UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, May 14, 2015

PARTICIPANTS:

PPAC Members:

MARK GOODSON

PAUL JACOBS

MARYLEE JENKINS, Vice Chair

ESTHER KEPPLINGER

DAN LANG

JULIE MAR-SPINOLA

WAYNE SOBON

PETER THURLOW

P. MICHAEL WALKER

USPTO:

MICHELLE LEE, Under Secretary and Director of The USPTO

RUSSELL SLIFER, Deputy Under Secretary and Deputy Director

DANA COLARULLI, Director, Office of Governmental Affairs

ANDREW FAILE, Deputy Commissioner for Patient Operations

DREW HIRSHFELD, Deputy Commissioner for Patent Examination Policy

BRUCE KISLIUK, Deputy Commissioner for Patent Examination

DAVID LANDRITH, PE2E Portfolio Manager

VALENCIA MARTIN-WALLACE, Deputy Commissioner for Patent Quality

PARTICIPANTS (CONT'D):

JOHN OWENS, Chief Information Officer

MARK POWELL, Deputy Commissioner for International Patient Cooperation

ANTHONY SCARDINO, Chief Financial Officer

DEBBIE STEPHENS, Association Commissioner For Patent Information Management

Union Members:

ROBERT D. BUDENS

CATHERINE FAINT

PTAB:

JUDGE JAMES SMITH, Chief Judge, PTAB

SCOTT BOALICK

Other Attendees:

AMBER OSTRUP

CHARLES PEARSON

SEAN M. REILLY

MARY CRITHARIS

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P R O C E E D I N G S

(9:02 a.m.)

MS. JENKINS: Good morning and welcome. I am not Esther Kepplinger. Unfortunately, Esther, our chair, had a family emergency, so she is unable to attend this meeting and unable, also, to call in. We send our condolences and concerns to her. And so I am chairing our meeting.

I am Marylee Jenkins. I am vice chair of PPAC. I'd like to open the session and welcome everyone and like to begin with introducing Michelle Lee, under secretary and director of the USPTO, if she would share some comments about the USPTO. And then once she's done with that, I will then introduce the Board.

MS. LEE: Well, good morning, everyone. It's a real pleasure to be here and I'm delighted to have you here. Before I begin, I'd like to acknowledge some recent additions to our team as well as some pending departures. And first let me welcome our newest PPAC member, Ms. Julie Mar-Spinola, joined us in April, filling the seat left by Dr. Christal Sheppard, who took

over as the director of our Detroit office, as I think many of you know. So welcome, Julie. We very much appreciate the contributions that you will make with PPAC and the PTO team looks forward to working with you. And you bring a deep set of experiences in patent and intellectual issues, so we very much look forward to working with you.

Next I'd also like to welcome, Russell. Where's Russ? Ah, there you are, Russ. Russell Slifer, our deputy director, he was appointed less than two months ago. And I have to say I couldn't be more delighted to have Russell on board. He comes with an impressive track record of success, most recently as the first director of our Rocky Mountain Regional Office, which he helped put on a solid foundation, so it's well on its way to getting up and running. And he was also, before that, an executive a Micron as head of their Intellectual Property Department. So I'm delighted to have him here and I look forward to his many contributions that I know he'll make to the agency.

Our commissioner for Patents, Peggy Focarino, couldn't be with us here today. She's

receiving her honorary doctorate degree of science at her alma mater. Not something you can say every day. So Peggy recently announced that she'll be retiring in July. We are thrilled for her. I can't think of anybody more deserving of a retirement. I tried to talk her into making it an even 40 years. She's retiring at 30 years, but, you know, I can understand when the time comes, the time comes. But really, her leadership and her wisdom has been indispensable to this agency and to me, as well, and I'm very grateful for my time with her.

And so since the last PPAC meeting, we've been very, very busy at the PTO, advancing the Patent Quality Initiative on several fronts, both internally and externally. And I was pleased to see some of you at our two-day Patent Quality Summit. I think a number of you participated and attended in March. And as you know, the summit included extensive dialogue amongst stakeholders, agency officials, and, importantly, examiners. It was an incredibly successful program with over 1,500 participants. We received a lot of great feedback. We've been

carefully evaluating the input and we will be following up with actions we can take administratively.

And Ms. Valencia Martin-Wallace sitting here to the right, our deputy commissioner for patent quality, will go into greater detail during our presentation today about the status of our quality initiative and what you can anticipate seeing in the weeks and months ahead. The USPTO is also dedicated to improving the processes to increase patent quality. We're doing this by ensuring that our patent examiners and supporting staff have all the tools they need to do their job efficiently and effectively.

As a great example of this is our Patents End-to-End System, or PE2E. It was designed by examiners, for examiners, and the program unifies a lot of the computer- based examiner tools into a simple, single, unified interface. When the program was being constructed we solicited input from the examiners and we've already incorporated some of their suggestions into the tool.

PE2E is being deployed in stages, but it's already making a productive difference in the way our examiners perform their work. And John Owens will be speaking to you later on today about some of the accomplishments and milestones in the PE2E program.

And I suspect you will want to hear from Dana Colarulli, our director of governmental affairs, who will provide an update on patent reform legislation. As I'm sure you all know, a lot has been happening on the Hill and the PTO has been intimately involved in those efforts.

Finally, I should mention that we have three recent events of note. One was -- actually we had. One was the celebration of the 225th anniversary of the first Patent Act. The second was our 43rd induction of the National Inventors Hall of Fame. And our third is the Patents for Humanities Awards ceremony.

And if you came through the upper atrium today, this morning, you likely saw the exhibit or the display called "A Walk Through History." And it's an exhibit and it leads you through all 225 years since the Patent Act of 1790, with a

number of important events identified along this walk through history. Among other things, they include the Patent Acts of 1739, 1836, and 1952, each proposed, debated, and passed in response to a set of new challenges, not the least of which oftentimes was the breathtaking pace of American innovation.

So we marked the 225th anniversary on April 10th. And just this Tuesday we inducted the 43rd class of the National Inventors Hall of Fame in really what was a fantastic event at the Smithsonian. And I think some of you were there, as well, so it was really a memorable -- it reminds us why we do what we do.

The inductees into the Hall of Fame embody the spirit of American innovation to the fullest, from Thomas Jennings, the first African American to receive a patent in 1821 for a dry scouring process, the predecessor of dry cleaning, to Krista [sic] Johnson, a pioneer in optoelectronic processing systems, 3D imaging, and color management systems. And I guess I would strongly urge you to swing by our National Inventors Hall of Fame Museum upstairs, if you

haven't been there already, to learn about this year's inductees as well as the past ones. And we just finished updating the museum's exhibits last week. I don't know if you know, but each of the inventors who's recognized gets a little icon and it's really quite a special place there.

And let me mention another great event. It was our latest Patents for Humanity Awards ceremony held last month at the Old Executive Office Building in the Indian Treaty Room. And the Patents for Humanity Program is really a special program. It began as a pilot program to encourage the use of patented technology to help the world's most needy. And last year President Obama made it a permanent program as part of an Executive Action.

And in this year's competition a total of seven companies received awards for new and innovative ways to combat malaria, tuberculosis, and malnutrition, to improve basic sanitation; to provide light through solar power, and increased mobility of disabled people, all in some of the most disadvantaged and underserved regions in the world. So, again, another event that reminds of

the importance of what we do here at the USPTO and how our innovators are really making a difference in this world.

So together, the 225th anniversary of the first Patent Act, the National Inventors Hall of Fame, and the Patents for Humanity Programs are really, I think, admirable programs to recognize the contributions of innovators in our society, building and maintaining on a truly 21st century Patent Office and patent system that will continue to facilitate, we hope, game-changing innovations for generations to come.

So it's a grand and noble effort and I'm thrilled to be part of it. And I'm glad that you all help us do what we do each and every day.

So with that, I want to thank you for your service on PPAC and your contributions. And we couldn't do our job as well as we do without your help. So thank you very much.

MS. JENKINS: Wonderful, thank you. And that's such a busy schedule for you and the Office, which is great to hear in these times. So I'd like to segue now and have the members on the panel present themselves, and then we'll go to the

schedule.

So, Andy, if you would start and then we'll flip this way.

MR. FAILE: Good morning. Andrew Faile, USPTO.

MR. THURLOW: Good morning. Peter Thurlow, PPAC.

MR. WALKER: Mike Walker, PPAC.

MR. GOODSON: Mark Goodson, PPAC.

MR. HIRSHFELD: Drew Hirshfeld, PTO.

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

MR. POWELL: Mark Powell, USPTO.

MS. FAINT: Catherine Faint, PPAC.

MR. BUDENS: Robert Budens, PPAC.

MR. MAR-SPINOLA: Julie Mar-Spinola, PPAC.

MR. LANG: Dan Lang, PPAC.

MR. JACOBS: Paul Jacobs, PPAC.

MR. SOBON: Wayne Sobon, PPAC.

MR. KISLIUK: Bruce Kisliuk, USPTO.

MS. JENKINS: Excellent, thank you. We'd also like to comment, because I've been asked to, that if there are any public comments we have

an email address that you may use at ppac@uspto.gov.

So we'd like to start with I'm sure a very interesting presentation on quality based upon the event we had, I guess, almost a month ago. I heard that went very well and incredibly well attended, so looking forward to the highlights. Valencia?

MS. MARTIN-WALLACE: Thank you, Marylee. I'm going to talk this morning about some of our updates, one being the update of the Deputy Commissioner Patent Quality Division organizational structure, the second being on the summit efforts as well as other Quality Initiative efforts, and third being an update on our composite measures.

So first let me start by saying that this has been a long process because deciding to have a DCPQ organization and actually getting it up and running is two compete different things, so we've been working very diligently and Bruce's staff has been working really hard to get this done. And part of that process is a notice to DOC, OMB, and Congress that we are establishing

this. So we've been waiting and we finally received the notice that all have seen and acknowledged that we're having this new organization. So I'm going to present I today even though technically we are not going to be established as one division until July 12th of 2015. We're in the process of developing the infrastructure and organizational changes and making sure that that runs smoothly.

But I will give you the preview of my division. Over to the left you see the deputy commissioner for patent quality. Under that organization we'll have four different divisions: One being the Patents Ombudsman and Stakeholder Outreach area; the other being the Office of Patent Quality Assurance, which is presently under the D.C. PEP area; the Office of Patent Training, which is presently under D.C. OPS; and the Office of Process Improvement, which is -- I always forget the name, but Deputy Commissioner Kisliuk and his organization.

So there are two really main functions to the D.C. Patent Quality. One is to support and lead, along with all the other deputies, the

Quality Initiative and all initiatives that come under it, and our outreach and expansion. The other is to oversee the day-to-day support of not only patent operations, but all areas under Patents. So that function is the Office of Quality Management, which all four of these divisions that I mentioned are all under the Office of Quality Management.

And our focus is to bring quality, a quality management system to all of Patent. So it's taking a holistic view of quality, and all organizations, all functions that have some type of support or some type of influence on the patent examination process and our final product; and making sure that every process, every service, every product throughout Patents is enhanced quality and doing the best possible in order to positively influence that examination process and the final product.

So I'll start by reading our mission of the Office of Quality Management: To optimize the quality of patent products, processes, and services to build a culture of process improvement and overall quality for the Patents

organization; and the overall functions of that are supporting and services.

And I mentioned this and I'll mention quite a few times. The Office of Quality Management is a support organization. We're not the ones who decide on the measures or decide on the improvements in the process. We shepherd the owners of that process, of that product through the process in order to put in place the appropriate processes, the appropriate quality checks. We also help to maintain that for them. We do monitoring and we keep in communication with the organization.

