20 to Management to Supervisory Patent Examiners. So
21 there's a certain percentage that are that way.
22 The next portion of that would be our retirees.

1 Right now we have a very high number of folks that
2 are retirement eligible, and starting a couple
3 years ago, and into the next couple years, it's
4 going to be our highest number of eligible folks
5 that could retire, should they choose to.

6 And then the last component of that is
7 essentially our first year probationary employees.
8 The 1 good piece of news here is, during the
9 pandemic, in FY21, we, by necessity had to onboard
10 all of our new employees, all of our new
11 Examiners, onboard them and train them all
12 virtually. And the effects of that don't appear
13 to be any different than when we were doing those
14 activities while we were on campus. Next slide
15 please.

16 So a few more FY21 filing trends in
17 comparison to FY20, we talked about the
18 serialized, the essentially flat or decreased by
19 0.1 percent of the filings. Another really good
20 news story is our RCE filings have again
21 decreased. They decreased in 20, and again in
22 FY21 by 6-and-a-half percent for 21. This really

1 kind of indicates to us that our continued
2 commitment to compact prosecution, and the
3 maturity of our- the more experience, the maturity
4 of Examiners has really resulted in reducing our
5 reworks. This is another good piece of news that
6 we hope to carry through in FY22.

7 Another data point is Provisional
8 Filings have decreased by over 9 percent. This is
9 a larger decrease than FY20. The 1 thing here is
10 we're not too concerned about how this can portend
11 for non-provisional filings, because it's been our
12 experience in the past that the level of
13 provisional filings is not a good indicator, is
14 not predictive of what level of non- provisional
15 filings we will be getting. So that's the data
16 point, it's there, but we're not terribly
17 concerned with that.

18 And another big point here is Designed
19 Filings have increased by over 17 percent. This
20 is something that we continue to monitor, PC 2900
21 which is the design group, has got their eye on
22 this in a very close sort of way. They have done

1 modeling, and they have made provisions to bring
2 on 80 new Examiners to help with the influx of
3 cases. So hopefully we'll be able to deal with
4 increased filings in a good sort of way. Next
5 slide please.

6 Okay, if we look at these serialized
7 filings by county of origin, if we take a look at
8 the Table, at the very last line you can see the
9 United States accounts for 50 percent of the
10 serialized filings, and then the rest of the
11 countries are shown the table, and if you look at
12 the graph, you can kind of see. To orient you,
13 the blue bars are FY20, the red bars are FY21.
14 It's more or less the same filing trends that we
15 see from the various different countries, other
16 than the US, which is not shown in the bar graph.
17 Very similar, not very many notable changes over
18 FY20. Next slide.

19 Again, if we look at the filings by the
20 priority type, the cons and the national stages
21 are pretty much the majority of the filings. We
22 again, the blue bars are FY20, the red bars are

1 FY21. Again, following a very similar pattern,
2 with just slight increases for CONS and the
3 national stage applications. Next slide.

4 So this is going to be the start of the,
5 hopefully a more fulsome cons story in the next 4
6 or 5 slides we'll be going over. First of all,
7 continuation filing trends, again CONS continue to
8 increase over time. You can see that, with the
9 charts to the right, the blue curve is the
10 continuations, the CONS, the yellow curves are
11 divisional applications, and the red curves are
12 continuations in-part. They have remained
13 relatively flat over a 10-year period, whereas the
14 continuations have continued to increase. Now
15 this impacts our ability to be effective in our
16 workload, and docketing practices and to just
17 balance out the workloads. So this is a challenge
18 that we are continuously working on, and
19 monitoring. They are still increasing, although
20 you can see the rate of increase over the last
21 couple years, it looks like it's slowing, but 2
22 data points, we shall see how that plays out in

1 the next few years.

2 Another interesting point about
3 continuation filings is that a large majority of
4 these continuations are files from Allowed cases.
5 So when we Allow a case, which is when inside
6 USPTO parlance is a disposal, it's really not a
7 disposal because we will get a CON in many
8 instances. Next slide, please.