So I'll give an example of what I'm referring to. In Patent Operations a couple years back we did a look at hiring. So the Process Improvement Office went in and helped the subject matter experts, so the directors, the supervisors, the assistant deputy commissioners, in Patent Operations to identify the appropriate process and to identify their standards and their measures of success. So they own that process. They are responsible and accountable for that, but we will support them.

And the division lead over the process improvement area likes to say that if I'm doing my job right, then I'm putting myself out of business. Because it's not just helping usher them through that process and identifying the measures and the standards, but helping them to understand how to maintain and monitor that, as well. So internal to the organization they will be able to do their own checks and identify when there are changes that are needed or if they're having the successes that they're expecting to have.

So with that, since I kind of jumped ahead, I'll talk about the Office of Process Improvement. Process Improvement is actually a small office. It should be a small office. We're expecting maybe four FTEs at this point at tops. They are the subject matter experts on process improvement, so Six Sigma and the ISO process and how to go through it and how to maintain it. They're those subject matter experts that work with the subject matter experts in the particular organization that they're supporting to help them meet their goals.

And the functions, some of the functions of that area is to provide the Patents' wide framework, enabling that process for performance improvement; to coordinate and create an alignment, as I mentioned earlier, not just within Patent Operations, which really has been our main focus for most years, but to find that alignment and coordination throughout the entire Patent Business Unit; and to maintain the continuous improvement and monitor it.

And the next is Office of Patent Training. So this is the same type of process with the Office of Patent Training in that it should be a smaller staff that coordinates, works, and supports the subject matter experts within whichever division they're working in, in order to make sure that they have the appropriate training; that they're building the appropriate training in the proper process to make sure that whoever is the participating examiners, if it's management, whomever, that they're getting the training in an appropriate way in order to learn; as well as OPT, OPI, and OPQA will also help with monitoring and giving recommendations when

things have gone a little off course or we need some type of changes.

And the next is the Office of Patent Quality Assurance. And we're in the process right now of taking a look at how our reviews take place, not only supporting the organization to make sure that the standards and the measures are appropriate, but how we actually within that division do the review to make sure that we're drilling down to the appropriate data and giving appropriate recommendations that can go down not only through a core level; but also down to the particular technology center, work group, and even art unit where the examiners are, and be able to help them identify trends and where they need to focus their attentions; and monitoring that, as well.

And the last is the Office of the Patents Ombudsman and Stakeholder Outreach, which has been in existence for about five years and we've had a great deal of success in not making, once again, decisions on cases, but assuring users who have had some type of roadblock, and doing away with that roadblock and

making sure that the patent examining process is happening the way it should. We've gotten a lot of great feedback from those who have used the program. Currently, we feel maybe about 4,000, I'm not going to say just complaints, some are complaints, others are just users who don't know where else to go. So we make sure that they get to the appropriate person who can help them as quickly as possible and we also make sure that that -- we loop back to make sure that the user did receive the appropriate answer in a timely manner.

So that makes up all of the Office of Quality Management.

And while we transition into the DCPQ Office, we're moving each division as it is now, but one of the things that we're doing as part of the Office of Quality Management is looking within each of these divisions, as well, to make sure that they are progressing as they should; that they're enhanced and moving forward, as well, in order to meet the needs of our new enhanced quality focus here.

So now I'll talk a little about the

Quality Initiatives. And I'll start with some of the internal steps to improving our quality and particularly what we have as our current internal initiatives, and one being the quality assurance specialists. And as I go through this list and discuss it a little bit, most of these initiatives have been in place for a while. It's the process that I was talking to you about of, okay, how do we enhance a particular project or program, make it better, make sure that we're meeting the needs of our employees as well as our external stakeholders.

And a Quality Assurance Specialist Detail is one of those that has been in existence for many, many years. It's a great program where we have senior examiners who work in the quality shop within a particular technology center to expand their understanding and knowledge of the patent examining process as a whole, everything that goes into it, as well as to help learn more about what our quality assurance specialists do and how to perform those tasks.

The next is the GS-14 Trainer Program, which we've just recently expanded. This was

also put in place as a pilot about a year and a half ago that we've negotiated through with POPA and have just recently signed off -- on to expand on this program, which is another really excellent program for senior examiners who don't want to do away with all of the examining. They enjoy the examining, but they want to serve on a different level in training. So a majority of their time is spent in training other examiners and reviewing their work and giving them appropriate feedback.

And the next is a Search Analysis Program, which is a relatively new program that was started in one particular technology center. And in most cases, you know, we have a grassroots program that really should be expanded, and this is one of those that we have where it's leveraging the search strategies of examiners -- the positive, the quality search strategies -- by sharing them with other examiners in like technology. So it's harvesting those search reports and having the senior examiners to share them and explain them and help with the coaching of other examiners on what's their search

strategy and how it works.

So we've received some success in the particular TC and it's one of the things that we need to expand. It works. It's helping the examiners. So we're expanding on that one right now.

Peer Interaction Meetings, which is also something that was established many, many years ago, and I think may have been established in Andy Faile's former technology center, where we have time given two examiners to participate in a discussion. They can bring in any issues that they have into a one-hour meeting. It's run by senior examiners. It's not run by management. They sit, they discuss whatever the issue is. Anyone can come into the meeting. They don't have to present. They don't have to have an issue. They can just sit and hear the discussion or participate in the discussion of how to address issues, patent examination or technology-wise.

And we've had a great deal of success. The examiners who participate in this, they participate in it by droves. They love this program. There's no intimidation by who else is

in there. It's examiners helping examiners.

And we also have the Review Quality Assurance Specialist Assistants. So this is also something that's already been established. Part of every review quality assurance specialist function is to spend at least 25 percent of their time in the technology center that they service. So the area that -- the technologies that they review, they would support whatever the function is that is requested of them by the managers and the directors of that particular TC. So it could be reviewing further cases. It could be coaching and mentoring and training examiners on a process and they're the points of contact and the liaison between the technology to make sure that we are providing consistency in how reviewers are reviewing cases and how our examiners and supervisors are examining them.

Then we have the Interview Specialists and Facilitators. And this particular initiative came out of the summit, where we were told by many participants at the summit that, you know, we're really interested in having more face-to-face interviews, but we want to make sure

that those interviews are substantive and significant and something comes out of it. So we've identified specialists or the most experienced and skilled managers within each technology center on interview practice and the tools, the collaboration tools that we use in order to have the face- to-face interviews, especially with the environment we have now where there are so many remote examiners.

So these people in each technology center have been identified, will be there to help support and assistance both examiners and SPEs, as well as any applicant or attorney looking to have an interview or would like to know more about an interview, the interview practice. So we already have a web page on interview that is open to the public, so the names of these facilitators will go on that web page so that they can be identified. And anyone who would like to learn more about the interview practice, as well as our collaboration tools, will be able to contact them directly.

And the last I have is the Quality Awareness Campaign and Training. So this

happened well before I was placed in the position that I'm in, and that Drew Hirshfeld and Andy Faile were working on the 112(f) challenges that we hear about from both internal and external in addressing clarification of the record, as well as the new challenges that we all have with the court cases that have come out -- Alice and Mayo and a slew of others -- in order to address making sure that examiners, supervisors, and anyone has the appropriate methods; that we are continually making them aware of each of the processes for 101 and 112. And I believe Drew is going to talk to you further about that.

MR. THURLOW: Valencia, do you want to go through the whole presentation and then come back for questions? Or for these (inaudible) want to --

MS. MARTIN-WALLACE: Absolutely. We have an hour, right?

MR. THURLOW: Yes, that's what I figured.

MS. JENKINS: You mind? Why don't we stop there?

MS. MARTIN-WALLACE: Okay.

MS. JENKINS: I think that's a good stopping point.

MR. THURLOW: Yes, so just to give you some feedback from practice on a few of these points. Search Analysis Program, it seemed like it's a good program because from a practitioner's standpoint, really all these initiatives come back to a good search and a good examination. To the extent we get a good search initially, that's always helpful. A lot of concerns, I guess, shall I say, from practitioners is when we get an initial search, then we'll submit a response, and then we'll get a second search with other prior art. And it kind of extends the prosecution more than we would like. So to the extent we get a good search up front, that's great.

Peer interaction meetings, I'm looking at this just kind of more senior examiners training more junior examiners. There's been concern just with the whole hotel program that that knowledge that may at home is not with the junior examiners that may more likely be in the office. So I think that's a very good program.

Two things: You mentioned the

interview specialist facilitators and you mentioned face-to-face interviews. I'm not sure about what everyone does for interviews. Years ago we had to do a lot of face-to-face. Quite frankly, we do a lot by telephone. They're very effective. It's too expensive to come down. It doesn't fit the budget.

And then the last point, as Drew and everyone knows all to well, the 101 issues, the more the office can do, the better. There just continues to be shall I say mass confusion or a lot of confusion about Section 101 in particular. So that awareness campaign is particularly helpful.

So there's a lot to throw out to you there and you can respond as you like.

MS. MARTIN-WALLACE: Well, thank you for the positive feedback, and please stop me at any point. I have my notebook and I'm taking notes.

MR. BUDENS: One question real quick because I'm not familiar with this Search Analysis Program. Can you give me a little idea who's heading up this program and who's doing the

analysis and, you know, what are they analyzing? You know, how big is the pool, whatever? Some details on this.

MS. MARTIN-WALLACE: Certainly. And I'll say it's a bit of a misnomer when I say "search analysis." They're not analyzing -- it's a management initiative and it's not that any one class, manager, or even examiners are analyzing the search. It's those examiners who feel that they've been very successful with their string or the search that they have in a particular application and wants to -- who would like to share their search analysis, how they went about doing their search, can share it with other examiners. So there's no rating or review of good, bad, or indifferent really. It's the experienced examiners in a particular technology center that's wanting to share in the same manner that we had some of the other initiatives through mentoring and coaching of junior examiners or anyone on where they found success.

MR. BUDENS: So is this something that's being incorporated into the Peer

Interaction Meetings or are there some kind of separate mailboxes or feedback mechanisms or something for this?

MS. MARTIN-WALLACE: I cannot give you the specifics of how we share, but, yes, through the peer interaction or QEM meetings is one area that examiners -- that's run by examiners are sharing how they've been successful in finding art.

Yes, Dan.

MR. LANG: So there's lots of important things to talk about on this slide and with respect to patent quality, but I'm going to focus on the Quality Awareness Campaign in Section 112. You've listed Section 112(f), but I want to make sure that we don't forget about the very important other parts of Section 112. You know, we have a big problem in this country with claims that are hard to understand and that are, you know, leaving private parties to litigate at the expense of millions of dollars. It would be better if we could, you know, have an active campaign within the Office to improve 112 examination for indefiniteness, but also for support and

description.

We also have a reputational problem, I think, with the patent system. Many people feel that patents, particularly ones resulting from continuations, are not well supported by the applications as originally filed. So I'd like to see us, you know, really emphasize Section 112 as a whole. And, you know, I recognize that there may be costs associated with that, but in terms of the overall economic impact, it's tremendous.

MR. HIRSHFELD: So thanks for the comment, Dan. And I'm on tap to speak after Valencia and I will talk about 112 and what we're doing in 112. We started with 112(f), but the intent is to go through all areas of 112 and even just functional language in general. So we agree with your comment about making sure we're training on all areas of 112 and not just limit it to 112(f).

The awareness campaign that we've done so far is related to the 101 and 112(f) because that's where we started. And as we progress and give training on 112(a) and 112(b) and even functional language in general, that awareness

campaign will expand to those other areas, as well.