9 So if we look at the continuation
10 filings historically- So this is the period of
11 time we're looking at here, on the X axes, if you
12 look at the right hand panel we see the filings by
13 the entity types, you can see that the green
14 curve, which represents the filings by the
15 undercounted entities, they have taken a really
16 steep incline over the last years or so. But if
17 you look at the very end of that curve, between
18 2019 and 2021, we see a slight plateauing, so
19 we'll keep our eye on that to see if that
20 continues. The red curve are small entities, and
21 you can see they're beginning to use continuation
22 practice a lot more than they used to over this

1 past decade. And then the micro, which is the
2 blue curve, again is very flat.

3 If you look at the right side curve, you
4 can see that the continuations represent about 25
5 percent of our total filings. And that this
6 number, I think we have heard it a couple times
7 today, so it continues to be something that we
8 really need to monitor and work on in terms of our
9 workloads and docketing practices. Next slide.

10 So continuations parentage -- So the
11 chart on the left hand side basically shows that
12 the number of cases that have a single CON really
13 kind of rule the roost. The red stack on the bars
14 represent 2 CONS, the green is 3 CONS and the
15 purple is the 4 or more continuations. So the
16 vast majority of the continuation cases only have
17 1 continuation. And if you take those colored
18 curves, you bring it over to the right hand side--
19 You can see that the number of cases that have a
20 single CON has been steadily decreasing since, 20
21 years ago, since 2001. From a little bit under 80
22 percent to a little bit over 60 percent. The red

1 curve is remaining around 20 percent, and we're
2 beginning to see a slight increase in the
3 percentage of CONS, or cases that have 3 and 4
4 continuations. Next slide please.

5 And as we continue on the continuations,
6 we look at the origin of the continuation filings,
7 the right hand panel shows the relative filing
8 rates between US filers and foreign filers, and
9 the US being represented by the blue portion of
10 the bars, and the red is the foreign filers.
11 Unlike the serialized filings, where the US
12 represented about 50 percent of the filings, in
13 continuations they represent closer to 60 percent.

14 If you look in the right hand panel, you
15 can see that continuations practices are really
16 being mostly used by Japan, which is the maroon
17 curve, and China, which is the green curve, and
18 that's still continuing to increase, between 20
19 and 21 Japan has taken a slight downturn. SO it
20 will be interesting, in the upcoming years, what
21 changes there are in filing patterns and behaviors
22 from the different foreign filers. Next slide

1 please.

2 Okay, so bypass continuations, again,
3 the left hand curve basically shows the historical
4 filings over the last 20 years or so, bypass
5 continuations, which are essentially continuations
6 of PCTs have grown over the last 20 years, around
7 sixfold since 2000. If you look at the filing
8 behavior, China again is the heaviest user of this
9 continuation practice, they are the red curve in
10 the chart on the right hand side. And Japan would
11 be a modest second place to them. Next slide
12 please.

13 And then this is always a very popular
14 question that we get, and deservedly so. Where
15 are these continuations being filed? If we look
16 at continuation filings by technology centers of
17 the last 20 years, you can see that my previous
18 home, 1600 used to rule the roost here right?
19 Back in the day, but now the Electricals have
20 caught up to them, so if you look at the curve
21 here, the purple curve is TC 2400, which is
22 networks, multiplex, cable and security. The

1 darker green curve is 2100, which is computer
2 architecture, GUI, AI< and the lighter green is
3 2600, which is also an electrical discipline. So
4 electricals have certainly caught up, and in some
5 cases even eclipsed us, 1600, by some measure. So
6 the story now is these continuations are
7 everywhere, and not just located only in Housing,
8 Biotech and Pharma. Next slide please.

9 Last slide. Getting back to the final
10 slide of our FY21 filing outlook. If we look at
11 the serialized filings by entity status, again,
12 I'll remind you that the blue bar represents FY20
13 and the red bar represents FY21, you can see that
14 the filing levels by the different entity
15 statuses, again, have been very, very stable. No
16 surprises here. And again large entities have the
17 lion's share of the filings, as you would expect,
18 followed by small entities and micro-entities.
19 And I believe that is the last slide I have.