MR. WALKER: Maybe I'll just pile on to that point from the chemical and biotech point of view because it's more than just in the high-tech sector, but that same issue around 112 continues to be, you know, a pretty significant problem in the chemical area when you see some of the chemical structures and some of the claims that come out based upon what -- amendments to the claims based upon the original specifications. So just to make sure that the point's clear that that's also a chemical-biotech issue.

MR. GOODSON: Okay. I come from an electrical engineering and forensic medicine background, and we'll approach it from the latter, a post mortem. And that is essentially, you know, patent's been issued; several years later, someone challenges it and, you know, the claims are disallowed. Is there any feedback from those situations where that occurs? What happens? Is that used as a training tool or a teaching tool? Is there something systemic about why, you know, certain things are being

disallowed? Later on, it would be useful in your program.

MS. MARTIN-WALLACE: Actually, if Drew doesn't mind, I'll let him -- he is, he's been going out and getting some feedback.

MR. HIRSHFELD: So we certainly do look at court decisions and PTAB decisions, right, to see if there is any reasons that we can feedback. Now, usually the number of decisions that we have from the courts are so small that it's usually, you know, one-off issues that are not indicative of larger systemic problems that we need to address. But we do look at all these cases to evaluate them and see if there's any training that could come out, if there's any feedback that we need to be providing to examiners.

MS. JENKINS: Just for past attendees, I'm a little bit more free flowing than Louis was, but I will keep us on time. So, Julie.

MS. MAR-SPINOLA: Thank you. So I will hold my questions, more specific questions about 112 until Andrew has his presentation. What I wanted to ask about, the training program, is whether or not that is synonymous with a

mentoring program? Personally, I'm a big proponent for a mentoring program where you match individuals who can very candidly and freely at any time access someone who's senior. And it doesn't have to even be in that space, you know, technology space. I think there's great value in that, so that would be my question.

MS. MARTIN-WALLACE: Sure, thank you. Good question. So actually we have several mentoring programs here at USPTO. We have an agency-wide program that goes across the business units for matching mentors and mentees based on their interests. We also have a series of affinity groups here at the Office that's run through Office of Equal Employment and Diversity, who have a voluntary mentoring program, as well, which has shown great success. Because in most cases, we'll have a senior examiner who volunteers to mentor junior examiners. And what we found specifically in some of these affinity groups is we really had a great success of first-year examiners being retained or staying here after going through this program and getting that level of support, as well as a standard part

of the performance appraisal plan and functions of a supervisor's job is mentoring and coaching.

So it gives it to them on many levels. So in some, such as the agency-wide or the affinity groups, it is an anonymous thing. And in other areas with a supervisor, then not as anonymous because they're mentoring a group. But developing the responsibility and those functions as the core part of a supervisor's job has shown great success for us.

MR. SOBON: Thanks, Valencia. I have a couple questions. One, sort of stepping back a bit, I wasn't, unfortunately, able to come to the summit, but one question I have as an output of that or as work we could even do together, is there a thought to create a mission statement, statement of principles of what we actually share and consider high quality for the process and the ultimate product?

Because I think we talk about it a bit, but I think not having it set out and agreed what that is, and it's very difficult to do, I think, to actually -- there are some key things I think we could agree upon, so that everyone knows what

the pollstar is that this all is tending towards that involves balancing and tradeoffs.

And I say that because, you know, everybody in the -- we call it the supply chain of patent development and use faces the same problem. Law firms face it, inside counsel faces it, and I think the administration. It's not unique to the Patent Office to know what quality is. And we tend to be scientistic [sic] and measuring lots of -- we can measure what we measure and then that determines what quality is, but ultimately, one of the biggest challenges is at bottom.

And I think it's something that policymakers don't fully understand, judges don't fully understand, juries don't fully understand that at the bottom, patents are not a technical product. They're a human product, a plain language, frail language to an otherwise technical world. And that ultimately becomes more art than science and more professionalism than robotics.

And so I fear sometimes quality measures and issues and things can veer towards

a product line, product- based thing for something that really a bottom is often more artistic than anything else. And how are we managing that tension in the definition?

MS. MARTIN-WALLACE: Thanks, Wayne, that's a great comment and question. And, in fact, the team that I've had, as well as the deputy and Peggy, have actually been talking about that recently. Part of the first part of the summit or the first part of the summit on the prospectus on quality was to bring that out, that we have different industries of IP and there's different things that they focus on. So we've been talking about that. You know, what's the policy on quality that should be embraced not only within the USPTO, but the IP community as a whole?

In fact, I had a conversation with Robert just the other day and that was one of the things that he brought up at the summit is there was no defined quality through that, which is very hard to define, but a policy or a mission that we're all embracing and marching towards will help us get there a lot sooner. So it is something that we are considering doing and we do

want to continue to look through our comments and ideas that have come in and make sure that we're going in the right direction. So we're waiting to make sure that we're considering everything before we put any stamps on anything or bring it to you for comments.

MR. SOBON: As always, I think I speak for the PPAC, we stand ready and willing to assist in that very -- I think it's very central to this to know what, you know, you actually are shooting for, what we are agreed that we're shooting for in all these discussions.

MS. MARTIN-WALLACE: You're absolutely right. Thank you.

MS. JENKINS: Yes, I think we all echo that, definitely. I like the artistic and fragile. We have new words for the PPAC Board.

I think this might be a good segue to the next slide.

MS. MARTIN-WALLACE: Okay, so I'll go on next to our external initiatives that we are currently underway on. And the first being a Quality Webinar Series. And this idea came out of the summit and actually the preparation for the

summit, where I met with Janet Gongola and the series of speakers that we were having at the summit prior to the summit to really just discuss quality and get everyone's idea. And it was such a fantastic conversation, discussion on quality that we decided, well, why are we not having these in a shorter form, having a topic that we bring up, have a short presentation, and then open it up to the public?

So we're going to start this webinar series in the next month or two, where we will have a particular topic and a guest host to come in and discussion whatever's a relevant topic at the time and invite the public to come in and listen to the lecture, but then open it up and have an open discussion. And this is a wonderful way of bringing in that continuity, as well as garnering even more comments and ideas for us as we're going through this quality journey.

The next also came through the summit, where we were asked about time zones and making sure that applicants, practitioners have the opportunity to -- whether they're on the West Coast or the East Coast, to talk to someone the

same day. So we're starting with the Patents Ombudsman Program, where we will have hours 8:00 to 5:00 no matter what time zone.

And we're in the process right now of making sure that the Denver office, Detroit office has the appropriate tools to do that. We are going to have to lag a little bit with the West Coast until we have the FTs, the human resources to man the phones and make sure that there is an 8:00 to 5:00 no matter what time zone you're in.

And the next is a Patent Quality Road Show. So we're expecting that this fall we'll be going around the country to update and give more information of what came out of the summit, as well as the comments from the FR notice and steps forward and gather more information and get ideas and comments based on what we come up with.

And the last two is through Federal Register public comments as well as the summit comments. We are feverishly going through the summit comments now. And I'm happy to say that we received over 800 comments from the summit, as well as after the summit, the open mailbox that we have for suggestions. So our team is

feverishly going through those and categorizing them and identifying them by a particular initiative, as well as new ideas that have come through. So, hopefully, we will have something very substantial soon on categorizing those.

And with the Federal Register notice we did extend the comment period due to requests, making sure that we give everyone an opportunity. But I'm also happy to say that we have over 100 comments that have come in already through the Federal Register notice, as well. And we will be coordinating and analyzing those comments, as well.

And we've talked a little bit about these, but I'll just bring them up again. We looked at the most common themes that came out of the summit, the discussions and the breakout sessions. And the three that rose to the top I don't think will be a surprise to anyone.

First being clear record throughout prosecution. That's been the common theme. And from the comments we've analyzed so far, that is the number one theme.

Second is the differentiation between

measures of patent process and patent product. And a lot of comments that came through about our measures, while understandable how they help us internally, but not necessarily the focus that our stakeholders on the outside are looking for, so we're in the process of reviewing what we currently have and how we would change that.

And the third was the usefulness of face-to-face interviews. And I'll just share with you, several attorneys who attended PTO Day prior to the summit, who also attended the summit, told me that there was a presentation by one of our lead directors on our interview practice and collaboration, Tim Callahan, who did a great presentation on our current WebEx tools and how to use those tools as part of face-to-face interview even though it's remote. And they loved it. They thought it was a fantastic tool. The way he was manipulating it, it gives exactly what was needed to have a really robust and positive interview. Yet they did not know how to use those tools even though the examiner may be proficient and the supervisor, the attorney not necessarily proficient in order to utilize those

tools the best way possible.

So part of what we're doing now is developing a training course for our external stakeholders on how to use the WebEx tools proficiently, so that you can be confident and proficient as the examiner on the other side of that interview. So we will be advertising that implementing that very soon.

So that's our emerging theme.

MR. THURLOW: So just a quick comment. And we don't need to discuss it because I think each PPAC member has their pet peeve for topics that, when they spend enough time on the committee that they're hoping for. But I just think as you go through prosecution, Mr. Budens, we always get into it somewhat in a fun way, but -- and there's people on PPAC that disagree with me, but, at the end of the day, if the examiner reviews it and they give a notice of allowance, it sure would be nice if in every case they provided reasons for allowance (inaudible).

So that clarity of the record, as was talked about, someone should not have to review the whole prosecution history, which sometimes

can be 1,000 pages, to figure out why the patent was granted. And I think it's so silly, forgive that, but that's something I always do.

The face-to-face interviews, I know there's been discussion about the videoconference. I haven't done it. I'd like to try it in the future and learn more about it. I've heard good things about it and that's something we should probably promote more. I'm not sure if enough applicants are aware of that or so on.

MS. MAR-SPINOLA: May I ask a questions, Valencia?

MS. MARTIN-WALLACE: Yes.

MS. MAR-SPINOLA: So with respect to the clear record and I'm going to follow up with Peter's comment, can you elaborate more on what clarity people are looking for besides the conclusion of the examination?

MS. MARTIN-WALLACE: I will speak and then I'll ask Drew to comment because he's heard a lot, as well. But it's really, it's the totality of the prosecution. It's the interview record and making sure that it's clear and

everything that was mentioned. And that might be a little bit controversial, depending on what area (inaudible) that you're servicing, but making sure that the interview record is clear and there is what was discussed in the interview as opposed to just a few lines that really don't give any clear direction.

Also, with preambles and making sure that it's clearly -- the record is clear as to the purpose and the significance of the preamble, 112(f), and making sure that it is clearly defined as well as with one-on-one, especially now with Alice, clearly defined the analysis and the decision of the examiner.

Jump in.

MR. HIRSHFELD: Yes, I think Valencia hit them well. I think, you know, maybe perhaps I'm stating the obvious, but, at the end of the day, the goal would be so that a third party can pick up that patent, look at the claims, and know what the boundaries of those claims are. And I know that's the obvious, but if you look at history, right, and how we've examined claims, you can actually have an entirely correct

allowance of a case or a correct rejection of any particular claims.

And still, it's not entirely clear when looking at that record what the scope of those claims are. Right? The examiner may have in their mind what they are and maybe the applicant has in their mind what they are. But really, that's correctness and clarity can be two sometimes distinct things. So what we're trying to do is take a look and say, okay, how do we improve in that clarity area? And we're trying to still determine what that is and look at the comments, as well. I mean, it could be in a claim construction, where an examiner's actually doing a claim construction.

It could also be, as Valencia started to mention, things like, you know, was 112(f) invoked? How did you treat functional language? Was the preamble given weight? All of those type of things, as well. So I think that the endgame is that people can look at the claims and know what they are and we're still figuring out what the best way to get there is.

MS. JENKINS: I think it would be

helpful for the August meeting if we could hear a summary of the comments that you receive from the quality summit, so we see what the public is focusing on could be very helpful.