20 So, any questions?

21 MR. FAILE: So thanks Remy. Let's kick
22 it over to Bob Bahr to introduce the next couple

1 segments. Just hold questions and we'll take them
2 at the end, is that okay, Jeff?

3 MR. SEARS: Fine, I was going to suggest
4 that.

5 MR. FAILE: Okay, Bob.

6 MR. BAHR: Thanks Andy. And I, of
7 course, am going to phone a friend for the next
8 section. I'm going to go to Stefanos Karmis. He
9 is the Director of the Office of Patent Quality
10 Assurance, and he is going to go over our FY21
11 Quality statistics and projections for FY22. So
12 with that I'll kick it to you Stefanos.

13 MR. KARMIS: All right, thank you, Bob.
14 As Bob said, I'm going to be talking about FY21
15 Quality statistics roll up, and then a little bit
16 of a look ahead into Fiscal Year 22. So you can
17 go ahead to the first slide here.

18 Before we get into the Quality
19 statistics, I do want to take a moment. I think
20 most people in this virtual room know, but I'm
21 sure there's some people listening at home. We do
22 a lot of reviews at the Patent office every single

1 day, in the technology centers, done by Managers
2 and Reviewers. We've given feedback back to
3 Examiners, for their performance appraisal plan,
4 for coaching and mentoring, or even to sign the
5 work of junior employees, before that work goes
6 out the door.

7 In addition to that, the organization
8 that I oversee, the Office of Patent Quality
9 Assurance, is staffed by 70 dedicated Reviewers,
10 who do a representative random sample of the works
11 products that we mail out the door. Essentially
12 what we do is we review about 12,000 work products
13 for Fiscal Year 21, and more than 12,000 work
14 products. And we look through every stage of
15 prosecution, so we're looking at the non-final,
16 the final and allowance. And again, we do it as a
17 representative sample, indicative of the work
18 products that we mail, and you'll see that on the
19 next slide, some stats. TO it.

20 What are we looking at as we do these
21 reviews? We know there's a lot of different ways
22 that people look at quality. We look at it

1 through a statutory compliance lens. Meaning
2 that, you know, we are tasked with applying the
3 statutes as an agency, so we look to see how well,
4 in a case that we either do or do not do that.
5 Most of the focus is put on things like the main
6 statutes, 102, 103, 112, and 101 in developing a
7 metric so if our Examiners do make, for an
8 example, a rejection under 102, did they do it
9 properly? By properly identifying the claim and
10 the statute? As well as giving sufficient
11 evidence in the rejection that demonstrates why
12 that claim was unpatentable.

13 We also look for omitted rejections. So
14 if our Examiners did not reject a claim under 101
15 or 112, and 1 should have been made, we mark that
16 as a non-compliance as 1 of our omitted
17 rejections.

18 Ultimately, we take our data, our
19 reviewers use something called the Mass Review
20 Form, which can be found online on our Web site.
21 And we turn it into a metric which I'm going to go
22 over on the next slide, Fiscal Year 21 roll out

1 here. So you can go to the next slide.

2 Okay, so what we have here on the left,
3 these are the main statutes we review, that go
4 into our Mandatory Compliance Data. The first
5 column you see here is prevalence what we review.
6 So how often do we see a 101 rejection? A 102,
7 103 and 112? In Fiscal Year 21, in our random
8 sample, 101s were identified about 7 percent of
9 the time. That had been dropping in the previous
10 years, but it was actually the same in Fiscal Year
11 21 as it was in Fiscal Year 20, 7 percent. 102,
12 percent, 103, no surprise, it's in most of our
13 office actions, that's our biggest one, it's in 77
14 percent of the things we review in OP QA. And
15 then in 112 we have it broken down by enablement,
16 written description and 112b issues. The 112a
17 issues are, we don't see that often. In our
18 random sample, the 112Bs we see a little bit more,
19 on par with the 102 rejections if you will.

20 We do set goals. We've had these same
21 goals for the last couple years. You can see them
22 there in the column. For 101, it has been 97

1 percent; 102, 95 percent; 103, 93 and 112, 93.

2 These have been goals that have sort of
3 been on the upper end of where we have
4 historically been. So we're trying to strive to
5 make these goals. And the next column shows where
6 we were last year. I wanted to give you a flavor
7 of where we were last year versus this coming
8 year. So in Fiscal Year 20, for 101 we finished
9 at 97.7 percent. In Fiscal Year 21, next to it,
10 you see we're 98.3 percent. So a little bit of an
11 increase, we were over goal for both years. For
12 102 we were a little bit below goal last year at
13 94.3 percent. This year we are actually at 95.1
14 percent, this slide probably needs a little bit of
15 an update as a result of a few cases at the end of
16 year, but nonetheless it was an improvement. We
17 actually made the goal for 102 this year, whereas
18 last year we were a little bit below it.

19 And then 103, we were 88.9 percent last
20 year, 90.6 percent this year. So while we didn't
21 make the goal, we did actually have a really large
22 increase than where we were from last year, at 1.7

1 percent.

2 And same for 112, we were at 90.6
3 percent, below that we want to get to. And ended
4 the year at 92.2, another sort of 1.6 percent
5 increase from where we were. So again a little
6 bit short of that goal, but moving in the right
7 direction to achieve it.

8 The last column just shows, if we only
9 look at the independent claim, we just sort of
10 track this as the back to our technology centers,
11 so they have an idea where to focus their efforts.
12 No surprise that 101 and 102 are very concentrated
13 on the independent claims. A lot of times 102s
14 are made on the independent, not necessarily all
15 the dependents. But if you look at the 103 and
16 112s you'll see that the dependent claims are a
17 big factor in us not making these goals. And we
18 do treat the dependent claims when we do our
19 reviews, to the independent claims. If 1 claim is
20 incorrect, whether it's an independent or a
21 dependent, we've marked that whole application as
22 non-compliant. So I just wanted to give you that

1 feedback. It's helpful, I think, for our managers
2 to get an idea of where some of the
3 non-compliances are.

4 That's sort of the data, we'll cover 1
5 or 2 more of the data slides, and then talk about
6 our Fiscal Year 22 direction also. So next slide,
7 please.

8 One of the other things that we've done
9 recently, in the last about year and a half, is we
10 updated our master review form to try to. Capture
11 what we call character risks, but it's really, how
12 do we communicate with our applicants? How can we
13 provide better insight into what we're doing to
14 focus on clarity, and things like that? These do
15 not necessarily need to be done in every office
16 action, they're sort of things we're tracking as a
17 way to look for risks of potentially things being
18 non-compliant. Or if we want to take a group of
19 cases, or maybe compact prosecution was really
20 good, to see what sort of habits were done in
21 those. And so what you see on the left is a group
22 of cases organized by accolades. The accolades

1 are cases that our reviewers designate as really
2 something that was well done, and something that
3 went beyond the requirements of the MPE PE best
4 practices that were used in a really effective
5 way.

6 The Middle Group is our pass throughs,
7 those are sort of our, nothing was wrong with
8 them, it was a good work product. And then our
9 non-complaints, where there was some issue in the
10 case.

11 And then you see the various
12 characteristics. This is for 103, but we do it
13 for all statutes as well as some other aspects of
14 prosecution. And we're just trying to get a
15 better feel for what's in there. I'll just
16 highlight 1 or 2 things here. So sort of like the
17 teal-ish, or sorry purple 1 where it says,
18 "Explanation in Detail." That's 1 where you can
19 see we're kind of high in the accolades, and much
20 lower in the non-compliance. So what we're
21 really looking for there is, did our Examiner not
22 just say, see column 5, lines 10 through 20, but

1 did they use language from the reference in better
2 equating what it was to the claimed invention and
3 things like that? Did they go that extra step in
4 really explaining it?

5 And even the bar, all the way to the
6 right, that says, "None," and a lot of the ones
7 that were non-compliant, as we've looked for some
8 of these characteristics, we don't really see
9 them.