I think I saw Paul. Yes.

MS. MAR-SPINOLA: And one other point --

MS. JENKINS: Oh, go ahead.

MS. MAR-SPINOLA: -- I'm sorry, and that is that in light of all the satellite offices, do you anticipate being able to host face-to-face meetings at these satellites, which I think could be maybe more cost- efficient, time-efficient? And although I think videoconferencing is fairly effective, better than the phone for sure, I think being able to have those face-to-face at the satellites will be, I think, a very effective program.

MS. MARTIN-WALLACE: And I'm going to look towards Andy to make sure I'm correct, but my understanding is that we do have interview rooms in the offices that are being utilized right now, so that, yes, if you put a request in, you can have an in-person, face-to-face meeting at a

satellite office with an examiner that is there or in that region.

MR. JACOBS: Yes, I'm sorry, I just wanted to underscore one thing that Drew said that I strongly agree with. And I think for the sake of clarity of our record here, I think the message really -- not that reasons for allowance and some of these other things aren't important, they are important. But I think the message that's really been coming through loud and clear is that claim clarity should be an important focus of patent quality, and not only has a big influence on the quality of the issued product, but also plays an extremely important role in the economics of the patent system in terms of the effects of litigation. When people have to go to litigate to try to figure out what the claims mean, this is something that's been coming through loud and clear, that we want to try to minimize that, right?

And so I think it would be good to put a little bit of a sharper focus on this because a lot of messages do come through and people do get mixed up. And I think really our focus should

be on claim clarity or for some of these other issues with a record that can get very complicated and even controversial, whereas you're not going to have a lot of controversy that people want to have clear and valid claims in issued patents.

MS. JENKINS: Why don't we move on?

MS. MARTIN-WALLACE: Thank you. Okay, so then we'll move on to just a one-page summary of the Quality Summit and the FR notice. So as I mentioned earlier, we have an extended deadline till May 20th for the FR notice comment period, and that was due to -- we did receive a couple of questions about extending out that period, as well as there's a Berkeley Law Journal request that's going out specific to comments about the USPTO's enhanced quality initiative. And in order to really capture that, that deadline was about a week after our deadline closed. So in order to capture as many comments as possible, we've extended out till May 20th, which is coming.

And as I mentioned, we had quite a few comments that have already gone through, but I'm hoping that we'll have even more by May 20th.

And next steps, as I mentioned, we

are -- my team is working through and analyzing those comments now. And we are doing that through a common database that we're using and consolidating all comments, not only from this summit, but the FR notice as well; and categorizing and filtering so that we can identify the particular initiative or other ideas along with some other issues that we would have to address based on what the comment is and how doable it is.

And sorry about that, I must have done that. Also, if you are so inclined and weren't able to make it to the summit, the entire two-day summit is on our uspto.gov webpage, that you can go and view. It is segmented, so you don't have to start with Day 1, 9:00 a.m., in order to get to 2:30 the next day. So you can segment and go through that to see what happened at the summit. And we will keep that on our web page for quite some time now, so.

And then, also, just to show you, we do have an external Enhance Patent Quality Initiative that not only discusses the summit and some of the other initiatives that we are looking

forward to, but it also links to some of the training that we've already done and given to examiners through Drew's shop and other nice points to know, as well as points of contact on our quality initiative and who's working on it.

So next is, with my last few minutes, we'll talk about the quality metrics. And Quarter 2 has been posted, but I will go over them with you right now, as well.

So for FY '15, Quarter 2, you can see our goal for this year is at the 100 percent of our quality composite. And right now, we are at 60.2 percent.

And I apologize for the small numbers. This gives you the breakdown by component of the Quarter 2 measures. So while we have gone down in all of the areas of each particular component, it's important to know that none of these changes have are statistically significant. Our greatest changes or ranges were our final disposition. And you can see we're at 96.3, where for FY '14, Quarter 4, we were at 96.9, as well as our internal survey where we hit a high of 6.1 in FY '14; it's now at 5.0. So naturally,

the questions are, so why?

And I would have to say that we're currently analyzing to see if there's anything that we can really pull at that change, but I would have to say the level of -- just one second, the level of reviews that we do, while they are significant, they don't really give us the type of information that we need to really drill down to the root. So just as those externally, we can speculate as to what was doing on and to make these changes, but not really have the factual evidence that we need to say.

MR. SOBON: I'm just going to suggest, especially since we have new members on the PPAC, as well, in the past we've had this, but if you could provide us the actual underlying details of how you arrive at these calculations, the rubric for that would be helpful, I think, for the others on the committee.

MS. MARTIN-WALLACE: And with that, I will say, Mr. Marty Rater, if you don't mind stepping up, who's in the audience and he is our statistician and they really help. Don't hide, you can step up.

You don't want to get any -- oh, you're saying later. Okay, okay. Because, yeah, that's -- they put me on the spot on that one.

MS. JENKINS: We're not putting you on the spot.

(Laughter) Wayne's not doing that.

MR. SOBON: I just think it'd be (inaudible) I would like to have the current setup on the record.

MS. MARTIN-WALLACE: Absolutely, absolutely, we will. So one of the things that I wanted to talk to you about today and get your ideas of our -- as we're looking at our component and our measures, getting your ideas now or in the weeks to come on the direction we should go and making sure that we can drill down and give good analysis, trend analysis at lower levels, not only for your purposes, but also for our examiners' purposes and understanding and identifying issues, as well.

So we're in the process and don't want to put you on the spot right now. If you do have ideas, please contact me and we will be -- the

Quality Subcommittee will be meeting and discussing this in the future.

MS. JENKINS: Do we have more questions? Paul?

MR. JACOBS: Yes, since no one's really said it, I want to say that it's great, a lot of the things that you're doing are great. I mean, I think having a heightened emphasis on patent quality is great. I think the new organization is great, the outreach. And I did participate to the extent that I could in the summit. It was an excellent meeting, a lot of really good feedback. So all good things.

I think a lot of the people who are coming forward from the user community and participating in these summits, they want to know not only that we're listening, but that we're acting. And, in particular, you mentioned the feedback in terms of distinguishing the quality of work product from quality to service, so let's just focus on quality of work product.

Presumably, we want to improve the quality of issued claims. We should issue patents with valid claims and we should reject

claims that are invalid, right?

Can you comment based on your experience so far? What are the lessons we've learned so far? Are we improving, for example? And do we have confidence that we're going to improve in those areas in terms of quality of work product?

MS. MARTIN-WALLACE: So based on the summit and the initiatives and everything we've done most recently, is that what you're asking?

MR. JACOBS: No, no, I'm talking about -- like everything we've learned so far and what you've learned so far in your position. But what did we learn from the past few years? We certainly had -- I mean, I've participated in a number of initiatives. We talked about like crowding sourcing prior art, third party submissions, you know, all kinds of things that have gone on, the 112(f) training and so forth.

So what have learned so far? I'm happy to say what I've learned. I'm just asking what you've learned.

MS. MARTIN-WALLACE: Okay. So my work as an examiner, supervisor, director, all the way

up I've learned quite a few things, and I'll start with the level of responsibility, for one, and the examiner's attention to what they're doing. I think for some people it's a misnomer that examiners feel this is just a job and they don't take -- they don't feel accountable for that quality product. And I would say that anyone who thinks that is a complete misnomer. There's a lot of pride that examiners take in the job that they've done, that they've done well, and that they are giving valid patents, strong, valid patents to applicants.

So the interviews that have gone up that have been initiated by examiners in order to make sure that they understand the point of view of the attorney and the applicant; the level of time that they spend; and the resources that support that they reach out to on the searches not only for the time they spend on their searching, but also the time they collaborate with their co-workers as well as utilizing the resources that we give them for further search analysis on their applications.

The level of time spent and the manner

in which we have started changing how we train our examiners and not having just a lecture style, but actually workshops that give hands-on examples, working through mock applications in order to learn the intricacies and have a better understanding. And I would have to say as a lead for implementation of AIA (inaudible) to file it was just amazing the response that we received from examiners and, quite frankly, the level of quality of these office actions from examiners that now examining under AIA is -- I'm proud of the work that they're doing. I'm proud of the work that the supervisors are doing.

So, yes, I've seen significant changes. And I would have to say not necessarily that they have been reflected in Quarter 2 measures. I don't think there's an accurate reflection, but we have to find out why and we have to find out what's going on.

So, yes, I have seen very significant changes in how we approach the examination process here as well as our collaboration with applicants and attorneys to make sure that we are addressing it appropriately, and, as I said,

having that strong, valid patent that can be relied upon.

MS. JENKINS: Okay, great. I get one quick question. Maybe this is directed to Mark, so I'm going to put him on the spot. Mr. Powell.

Is there a quality, like, department in, say JPO or EPO? And are we -- I mean, not to totally overburden you and not to stress you out, but are we looking to other offices for what they do.

MR. POWELL: Oh, absolutely, and we are fully right now in the process of exchanging views with the other offices. As a matter of fact, Monday we had the APO quality people here for essentially an entire day of discussions with Valencia and her crew. JPO has embarked upon a robust quality program very recently, citing their reduction in backlog and newfound ability to apply resources to the quality elements and not necessarily chasing the backlog anymore; same as us. Korea, I understand, is also starting out in the same program.

So the answer is yes. Everyone is doing something a little different and we're

seeking, you know, the best practices of all of these offices. And we've already, you know, spotted a couple of gems out there, which we may, in fact, plagiarize in the future.

MR. SOBON: That was quite related. I was going to ask that question, too, so that's great.

And similarly, I think raising the prior one, but you're also with global dossier and machine translation, you're on the verge of having really good, for the first time, as best as you can run, data sets of parallel experiments for the same applications being run in different offices, too. And I'm wondering what your thoughts are planning forward, to use that kind of data as to feedback into quality analysis?

MS. LEE: Yes, Wayne you're right and there are a number of initiatives, either in an abscission phase or nearly about to be deployed in the end to end system, allowing access for example, to prior services of other offices by our examiners. Later in the day you'll hear about collaboration pilots that we're going to be beginning with the Korean and Japanese offices,

but yes, the data set is basically getting the right information forward -- not just our examiners, but any examiner globally and providing efficient means for these examiners to parse this data without being slowed down too much.

MS. JENKINS: Great. So we will need to move on. Thank you. I'm sure you're hearing, this is such an important issue. We are glad the Office has created this initiative. We wish you continued success and whatever we can do to help as members of PPAC. Drew?

MR. HIRSHFELD: So I'll start with my slides and what I had prepared today, but as a lead in, and since I'm fortunate enough to go up next when I wanted to say something to the previous one, I'm going to use that opportunity just a little bit just to frame the big picture, right, because in addressing Paul's question about, you know, what have we seen so far, in quality, I really think that we really need to bifurcate what Valencia and her shop is doing and what we've done up to this date, right, because Valencia is -- and her whole shop is brand new, and this whole

quality initiative is really a new look by us, at PTO. We say, how do we think a little more out of the box than we've done in the past? And we're really still even in the comment period, so her, you know -- she hasn't really been able to get rolling with this yet because of the early stages of that. So I think, as we move forward, we'll be able to take those bigger steps, a little bit more out of the box than we've done in the past. You know, your question was about, what have we seen so far, and I think we have been always focused on quality, again, trying to look at it more out of the box now. But as we've looked at quality, I think we have made significant improvements and you know, I'm going to get into the training that we've done now. My personal view is, that's been really helpful, and I know people meant some other things. I mentioned some other things, but I would also add in, that interview practice is something that we've really started to focus on years ago, and the feedback we received is that that's been extremely productive, with examiners reaching out. So anyway, I just felt it was important to say, yes,

we are seeing improvements, and we've always been focused on it, but Valencia and her efforts will really be a more out of the box look, and I think time will bear out what we're able to do there, so, with that, I'm going to jump right into the training. So it was a pretty good segue.

I have some discussions on the functional claiming training that we've been doing, and give you an update on what we have done there. And then I'll get into subject matter eligibility, specifically, I'll address some of the training that we've done and some of our next steps as you all know, we've had a recent comment period and I'll discuss some of the comments and what we have planned. So I'm happy to keep this as informal as possible. Just, you know, if anybody wants to ask questions, go ahead and we'll do it as we go. So I have, up on the slide, and I know that is difficult to read, but the eight different modules that we have planned in the functional claiming training update. And I just wanted to reiterate that this is -- this was our initial plan, right? And so we have a series of modules on functional claiming that started with

112(f) and we had four different modules on 112(f) and then basically tried to get into non-112(f) issues and we've had two more modules on 112(b) and then even less of the broadest reasonable interpretation, plain and ordinary meeting, so we've tried to address functional language from a variety of different angles.

If you jump down to number six, okay, you'll see that we have claim interpretation module that's examining functional claim language, and that we're planning that for the spring. We are in the finishing touches of review and preparation of that module, sort of hoping that will roll out very soon. That is really basically when you have functional language that's not invoking 112(f), how do you handle that? Is it given weight, is it not given weight, do you have to have something with the capability, et cetera? So again, we're trying to expand beyond the 112(f); 112(f) was just a starting point and then I think this will be a very good next step, and I always tell people that one of the advantages is -- of being working on the training, is I get to try to answer some of those

questions that I remember asking myself when I was an examiner. And I can tell you a lot of these were questions that I remember having conversations with my supervisor -- hey, how do I handle this language, if it's not 112(f), you know -- what is it mean, right?

So I think that's good, right? And then you'll see that seven and eight, our plan to get into 112(a) issues and we know that written description enablement, there are parts of the office that are more used to looking at those issues and so we're specifically trying to address the areas that don't -- haven't typically addressed those area as much as other areas. So again, the plan is to have a well-rounded 112 functional language look. I'll also say that, just because there's eight here, doesn't mean that's where we would stop. The goal would be to continue and to basically have continuing education going on entirely.

MR. WALKER: Drew, thank you. Written description enablement is favorite topic. So in terms of your training material, this is a question -- what materials do you use, and

particularly do you look at any actual decided cases and if not would you be open to receiving published written decisions on written description and enablement?

MR. HIRSHFELD: So at the end of Valencia's slides and also at the end of mine there's a link where you can see all the training materials that we have. So everything that -- all the training, and this is true for all the legal training that is either on the functional language in 112 or even the 101 that we'll talk about. We make that all available to the entire public so that people can see it. And I can tell you as we have comment period and say 101, we're definitely hoping that people will comment on the training material as we go. About your question about cases -- we use a combination of cases and just either hypotheticals or explanation and it really depends on what training module that we have. Often times what we'll do is we'll use cases without necessarily even citing to that particular case -- or we'll just have a cite and try to pull something out from it. But I think what you'll see is certainly we

are open to using cases and want to use cases, and often do use cases. But depending on the module, whatever is the best ideas to get across to people is what our goals is and sometimes that's through cases and sometimes that's through hypotheticals.

Yes, Dan.

MR. LANG: So as you roll out training to the examiner corps, how are you assessing how it's actually changing the way that they do their jobs? How do you measure your success in communicating the message and making it have a difference in the examination process?

MR. HIRSHFELD: Sure, so as we are continuing to roll out the training we're also creating a review cycle -- where we're going to go in and review these particular issues, see how they are and try to keep a cadence of that so we can keep tabs on how we're doing. So we've already gone back and looked at 112(f) and examiners' uses of 112(f) and what we've seen is -- it gets a little bit difficult to describe because often times -- and this is the whole point of the clarity issues, you don't know what

position anybody has taken with regard to 112(f) in the case. So we've had to really look at those situations where the examiners have clarified and you know what they're addressing. So where they've taken steps to clarify we've found that the examiners after the trading war were very much in accordance with what the OPQA reviewers thought they should do. So I don't have the numbers right off hand but I want to say it was like 98 percent correct. The area that we feel that we really need to focus on -- and this is not surprising to us is the steps of making the record clear and that historically has not been something that we've asked examiners to do. Again, you can have a correct office action, a correctly applied art or a correct allowance for example and the record isn't necessarily clear as to whether 112(f) was invoked and that's something that we certainly know from the reviews that we need to focus on and continue to improve. But to your question we will continue to review and do a review in cycles.

MR. LANG: On, for -- particularly 112(a) and you'll perhaps eventually, you'll get

to 112(b) as well, what, well -- are you considering looking across the arguments now and seeing how often those rejections are deployed? My impression is that they probably aren't deployed enough but that might be one way of evaluating the impact of training to see how often examiners are actually reaching for those tools in their tool box to actually improve patent quality.

MR. HIRSHFELD: Right so, certainly I agree with that 100 percent. The problem that we've had is that historically we haven't been able to capture that data, both for the system that we use to write office actions, it's difficult or almost impossible to be able to search and pull that data out. But as we move into patents end to end that is certainly something that we will be able to do as we'll be able to go in and better capture all of the data. What we're also doing is with our reviews our OPQA reviews -- we are trying to expand the data capture that they go through when reviewing a case. And I know that's a spot check and that's not all office action, but that will certainly

give us a better input as to the frequency people are or aren't making rejections. I can get carried away going on here, but we're also looking at trying to do the same type of data capture in other areas outside of review. So as we do other reviews in the office, we'll be able to data capture. So that's a long way to say, I agree 100 percent with comment. In the past we haven't been able to do that and we're looking at how we can do that effectively moving forward.

MR. LANG: Thank you.

MS. MAR-SPINOLA: Quick question on 112 and with the modules, does there exist and if it doesn't exist -- let me ask this question. Does there exist now a 112 module, training module that trains 112 as a whole, versus breaking it into these sections? If not would you consider that, because I think 112 is complicated but there's a reason for all these subsections. I think it is very important to focus on individual ones but at the same time I think before you get into the specifics to teach it as a whole. Is there any plan for that?

MR. HIRSHFELD: Sure so actually

in -- I believe it was 2011, although I'd have to check the date, we came out with a federal register notice on 112 and it was very comprehensive. So I think that fits the category of what I think you're asking about, is a bigger picture overview of 112 in its entirety. What we found is, we tried to go back and then break that up into smaller training to try to get home some of the finer points that we wanted to get across but I would say that larger 2011 document certainly was the big picture and then we went to the reverse.

MR. WALKER: This may have been discussed previously, but have you considered just having a requirement that every claim that's presented by the applicant in a new claim, they have to specify just on a data sheet whether they are requesting the treatment under 112(f), as rather than having to asked by the examiner -- have a big debate. You just have to specify yay or nay for every claim that you present. So you're challenged by the examiner but you just have to say it affirmatively.

MR. HIRSHFELD: So let me make sure I

understand. So you're suggesting that the public would do that for each of their claims and not -- okay. So we did explore that and actually came out with a Federal Register Notice -- I believe it was a couple Januaries ago. Where we asking what can the public do to improve quality and there were issues of would the public check a box about the preamble giving weight or would they identify whether they think 112(f) is invoked even the 112(f) support. And I think it's very fair to say that the feedback we received was not very positive about the bar taking on those steps. So as we've moved forward I can tell you with 112(f) that the way we've decided to train was to have the examiner rely on the presumptions to really try to set the record straight for all claims. But we've put the onus on the examiner -- I'd love to be able to have a more balanced onus on the public end of the examiners but we didn't really get a great reception from that one.

MS. JENKINS: So Drew, we're going to give you more time and we're going to go into our break period. So, okay -- because I really want

to hear you comment on 101 -- I'm amazed by the 112 response here, so, but --

MR. HIRSHFELD: It's great that we're talking about 112 more than 101 right now. So I'm sorry, did you say we're taking a break or am I going into the 101? Okay, all right. Sorry everybody I'm taking your break time. All right, so I'll transition into 101.

So we also have been involved in 101 training as you all know. I've discussed here what we've done in the training in December so I'm not actually going to get into the training or into the guidance itself but wanted to talk about the training that we've had. So the entire core got training on the December interim guidance so that was the Federal Register Notice itself. And that was all done classroom style for all examiners. And that was done in the January-February timeframe. Then we started a second round -- a second phase of training that we did in the biotech area. We completed already and in the business method software areas we're just about complete. So we're about 75-80 percent complete with that. And what that second

phase was on, was the example sets that we released, at least in the biotech areas with the training and then in the abstract idea space -- we released it in January. I say with training, but with the Federal Register Notice. So in December we released example sets in the biotech area and then in January we released example sets in the abstract idea space and we've been using those example sets to train examiners. And I think Paul, you asked before about improvements and what we think we've done with improvements or how would we see things going. I can tell you what we've done with the abstract idea examples has been very very helpful so we've trained in that way with workshops where we've have worksheets that examiners can get into small groups -- and this is one of the reasons that training has taken a little longer. But examiners can get into small groups and discuss those examples and walk through these worksheets which step them through the entire process that they should do for their analysis. And so I think that that's a model that actually I think Valencia and others started with AIA and it was really helpful to have the small

groups and I think that's been a really good improvement and we're getting to the close of that training now. Incidentally all of those worksheets will be posted on the website either today or yesterday or will be tomorrow. So really soon we're going to put those up. But they also have sample rejections written in them to give examiners an idea of exactly how we're saying you write up your office action.

So I'm going to switch now to the comment period. So we had after the December guidance came out, we had a 90 day comment period. We received 61 comments. Those comments, most of them or many of them were on not only -- on all areas of eligibility, so most people didn't comment on say, either abstract ideas or biotech. We had people commenting on all -- of course some commented on one or the other. But again, 61 comments were received. I wanted to go over some of the themes that emerged. For one, I think people were much more happy with this than at least the March guidance that we came out with in the biotech area. Many people commented that this was definitely a positive step in the right

direction and people certainly did point out areas where they thought more clarification or more information was necessary. So going to the 30,000 foot level, good step and we're looking for more too, right? I think that's a fair assessment of the comments. One theme that emerged throughout was the published examples that I just spoke about that we're using for the training. People really liked the examples. I'm also out speaking a lot about 101. I always get positive feedback about the examples. People are using them to cite back to examiners. They're using them to compare their cases. They feel those are really helpful and people want a lot more. So it's the more examples the better. We get that and I can tell you I have a team working on more examples, the more the better. I know one area where people are looking for examples is diagnostic method claims. We've been waiting like everyone else for the Seavenom decision to come out of the federal circuit. We will move forward regardless if it doesn't come out soon. Ideally we'd like to have that case as we move forward but we're going to work on examples in

that area and others will be a key theme. I'm trying to pick up the pace since I know we're on break here.

A couple other notable themes where people wanted clarification regarding the exceptions, and we get that. We want more clarification too about the exceptions from the courts of course. We do plan on coming out in the summer time -- most likely in July with a supplement or additional guidance where we'll have those additional examples that I'm talking about and also address -- try to get more clarity to how you define when you have say, an abstract idea or when you have any exceptions. One area that a lot of people commented on was the certain methods of organizing human activity. Some suggested it needed to be further defined. Some suggested it should be taken out entirely from the guidance that something we're looking at now. But suffice it to say we certainly will address that area as we go forward. Some other themes that arose were concern over implementation. We're hearing a lot of people saying that there are a lot of conclusory office actions that

examiners are not explaining themselves well. Again we came out with those workshops where we had sample write ups and again those will be made public. I think that will help. We also will be addressing this as we move forward to make sure examiners know what is required of them. So again I think we've taken some steps there. And I think most of the comments, or not most, all of the comments were actually before we finished the training, so hopefully the concern is not as widespread as we're hearing but people are getting in comments and actually hearing it from many people as well. So we will address what a prima fascia case is and what's required.