10 So it's kind of a first look for us, to
11 do some risk analysis more than anything, into
12 what may help with prosecution, or where people
13 may be able to focus some efforts. They also
14 underpin our accolades, which I'll talk about on
15 the next slide. I referenced them a moment ago,
16 accolades are things we in OPQA do. We don't want
17 to just give people negative feedback, tell them
18 they're wrong. We want to recognize Examiners
19 when they do high quality work. We know a lot of
20 them are doing it. And so you can go to the next
21 slide, sorry.

22 So again, when our examiners are using

1 these best practices in effective ways, not just
2 that they're going work products compliant, but
3 they're really being effective in these best
4 practices, we're designating that. In Fiscal Year
5 21, we identified it in about 15.6 percent of our
6 reviews, we actually sent letters to the Examiners
7 notifying them of what they did specifically in
8 recognizing them. That was an increase of 2.6
9 percent over the previous Fiscal Year 20. So it's
10 good to see those things moving up. It's nice to
11 be able to recognize Examiners in that way from
12 OPQA.

13 And then lastly, the only other slide I
14 have is sort of a Fiscal Year 22 look-ahead. We
15 have goals still for statutory compliance, so that
16 will still be our main focus, to review cases.
17 We're tasked with applying the statutes, we want
18 to maintain that 101 and 102 goal that we achieved
19 last year, but we also want to focus on our 103
20 and 112. We know we're really close to last
21 year's goal, we want to continue to focus on
22 improvements there. We do want to maintain high

1 stakeholder satisfaction. Our recent external
2 survey reveals customer perception is very high,
3 and there's a lot of things that go into that that
4 are not necessarily just in the statutory
5 compliance metric. It includes things like our
6 interview practice, how well we respond to
7 arguments, the overall customer service we
8 provide. So that's something we want to continue
9 to focus on keeping at a high level.

10 And then lastly, kind of the way I
11 started, is a lot of the grass roots effort here
12 is done in the technology centers, at their level
13 with the expertise they have, based on the reviews
14 they do, they have a lot of insight into how to
15 improve in their area. They're all working on
16 various impact plans, and improvement plans for
17 their areas.

18 So that's sort of what we'll be focusing
19 on in Fiscal Year 22, so happy to answer any
20 questions here, or can save them until the end,
21 after CRU goes also.

22 MR. SEARS: Thanks very much Stefanos.

1 I would say, given timing, we save questions to
2 the end and we move right on to CRU.

3 MR. BAHR: Thanks Jeff, so I think at
4 the last PPAC meeting there was a request for a
5 discussion of the overview of the Central
6 Reexamination Unit, or the CRU. So I have, I'll
7 say I phoned another friend in David Ruschke of
8 the CRU and asked him to give a report of, or an
9 overview of the CRU. So with that, I will pass it
10 to you, David.

11 MR. RUSCHKE: Thanks David, I know we're
12 running a little behind here, and I do want to
13 have an opportunity for questions at the end, if
14 possible for everybody in this section. But why
15 don't we move on to the next slide. Again this
16 will be sort of an overview of where we are with
17 the CRU. It was formed back in 2005, and its
18 jurisdiction has changed, if you will, over the
19 years. I'll get into each 1 of the individual
20 applications that we deal with, ex parte re-exams,
21 inter-party re-exams, re-issues and supplemental
22 exams in turn, as we get through the presentation.

1 as well, dedicated exclusively to the CRU, and
2 administrative support staff as well.

3 If we could go to the next slide, let's
4 start off talking too, a little bit about ex parte
5 reexamination filings. I've sort of given you a
6 little bit of a historical look back at re-exams
7 back to 2016. 2016 is when re-issues first
8 became- Essentially were completed to being
9 integrated within the CRU. So essentially our
10 jurisdiction was sort of stable as of 2016, and
11 you can see here with respect to ex parte
12 reexaminations, we've had about 1,200 files since
13 that time. We have 345 currently pending, and you
14 can see the trend here, this is based on our art
15 units. We have a Chemical Biotech unit in blue,
16 we have all of our Electricals in red, and we have
17 a Mechanical section in green. And you can see
18 they're fairly stable over the years, and then we
19 get to FY21, and you can see how there was a
20 dramatic increase in filings from FY20 to FY21,
21 from 168 to 273. And the vast majority of that
22 increase, of course, came from the Electrical unit

1 side. WE have looked at this, and we are
2 continuing to look at why that is. One answer
3 that has been put out there in the public sphere
4 was that, due to some changes with PTABs practice
5 in their Presidential opinions with respect to
6 deferring, instituting a trial at the PTAB, that
7 some of our shared stakeholders have then come
8 back to the CRU and filed the additional re-exams
9 as a way of, sort of- IF they didn't get
10 instituted at the PTAB, then they would come to
11 the CRU to get instituted, or essentially ordered
12 for re-exam here.