Finally a theme arose where a lot of people had comments about markedly different characteristics. I will tell you that there was many people commenting on it but not a lot of consistency through the comments itself, so there weren't any themes within markedly different. There were a lot of different comments on it to various aspects. So we're looking at that. I'm not sure how we will address that given that there was a variety of different approaches.

So in our next steps, we're completing the phase two as I mentioned. And as I also mentioned we do plan on having an update, a supplement. I'm not sure what we'll call it yet but we will be coming out with something that will add to the guidance. I see the guidance remaining as foundational with tweaks here and there, changes here and there, supplements et cetera. I'm expecting that to come out in the summer and it will also additionally continue the iterative process so we'll have a comment period as well. We will let people comment and we will continue this back and forth with getting comments and as case law develops.

So I went pretty quickly through 101. I'm happy to take any questions. The website is where you can get all of the training material that I've mentioned. There it is.

MS. JENKINS: Clearly this is a 112 group, not a 101 group. Or at least they're not just thinking about 101 at the moment. But I think one thing that I know I've had concerns about is sort of every couple of months we have a new set of guidelines and the challenge that you

face is advising clients who maybe aren't as familiar with U.S. practice and what is going on, about inconsistent interpretation by the examiners. So at some point in March you had one set of interpretation. Then in December you had another and then you have case law, and the new case that we're waiting on for a decision. I hear you're saying you're going to supplement. Is there a thought in the office of trying to make things, not necessarily consistent but a little bit less reactionary to what comes out? So you don't have such inconsistent practice, and have to guide clients based on that inconsistency. And then you can say, oh, well you can wait, and we've actually discussed that a little bit. Anything you want to comment on?

MR. HIRSHFELD: Sure so, for better or for worse, we follow what the courts do. So our level on consistency is greatly dependent upon the courts level of consistency. So if a case comes out tomorrow and completely changes the way we're supposed to be looking at, we would have to change with it, right? I mean obviously, there are no Supreme Court cases that are going to come

out tomorrow. But the point of that is we are following the courts. That being said we would love to be able to come out and say this is final guidance and not going to change. But I think the more than likely scenario is that there will continue to be updates. Now the change from March to December, some of that was based on court decisions and others wasn't. Others were just as we got feedback and we saw different ways to look at things. So I think that level of change took place during that time period and I don't think we're going to see, my own personal feelings, we're not going to see that level of change continue. What we'll see as the guidance will remain as foundational and we'll make improvements to it as we go. So I am hoping that if we're looking at like a curve, it's starting to have less (inaudible) -- you know, it's leveling out a little bit. I think that's the direction. Did that address your question?

MS. JENKINS: Yes. As best you could. Peter?

MR. THURLOW: Just a couple of quick comments. Colleagues that are watching the

webcast sent me an email of a special master's report from Maryland where they actually found that the patent (inaudible) on the 101 so I'll make sure I send it to you. Other things leading up to the meeting, I think in the PTAP hearings, any case where there was 101 was an issue, they found the patent invalid. So that's probably not the best thing with all the changes. I want to echo something that Dan mentioned earlier -- one of the benefits for the PE2E program that I look forward to is with 101 -- we sometime hear concerns that examiners are only given rejections on 101. I don't know how accurate that is but to the extent in the future we have data that shows 101 and other rejections, we believe from the practitioner's standpoint, it should be a complete review of 101, 112, 102 and 103, and not 101 stop. So that and then --

MR. HIRSHFELD: And we agree with that too Peter.

MR. THURLOW: And we just -- a basic question that I got from a company was, we have this portfolio of patents in the 101 area and we quite frankly don't know if they're valid.

They've been issued as a presumption of validity but with 101 we just don't know where they stand. So, I say that for the reason that you're doing a lot of work and I think it's to be congratulated but we need to do as much -- continue what you're doing because there's just a lot of confusion. Thank you.

MR. SOBON: Yeah, just to follow up on those comments -- I mean, I think one sort of meta theme I didn't see in your description from the comments that I would have maybe expected and maybe it's a subtext to all of this -- is I think people felt that there was a positive change from the first issuance to the second one in the guide -- and it relates to the effect that it has on the examining corps that to put it bluntly, the first approach seemed to be the court saying here's where you jump and you say how high? And all of the examiners, in a feeling that this is the trend and we need to maximize rather than minimize the effect on -- which after all are supposedly narrow judicial exceptions to a very broad statutory grant of patentability for all manner of human invention. So that I think has

been salutary that you pull back and I think if anything, that's still sort of the concerns is that you give clear guidance to the examining corps, that it's not supposed to be 101 and stop. And 101 is a blender bust, that just can eliminate all other needs for examination. So that I think is the biggest concern so.

MR. HIRSHFELD: Point understood and I would just really direct people back to the examples, because I think those examples do really set forth how we're looking at subject matter eligibility and how the guidance should be applied and the examples. There's a lot of case law that we have that show what's not eligible and we try to add hypotheticals in those examples to show what we believe is eligible and again we've gotten some good feedback on that.

MR. BUDENS: Just one comment kind of directed a little bit to Marylee's comment because I appreciate everything that has been going on here and has been said. By the way Wayne, I think a lot of examiners have had the same reaction to the round one guidelines as a lot of people on the outside did. We were like

wait -- and felt the same need of, did we go too far? And I think we've had conversations about that. But I also was thinking about Marylee's comment about trying to be more proactive I think, and less reactionary. And I think back to this as I look back over the history of some of this whole adventure we're going through right now and I think we tried that, and I think as an organization we tried to find language that we thought would allow a lot of these kinds of claims to be allowed, if we included computers and some kind of physical mechanisms into it and so that's why we have a lot of patents sitting out there with you know, a layers, and oh, by the way, this is done on a computer, kind of stuff. And we were trying to help the process along and help people get patents and it just seems like even when we were trying to do that -- somebody -- well nine people -- or five people disagreed with us. Nine people disagreed with us and shoot us down. So sometimes it's just like -- you scratch your head -- what do you do? You try and think you're doing the right thing and you still get beat over the head with a two by four. So just a thought

about how -- we do try to, I think, figure out how we can help keep the system strong. But sometimes the courts just don't agree with us -- so just a comment.

MS. JENKINS: Robert thank you for sharing. Drew Valencia, thank you. Always interesting topics and we will continue to get probing questions from the members on this. So we're going to take a quick, please, quick break -- can we do five minutes? So come back in like -- run out, run out, come back, in about -- start again at ten of. Okay? Thank you.

(Recess)

MS. JENKINS: You're going to -- John's not speaking right? Or is John speaking? You're going to speak? Okay, let's start. Please? Thank you. So we're going to start again and have the IT folks give us a presentation. I don't know who's -- John, are you going to start or David going to start?

MR. OWENS: Well I usually say, thank you for having us.

MS. JENKINS: I'm, as I said

earlier -- free flowing, whatever you want. So, John Owens? Yes, thank you.

MR. OWENS: And you know we appreciate the opportunity to brief the PPAC on our IT updates. I am going to turn it over the David Landrith, the portfolio manager, but as always I will poke my head in and out and have comment throughout the presentation. David? Oh, do we have -- oh we have a clicker, okay. Good. Oh it works too. All right, there you go.

MR. LANDRITH: We have a lot of material to go over and I think we're scheduled for 15 minutes total and ten of those are already gone so I'm just going to focus on a few key areas here. We are focusing on patents and both the overall effort and also a special focus on the recent success we had with the release of the document application viewer. Also the (inaudible) agreement is now fully deployed as of yesterday -- the legacy system replacement and other modernization efforts, primarily the effort to replace PALM, the Patent Application Life Cycle management database which is the core operational database for patent prosecution.

So, patents end to end, it's an integrated user oriented set of tools that eliminates repetitive tasks, it's text based and flexible. This is an overview of the major PED examination tools that we're focusing on. The document application viewer is the name of a product that has come out of the examiner tools and infrastructure project, which is a project that was named before the product obviously before the product was created. And so the name that has come out of there is Document Application Viewer, or DAV. That's what we demoed; I believe it was in February. So we released that at the end of March, training is underway and we'll go over that briefly in a few slides. We have official correspondence, which is our new name for office actions. That is what is going to be replacing the OAKS tool. That is targeted for release in the first quarter of FY17 with a pilot release scheduled for the first quarter of FY16. Examiner search, you've seen demos of this before as well. The targeted release for that is also the first quarter of FY17 with a pilot release scheduled for the first quarter of FY16. With

cooperative patent classification that was released in January 2013. The efforts to upgrade and enhance and stabilize that have themselves stabilized. Our next step is to begin working on the areas of the USPC that are not encompassed by the CPC, so that we can retire the legacy tools that are associated with that type of classification. And then the Central Enterprise Data Repository which is CEDR short, that's the new operational database that we're creating to replace PALM. That will occur in incremental releases in order to satisfy critical path items within PED. This is kind of a walk down memory lane. We started in January 2011 with the user interface prototypes. In June is actually when we began development. We had our first release to the central re- examination unit in September of 2011. This is the first large Agile project at the USPTO. We continued to enhance functionality but we ran into problems surrounding the data for the CRU, on the meantime our PATI conversion efforts -- the Patent Application Text Initiative were highly successful. So in August of 2012, we changed our

audience to the examination corps using PATI data. So then in April 2013, major development on PED stopped due to funding issues. There was 18 to 24 month projected delay. So we began ramp up again in October of that year. Our initial target release when we were beginning, release date, when we were beginning that, was the first quarter of this fiscal year. Once we had fully resumed by July of 2014 we reset that date for the second quarter of FY15 and then in March we met that date.

For training we've carefully coordinated this with POPA. We're going through each tech center one by one with four trainings per tech center and make up sessions. Training began in April. It will continue through August, we've completed tech centers 2,100 and 2,400 -- 2,600 is in process this week, we've trained approximately 2,000 people.

So this is the initial usage data that we have. We have a lot more usage data than this. We are in the process of culling it and trying to figure out what it means in terms of users and organizational units. These are unique

addresses for accessing the application. The unique addresses probably overestimate the number of users using it by as much as a third because there are conditions where in the computer -- it's kind of technical, but where a computer can get an address more than once, or more than one address rather, during a day. What we see here though is -- there is increased usage week after week, with the training. We have, obviously you see the weekends, we even have increased usage on the weekends, though obviously relative to the weekdays, that's small.

We already talked a bit about the CPC and the next step items in terms of delivering additional CPC services that support the legacy classification data system.

So examiner search has restarted. Since we started this, years ago, we commissioned a study to make sure that we are on track using the right tools. A lot has changed in three years. That did validate our current tool set. We've resumed work on that with our first pilot release to a small pilot audience, similar to what we did with the Doc and Application Viewer in the

first quarter of FY16. The focus there is going to be adding collections -- searchable collections and handling defects. We're looking at a release in the first quarter of FY17 with feature parity and all collections.

The official correspondence -- we recently completed our first workflow prototype. We also completed a selection and validation of the toolset which includes an MS Word based offering tool. So we are also scheduling a first pilot for FY16, first quarter, and to release the examination core in the first quarter of FY17.

So with Global Dossier, we're taking one (inaudible) dossier, we're making it open to the public and offering foreign patents through public pair. In June we're going to be releasing the extra tab in public pair that allows foreign access -- I'm sorry, we'll be releasing the services that allow the foreign equivalent of public pair to access our data and in first quarter of FY16, we'll be releasing the new tab that allows for the public to access the foreign patents.