13 I'm not sure if that's exactly the
14 reason for the large number. IT could be that
15 there just happen to be a lot of filings lately,
16 but that is 1 explanation that has been out there
17 in the public domain.

18 It kind of makes sense to some extent,
19 given the change in precedent, but also the fact
20 there's a large number of Electrical applications
21 in patents that are petitioned for trial, AIA
22 review at the PTAB. So that might be the case for

1 that very large spike in Electrical filings for
2 re-exams.

3 If we could go on the next slide, the
4 thing I do want to highlight on this is, you know,
5 similar to PTAB, I guess, essentially when you
6 have a decision to institute, we have to determine
7 whether there's a substantial new question of
8 patentability. And if there is, we shall order
9 re-examination. Now we find a substantial new
10 question of patentability in about 95 percent of
11 our cases. That's very high. That number has
12 been quite consistent over many many many years.
13 SO that's not something that's new, but it is
14 certainly recognized that it is a significantly
15 different standard, and a lower standard than the
16 Reasonably Likely to Prevail standard that's used
17 by IPRs at the PTAB.

18 You can also see that the first bullet
19 point, that our average time to order, when we
20 find an SNQ, or denial. When we don't find an SNQ
21 in 2021, is quite quick. We are at 1.1 months for
22 when we do find an SNQ and we're at 1.7 months

1 when we do not find an SNQ. And that has been
2 fairly constant over the last 5 or 6 years as you
3 can see from the chart. So once it is- Once the
4 request is filed, and it's docketed, we will act
5 quite quickly in order to give the requester and
6 the patent owner an answer as to whether we'll be
7 moving forward with re-exam. If I could have the
8 next slide please?

9 This is essentially a timing slide to
10 quickly work on our ex parte reexams. And once
11 the conclusions of our process, of course, is the
12 mailing of a notice of intent to re-issue, to
13 issue a re-examination certificate, a NIRC. And I
14 would like to point you out to the first real
15 bullet point there, that our average time to NIRC
16 in FY21 is 10.6 months without an appeal. So what
17 that means is that we are operating very quickly.
18 We not only order reexaminations quickly, but once
19 we order it we move quickly and give the patent
20 owner and the requester the answer that they want.

21 Now, again, in the majority of cases,
22 156 out of 186 total, there haven't been appeals

1 to either the PTAB or to the CAFC. And again, in
2 those situations, without appeal, 10.6 months is
3 the CRU's timeline. So I would like to highlight
4 that, and actually our internal goal, for many
5 years now, has been, for a number of years, has
6 been approximately 12 months. So I think we've
7 been doing quite well in getting the results out
8 to the stakeholders as quickly as possible.

9 Our overall tendency, if you will, is
10 about 16 months for all cases when they go up on
11 appeal. And of course, it's necessarily longer
12 because it takes time to go up to the PTAB, and it
13 takes even additional time when it goes to the
14 CAFC.

15 But the take home here, on this slide,
16 is that we are- Our goal is less than 12 months,
17 and our FY21 number was 10.6 months.

18 That's it for re-examination. I have
19 slide, on the next slide, which is on legacy
20 interparites re-exam. Again, this is, I think
21 people are interested in how many we have left,
22 and it's around 27, 1 of which is sitting at the

1 CRU. The rest are up on appeal at the PTAB. And
2 the CAFCS can be shown in the graph. Again, keep
3 an eye on this, reporting the data, and we pray
4 there aren't reversals or remands from above,
5 that'll send them back down to us. So those are
6 the data on the Inter-party's re-exam. If I
7 could have the next slide, please?