The content management solution is a

backend solution that will consolidate all the different content management storage that we have. Right now, the legacy systems -- each system basically has its own content storage.

With the Hague agreement, I apologize for the alphabet soup in the second to last bullet. I put that in just to demonstrate the breadth of the impact that this has had and the effort that it took. The Hague agreement, at the time that this was written was scheduled to live on May 13th -- that was yesterday. It did go live and we are receiving applications. We have assignments on the web. That is a product that started in October of 2014 and was completed in December of 2014 for its first release to the public. It was a three month project that was a complete rewrite of the existing assignment search and we were able to complete it so quickly because it's based on the technology -- the new search product was based on and the GPSM was based on.

So this touches on the strategy that we're using in order to replace the PALM system with CEDR. What we're looking at doing in the

legacy portfolio is making sure that PALM has services that define access to it rather than right now there is about a dozen different ways that it gets accessed. Standardizing that interface allows us to then rewrite portions of it incrementally without impacting the systems that use it -- which should be able to give us a smooth transition and just emphasize the last point and this will involve a lot of collaboration among different portfolios to make sure that that can occur.

MR. JACOBS: Thank you David, that was fast. So the walk down memory lane -- we're mixing it up a little bit today because usually Tony Scardino gives us the budget update first and you guys are usually later so usually we have a perspective on the money before you come up, right? But in terms of the money and the walk down memory lane -- when PE2E came to a full stop, or virtual stop in the Spring of 2013, the budget of course -- I think it was 82 million or something like that was instantly cut from the budget and then during the two years or so since then -- our run rate in IT has nearly doubled I think, right?

So now we have the opposite problem of everybody wants these things you have on the schedule, all these things we desperately need scheduled for FY2017. So if they say -- we want them now, you got the money, why can't we do it sooner, what are the challenges in terms of getting all this work done and why we can't we have it sooner?

MR. OWENS: I'll take that one. It's quite challenging under the best of conditions to grow a business 10, 20 percent. If you look at the growth rate that we've tried to sustain since sequestration, we're above 40. Unfortunately not all the organization including the federal regulation surrounding hiring and procurement and so on will allow that rapid growth -- not to mention my own team's capabilities. Like examiners, folks have to come on board and take several months to get indoctrinated and not cause issues in and of themselves. We have had several failures this year because new people doing the right thing -- or what they perceived as the right thing have caused systems to go down. So it is a difficult balance. I'm looking -- after the last two years being as aggressive as we have -- I

think we need to slow down a little bit to accommodate for some of the things basically in hiring and procurement that I just can't change, as well as managing the growth in a little safer manner. So I'm going to be looking at a steady, somewhere between a 10 and 20 percent growth rate going forward. Now there are a lot of challenges there. I could of course hire a ton of contractors and spend a lot of money. But none of you would be very happy with me if I started developing garbage. And we have been very careful as we've restarted patents end to end, we were very selective on rehiring new contractors and getting them up and running to deliver a high quality product and I think POPA would say that patents end to end for a first release with the DAN tool, or DAV, I guess we got rid of DAN and got DAV. Of course I wonder where that came from -- DAV. But that's all right. (laughter)

MR. LANDRITH: That was the patent examiners came up with that name.

MR. OWENS: I'm sure. Oh, okay. Anyway, so it is a fine tuned balance. We certainly have our challenges, I've needed to

hire a bunch of people, we can't quite meet the goals there. It's a steady process to do those things, same with procurement. We have flooded procurement with actions. In managing the money it is important to drive that dollar value to continue to get the high quality. So what you're going to see out of the budget from me is a less aggressive, out of the 40 percent plus growth rate, more of a somewhere between 10 and 20 percent managed rate. Which by all business accounts, for those of you who have been in business is a substantive growth rate in and of itself. And we'll see the appropriate level of hiring and so on and so forth. Now that does mean, as we were pressured by our customers as well as Congress to do and more, more, more, more, I am going to have to carry the message of -- we've tried it for a couple of years. I just can't sustain those rates and be safe so we're going to slow down. But in return we're going to develop and deploy quality products as we've seen now with the evidence of patents end to end release and the very soon trademark next gen release and so on and so forth.

Does that answer your question?

MR. THURLOW: Thanks, so just a question, today, the central focus of today's discussion is patent quality. You are well aware of everything that's going on with the PTO, with the patent quality so on and so on. One of the things I learned today is that we don't necessarily have the capability to track data with respect to office actions and what's in those office actions, like 101, 112, 102, 103. And I guess my point is to let you know that PTO obviously the data -- very data driven organization to the extent that PE2E program can be used to enhance certain data that we don't necessarily have now. I think that's one of the benefits as I continue and I think people in the public continue to hear and learn more about it. I do think with more data and the focus on patent quality that that could be extremely beneficial.

MR. OWENS: So I would agree with you. Everything that I've heard from my customer, whether it was Bruce or Andy or Michelle or anyone else, is the focus on quality. And we are on board with Valencia and her effort is focused on

that quality. And of course we work closely with Debbie Stevens and OPM to gather up those requirements and if there's a piece of data out there to be collected and we desire to collect it we will. So I see no technology with the patents end to end initiative and the patents end to end tool that would prohibit us from capturing any of that data. The only question is which data do you want to capture, where do you want to put it, how do you want to analyze it and those type of things. But there is no inhibitor. In fact if you remember the patents end to end demo, particularly with the note taking tool where an examiner identifies with a series of checkboxes which -- what they're citing and then what form paragraphs, we could easily catalogue all of that as metadata if desired. So that is not -- the system is no longer the inhibiting factor. It's the desire to capture and analyze that data. And we will put that into the system when the customer asks us -- in rank order with all the other important things we're doing like improved search and the office action tool.

MR. SOBON: So as I guess -- a person

who has been on the PPAC since 2011 when you first were rolling out and describing the PE2E, and especially you educated us as well as a number of others about your perceived advantages of Agile software development. And it's actually -- I have to say it's very impressive, at least from perspective to see that you've actually achieved what you set out to do. And I would wonder how it's been received by the examining corps that's been using the new tools and two -- and you came under some questioning under fire early on about whether that was the right way to move forward and also others have questioned it. But I wonder if -- are other parts of the government looking to -- and maybe you could comment on your use of those tools and that development for other government related software development.

MR. OWENS: Sure thank you. I'll actually leave to Debbie to describe -- and POPA to describe the feedback from the users. My perception is pretty positive but I don't want to taint what they would say as independent folks that are really my customer. You know, Agile development has been used and has been proven to

be more successful than waterfall or spiral methodologies for well over a decade in private industry. I used it for seven years before I came here from AOL. And it takes some time to master in the best of environments and industry. It's been a little difficult here because the government only knew waterfall. And if you look at our reporting and everything the whole government is oriented towards waterfall. So that's been quite the education. But as we've been successful in deploying -- we like the new assignment search database and you have three months to do it. It's a White House initiative, boom, done. Right, and you look at that product and you say, it looks as good as any other world-class website right now and it works really well. And we can add new functionality at a continuous iterative basis, has drawn the attention of many other CIOs in the federal government to come talk to us about what we're doing and we're happy to hand over our methodologies, our documented policies, practices, checklists and so on, which we are continuing to refine. Now when I was at AOL my

little org, it took about five years to really master Agile. We're in our fourth year and we're pretty close right now. Everything major that we're doing, we're doing with it. We've even expanded now to think about what's beyond Agile, is this concept called DevOps, which is if you do iterative builds and iterative development, how about doing iterative releases. Can I get a release not once a year, but once a quarter, or once a month? And there are companies out there that do multiple releases a day, and that is what I'm now orienting the organization to do. Now that we're getting really good at Agile development and we're churning out work, why don't I get more iterative releases into the hands of the public? And what you'll see with patents end to end, trademark, next gen and the others -- is now we're talking about quarterly and then soon monthly releases of new functionality right into those tools, which presents a whole new set of educational problems, but allows us a great amount of flexibility to improve. So I have to say there are several other federal agencies doing Agile today. We're a little bit more Agile

than they are, which we certainly have some benefits and funding, but we talk pretty close and we are one of the most successful. I look at the reception of patents end to end compared to the reception of the PFW tool -- which I stopped when I got here in February 2008, but I was appointed this position in December of 2008 and I stopped PFW because it wasn't meeting the needs of the customer. And after analysis we couldn't get it to meet the needs of the customer and I don't believe in throwing good money after bad. I think we all took that lessoned learned and after four prior attempts at producing this type of tool, that had failed, I now look at the methodology that we used as a major contributing factor to its success. And I hope that other federal agencies realize that if you use the right tools, that industry has proven with the right people -- with the right level of education, to guarantee the quality of the receipt from contractor interactions so on and so forth, and manage the integration yourself, taking on that responsibility which a lot of folks are scared of -- that you produce a higher quality product.

And I owe it to the team and my customer and us growing together as a unit -- obviously with David from industry, I've hired a lot of people to bring them in and just continuing to push the limits on where we've gone and increase the quality. It's been outstanding. Do you want to comment about reception of the tools?

MS. STEPHENS: Sure. So David mentioned that by the end of this week we'll have trained over 2,800 examiners on the tool. So in that time we often provide feedback sessions and mechanisms for patent examiners to provide us that feedback either on the training and or on the tool itself. What we found so far is the overwhelming response has been positive. They like the tool and it's going to take them some time to get more familiar with it. The other piece that we've found is, on occasion there is some data or image problems in terms of the conversion. But there are more one or two at a time. Certainly with 2,800 our mailbox is easily manageable and certainly nothing to think that either the conversion or our process or methodology is flawed. When we did our initial

tests of data and image quality it was over 99.5 percent. So you're going to have some of those things. But I would say overwhelmingly positive and the fact that I haven't heard a lot of -- or seen a lot of email traffic regarding any particular piece of the tool that is problematic -- it's a positive venture.

MR. BUDENS: Okay, now from the unbiased viewpoint. The fact of the matter is in this particular case I'm going to side with John and Debbie. The examining corps has never been known to be bashful about contacting me or any of the other POPA reps when things are going wrong, particularly when there are IT problems going wrong. And yet so far we've successfully rolled this out to two tech centers and the third one is in the process -- one of our biggest one -- I guess our biggest one -- 2,800. And so far I have not gotten flamed up about anything with the roll out of PE2E. And the comments I have gotten back from examiners have been very positive and impressed with the program -- I think that the user stuff we see here is simply a matter of time when you're rolling something into a production environment

it's going to take a little bit of time for people to find the time to familiarize themselves with the tool and get on board. I think the hallway talk will help accelerate that as more people become familiar with the system. But I have to say, in my 25 years here I have seen a heck of a lot of software rolled out. And most of it rolled out in the same way -- rolled it out, crashed, burned, spent 18 months fixing it while it was deployed. So far as near as I can tell right now, this has been the smoothest roll out of a major piece of software that I've seen in my career. So congratulations to the team. Let's hope we can get the tech centers on board equally as well.

MS. JENKINS: Great.

MR. OWENS: We will.

MS. JENKINS: Thank you. I think for Paul and myself we would let you talk all morning -- but we can't. But we do support the office, the support they've given to the IT, and being on the committee, the changes that we've seen and the focus that we've seen on IT and the importance is strongly supported in the user community. So we applaud all your efforts. So

Debbie, David, John, thank you. So now we're going to segue to Andy -- yes.