8 This is on, it should be a supplemental
9 examination. Again, this was a concept that
10 started with the AIA back in 2012. Throughout
11 that entire time period, essentially 10 years now,
12 we've had 386 files, of which 322 have been
13 granted a filing date. You can see here, a little
14 bit on the right hand side, I was using our art
15 unit numbers, but the color is the same. So the
16 light blue is Biotech Chem; 3992, the red, that is
17 Electrical; and 3993, the green, are mechanical.
18 And you can see that there's maybe not a
19 particular trend here coming out, but it is a
20 program that is still being used, so I wanted to
21 make sure you had the data on our filing within
22 the supplemental examination regime.

1 The next slide, if I could have that 1,
2 that 1 will show you a little bit on timing.
3 Again, we're looking for an SNQ for a
4 determination or issuance of a supplemental exam
5 certificate, and in FY21, we were able to produce
6 that in less than a month, 0.9 months. Now as
7 opposed to straight up, ex parte re-exam where an
8 SNQ is found a large amount of the time, 95
9 percent of the time, in supplemental examination,
10 an SNQ usually has been found, since 2012, this is
11 data all completely since the inception of the
12 program, in 68.5 percent of the cases. So that
13 gives you a little bit of a sense of the slight
14 differences we see in supplemental examination
15 versus ex parte re-examination. If I could have
16 the next slide, please.

17 And then again, once supplemental-
18 There's essentially once supplemental examination
19 has been- Whether we've found an SNQ and moved
20 forward, the average time to NIRC in FY21 was 9.8
21 months without an appeal. That's very, very close
22 to what we found in the 10.6 months with a pure ex

1 parte re-examination, and then our overall for
2 those cases that have included some appeal is
3 about 15 to 18 months. So again the message is,
4 using the supplemental examination process, we
5 also not only moved very quickly on finding an SNQ
6 or not finding an SNQ, and then once we moved
7 forward, we moved to NIRC within 10 months,
8 definitely less than our 12 months goal.

9 If I could go to the next slide, I know
10 I'm running a little bit out of time here, I just
11 wanted to cover re-issues quickly. One of the
12 things that I think it's important to recognize,
13 is that it's essentially an order of magnitude
14 difference between the quantity of filings we have
15 in re-exam, versus reissue. So we have had
16 essentially 4,000 files since 2016, of re-issues.
17 Again, Chemical, Electrical and Mechanical are in
18 the graph. Where the red the electrical bars are
19 showing the majority of filings of re-issue, we've
20 had a slight decrease from FY20 to FY21, I don't
21 think that's particularly concerning, or anything
22 like that. I think it's just the nature of it.

1 Essentially if you look at the raw numbers between
2 2016 and 2021, we've had approximately 650 to 700
3 re-issues, total, filed. And again, if you look
4 at our Pendency numbers right now, we're right
5 around 1,850. If I could have the next slide,
6 please.

7 I think this might be my last data
8 slide. And again, just to let you know, the
9 timing of what folks can expect when a re-issue
10 has been filed, and moving forward, similar to
11 regular examination, our goal is to get through
12 with the re-issue examination within 3 year. And
13 if you can see on the right hand side, for
14 essentially the last 6 years, we have been running
15 under that 3-year goal, and last year we were at
16 35.2 months. So I think we're doing pretty well
17 on the re-issues compared to the regular
18 examination in maintaining our 36-month, or 3-year
19 goal.

20 I know that was a lot of data to move
21 through. I just have 1 last slide, and it's just
22 a tickler out there, frankly. WE did have a

1 Presidential case coming down from the Fed circuit
2 at the end of September, I think it's pronounced
3 In Re Vivint, I'm not sure. This was a case,
4 again, where there were previous proceedings at
5 the PTAB, and then there was an ex parte
6 reexamination that was ordered. And what this
7 case involves is the application of 35 USC 325D.
8 Which is again, whether the same or similar art or
9 arguments, or have substantially the same art or
10 arguments been presented previously before the
11 office? And then whether the PTAB exercises its
12 discretion, via the Director, to not move forward
13 with the trial based on the statutory provision.
14 And so we are obviously looking very, very closely
15 at this case, implementing its provisions, and I
16 do want to mention just a couple of things that we
17 do, just so everybody is on the same page. We
18 have, even before this case came down- All of the
19 folks, and all of our specialists at the CRU have
20 looked very intently at all the proceedings on the
21 same patent, if it has been up before the PTAB.
22 And so that has always been a number 1 priority,

1 that they would look at that, particularly before
2 an SNQ would be ordered, of course. And just to
3 take a look at the proceedings, to see what was
4 decided at the PTAB. On what art, on what
5 grounds, and on what claims?

6 And so that is something that has always
7 been in place, and I think that is even going to
8 be stronger, and used more effectively now, under
9 In Re Vivint, as well.

10 I also wanted to make sure all of you
11 are aware, that before something gets mailed out
12 for the CRU, internally we have a conference,
13 whereby all the papers are mailed-- Before they're
14 mailed, they are reviewed, by not only the
15 specialist who wrote the paper, but also another
16 specialist, and at least 1 Supervisor, if not 2
17 Supervisors, including our Quality Assurance
18 Specialists. So before any paper comes out to
19 you, that you see, we make sure that it is up to
20 the standards of the PTO, it is compliant with all
21 the statutes, we talked about, that Stefanos
22 talked about. And that we're compliant with the

1 case law, in particular this latest one, In Re
2 Vivint.

3 So with that, I know that was a lot,
4 I'll close it down. My watch says 3:29, so I'll
5 leave it at that. And again, I wanted to thank
6 Steve Stein, who is my Quality Assurance
7 Specialist, as well as Irene Lillis, she is 1 of
8 our Senior Supervisors, and she's the 1 who
9 handles and puts together all of our data. So I
10 wanted to give a big thanks to that.

11 MR. SEARS: Thanks very much, as you
12 noted, we are at 3:29, I know we're scheduled to
13 close at 3:30, so I'll turn it back to the Chair
14 to determine whether we have a moment for
15 questions.

16 MS. MAR-SPINOLA: We can open it up for
17 questions, if any.

18 MS. DURKIN: I have one quick question,
19 it's Tracy Durkin. And it's to David Rushke.
20 David, I'm sorry if I missed this, but did any of
21 the statistics you mentioned portray the re-exam
22 statistics include designs patent re-exams? Or

1 were all the stats on Utility only?

2 MR. RUSKE: There was only 1 slide, I
3 think, if I remember it might have been within
4 re-issues, where we put designs. But you're
5 correct, there are designs, but they're actually
6 handled within the design unit within the CRU, so
7 that's why the stats didn't come through us.

8 MS. DURKIN: Thank you.

9 MR. RUSHKE: Thank you.

10 MS. MAR-SPINOLA: Are there any other
11 questions? Okay, so Davis I wanted to say hello,
12 it's nice to see you.

13 MR RUSKE: You too, Julie. When I
14 started this 6 years ago, I remember our first
15 PTAB subcommittee meeting. Your presence is going
16 to be greatly missed, but we're all part of this
17 patent community, so thanks for everything.

18 MS. MAR-SPINOLA: It's true, thank you
19 very much. The last thing I'd like to say before
20 we adjourn is you can access PPAC's annual report
21 through the USPTO Website, and it'll be listed
22 along with all our other information, or documents

1 from PPAC presentations, transcripts, whatever, on
2 the PPAC Web page.

3 So with that, do I have a motion to
4 adjourn?

5 MR. MAR-SPINOLA: Okay, Barney. Do I
6 have a second?

7 MR. CLATRIDER: Second.

8 MS. MAR-SPINOLA: Okay, thank you.
9 Thank you everybody. Happy Holidays, stay safe.

10 (Whereupon, at 3:31 p.m., the
11 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 COMMONWEALTH OF VIRGINIA

3 I, Thomas Watson, notary public in and
4 for the Commonwealth of Virginia, do hereby certify
5 that the forgoing PROCEEDING was duly recorded and
6 thereafter reduced to print under my direction;
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8 under penalty of perjury; that said transcript is a
9 true record of the testimony given by witnesses;
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11 employed by any of the parties to the action in
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