MR. FAILE: Thank you Jen. Okay so I promised Marylee I would try to bring us back on time. So there's a lot of information here in the stat pack. A lot of it is very familiar to you guys. There are actually two areas in the set of data that I think would make for good discussions so my suggestion would be we kind of pause on those, talk about those a little bit. I will likely move quickly through the other slides and give you a couple highlights to the extent there are highlights there, or just tell you that okay, this is pretty much the same place it was last time, not much moving that dial and we'll move on. The two areas I think would make for good discussions would be one, in our filing rate trends, which is the first set of slides so we'll probably pause there, and then by request, there is a portion of the presentation on after final practice. Basically, the after final consideration pilot and our quick path IDS or QPIDS programs, both of those programs come up for renewal at the end of our fiscal year -- which is

the end of September. I'd like to pause there and get some input from the group on your experiences with those programs that will help inform us moving forward.

So we'll spend a little time on this slide. This is kind of our incoming filing receipts slide. You guys have seen this before many times. I thought I would pause and give a little bit more voiceover to this slide and we can have a little bit discussion on the filing rate trends. So what you see here is really the office's -- from the office's perspective of incoming work load. These are the new cases that are filed, the continuations of divisionals and our RCE filings. We also have workload coming in from applicant responses that we need to respond to including after finals et cetera. But this is basically our incoming filing receipts. They're broken up in two different parts. And that's exemplified by the colors, the red and the blue. The red color is what we call our serialized filings. The blue is our RCE filings. The combined of those two batches equals our incoming receipts and equals our incoming workload, what

we generally call our filing receipts.

Let me talk a little bit about serialized. The reason we call it serialized -- that would be the red bar, is these are applications that come in -- they get a new serial number. They are regular new cases we haven't examined before. They are continuations; they are continuations and parts, divisionals, et cetera. The RCEs are obviously requests for continued examination.

So the interesting part about this slide is that we normally historically see about a five percent increase on filing receipts from year to year. Last year we saw a little bit of anomaly from that trend. We finished the year at a 2.8 percent over growth over prior years. This year we're continuing to move down. Currently we see about a negative four percent growth in the combined of serial and RCEs. Let me break that down for you. The serialized, again, the serialized filing which are our new filings, our cons, divisionals et cetera, what most people consider a new case or has a new serial number -- that filing rate currently is just a

little negative about a percent, percent and a half into the red. The RCE part of that equation -- the blue bar currently is down about 11 percent over last year. So that puts us, if you do the math there, that puts us at about four and half or 4.7 percent down filing rate from this time -- from now to this time last year. In doing our modeling we anticipate that moving up, we anticipate ending the year with about a 1.8 percent down. So one of the discussion points that we've just talked a little bit about, at the last PPAC and now we've got the trend even continuing, would be some input on filing rate trends. Again the serialized filing rate on our new cases, the red, is about 1.8 percent down. The next layer -- if we go in and look at technology filings, at the next layer, on the tech center layer, we do see those relatively flat. We don't see any statistical jumps up or down in the filing rate trends on a technology based area. One of the cautions there is there's quite the lag between the filing and then the processing by the office and the assignment of classification et cetera until that becomes something we can count

as pretty much being in one area has to undergo our transfer process et cetera. So we're still on the first wave of that trend. If you look in the RCE filing rate area again, we're about down about 11 percent overall. We certainly see a dip in business methods filing. There's a pronounced dip there. To some degree in the software areas, kind of bucket number two, and also part of the programs that we fashion, I'll talk about later -- AFCP, QPIDS, et cetera, have also contributed to reduced need for RCEs. The combination of those factors generally equaling up to our 11 percent downturn in RCEs. So I think this would be a good one to pause on and again I can move through the other ones pretty quickly and to the extent we have can a little bit of a discussion on filing rate trends, it will be helpful for us. The better we can predict trends -- it goes right to the sizing of the workforce and the level of work that they can put out et cetera.

MR. SOBON: I think I may have mentioned this before, but it's helpful with words -- but if in these future graphs, if you

could show a bar next to this interim year bar of what the bar was at this point in time last year. That would be very helpful, just graphically, visually to see. Then it sounds like the trend lines are going downwards versus upwards for the interim year part, because that visually, we can then know more of the magnitude of it. I like graphics. But I think you're right to be potentially concerned. It's not huge numbers yet, but there is anecdote and discussion that given all the changes to the shots we've given to the patent system, starting with AIA but also the Supreme Court decisions and future potential legislation, that all things being equal, patents may not be as valuable to companies as a whole or our economy as they may have been. And that will have potential effects on filing rates. And that needs to be factored in.

MR. FAILE: Thanks for the suggestion. It's a good idea so you kind get a -- yeah, got it.

MR. BUDENS: Normally Andy our projections and our budget projections and stuff are generally based on a five percent increase and

we're talking about being actually several percent below actual from last year. So that's quite a drop. What is the agency doing right now to adjust our hiring for FY15, because we're supposed to be hiring quite a few people this year and I'm wondering where we're at, how many we've brought on board and what are our projections for hiring here for 2015 and 2016?

MR. FAILE: Right so good question. We're still working through those models now. Certainly with a filing trend moving downward -- that obviously reduces the need for hires. We still will be hiring -- we anticipate hiring in the next few years. One of the other points -- other sides of that ledger is balancing out what we're going to be spending in quality -- or spending in quotes and quality. And as of yet since -- from the first presentation Valencia did this morning, we're still getting a handle on what the input is and how that's going to manifest into different initiatives and what the cost of those initiatives will be. So we will be doing hiring in the next year, we don't necessarily see cutting hiring out -- it will

likely be below a trip level hiring. We will not being doing the big numbers of hires that we've done in the past. So somewhere, just probably below a trip level hiring, we will be balancing that out as we learn more and more about our quality investment on the other side of that ledger board. We think that is probably is two good equalizing forces to keep us with a few hundred hires or so and then balance it out with what we're going to be spending in quality. We are obviously particularly nervous about the filing rate trend. We do model that at the end of the year, we're slightly negative -- 1.8 percent. We'll move a little bit up from where we are now but we're certainly keeping an eye on that -- filing rate trend is a pretty big driver.

MR. LANG: I was just going to echo the note of conservatism on filing trends, that if you look before this period there was a vast run up in patent filings and that occurred for certain reasons and I would maybe put a little different spin on than Wayne did, but I think a lot of companies are realistically calibrating their patent filing budgets versus other priorities and

we should be cautious in projecting forward. Just because there was a growth rate in the past doesn't mean it will continue in the future.

MS. JENKINS: So, and correct me if I'm wrong but I seem to recall, last year we were thinking there would be a five percent increase in filings. We adjusted to two percent and now in actuality we're lower than that -- which also not only impacts what we do outside AIA, we mentioned what corporations are going to do filing wise. But it also impacts fees and collections for the office. Maybe I'm stealing a little bit of Tony's thunder for this afternoon. Obviously this must be -- not only is it a concern overall but also for operations and hiring. Correct? Yeah.

MR. THURLOW: So forgive me if I try to make a negative into a positive. I try to have a positive attitude on life. But the negative actually, it's in my opinion -- specifically I like the breakdown between the so called serialized filings and RCE filings. The RCE, to focus on specifically as we discussed yesterday, it's actually because a certain creature of your

own success with all the work and credit to the patent office based on the AFCP 2.0 and other situations and QPIDS. Where, I believe -- I've been doing this 15 years -- going back many years ago, it was commonplace to file an RCE. Now with the AFC, with the enhanced focus on interviews and so on, the potential of getting a case allowed the first two times is much greater. Sometimes we'll get the allowance and then we'll file a continuation or a CIP. So I just think it's a much different -- that negative number for RCE, in my opinion is not necessarily a negative. And that's why I like how you break it down. The bigger concern obviously with the first number, the serialized filings -- that I agree whole heartedly with what Wayne said. Just a lot of trepidation, a lot of trying to figure out what's going on and there's just so much going on with filings. People are questioning whether to file or not. We have received questions from clients whether it's even worth it to file in the 101 area -- business methods area because of the state of the law. And to the extent that we file, maybe some areas will file a track one and those areas

the feeling is, let's get it on file, get a priority date and maybe just let it sit there so if the climate changes in two or three years, so it's something to watch very carefully.

MR. FAILE: To kind of add on to Peter's comment on the -- the RCE is one of the things, another thing to watch is that 11 percent downturn. We do obviously see a dip in the business methods area per Alice, which one could expect. The thing for us to watch there is -- that's kind of an expected dip. You know, Alice comes out, we're probably going to be doing a series of non-files applying Supreme Court opinion to those cases, therefore we don't have finals, therefore we don't have RCEs which you necessarily have to file a final, so the fact that we have a dip in RCEs there is part of that explanation. The real question for all of us would be, is that a trend we continue to see or we actually, as we start writing those files, we're going to see the RCEs move back up or not. That will be one thing workload wise I will be watching. RCEs are approximately, on these graphs approximately 30 percent of the workload

coming in. So significant portion to keep an eye on. Okay, Marylee says move on.

Okay so I'll move through some of these pretty quick. This is our unexamined application inventory. You see the general trend line from the high point of 750,000 all the way on the left. Moving down to currently we're somewhere in the 580, 581,000 unexamined apps as of the first part of this month, so general trend line down there. The RCE inventory, we talked a little bit about RCEs, we have a pretty healthy inventory -- we're somewhere in the neighborhood of about 36,000 RCEs currently. You can see just a couple years ago or so we were way up in the 111,000, due to all the efforts and the great partnering with PPAC and the RCE outreach. We've been able to attack both incoming RCEs and the backlog. We're at steady state, probably about in the mid-30s now. We probably don't see that changing too drastically in the future. In dependency in the RCE areas and the average is just below four months -- about 3.9 months currently.

Here's our graph of excess and optimal

inventory. In the blue you see the optimal inventory which represents 10 months, first actions worth of work for the workforce at the current size. The red is the excess that we have above that. Obviously when the red and blue meet we're at our ten month on our first action goal. Starting to close in on that.

MR. SOBON: Obvious question -- when do you anticipate to reach optimal?

MR. FAILE: I believe it's 2017 if I remember the model correctly. Bruce you may know?

MR. KISLIUK: I'm not sure exactly where. The inventory settles in quicker than the actual first action pendency, our first hand pendency targets get hit in 19 at the current model. So I think Andy is right, I think at 17 to 18 we hit that kind of inventory level. Pendency trails by about a year I believe.

MR. FAILE: So here's our first action and total pendency. Purple line is our total pendency currently at 26.9 months. We're shooting for 27.7, by the end of the year we're already below that, so that's good. We expect

that to continue, the green is our first action pendency, currently at 18.3 and we're shooting for a goal of 16.4 by the end of the fiscal year. Currently we're on task to hit that number as well. This is our forward looking first action pendency basically for a case filed along the timeline of the denominator. How many months to first action and currently we're looking at about 14.3 months -- kind of gives us the look ahead version of the reverse traditional pendency measure.

MS. MAR-SPINOLA: It's okay Andy, let me ask this question. I'm going to refer to your first action pendency and total pendency slide and also the one that we just discussed which has the total serialized and RCE filing. In terms of the pendencies, in light of the slowdown we'll say of the RCEs and serialized filings -- has that been factored in to see whether or not that can shorten the pendency period?

MR. FAILE: Let me see if I -- can you ask it one more time, I want to make sure I understand exactly --

MS. MAR-SPINOLA: Sorry, so the first

action pendency, you provided us with a certain amount of time from the period of application pending, correct?

MR. FAILE: Mm-hmm.

MS. MAR-SPINOLA: Okay. And then earlier we were talking about the trend of slower filings. And so I'm just asking the question of whether the pendencies have the period of time for the pendency has already factored in the slowdown on the filings?

MR. FAILE: Oh okay, there's probably a question each way there, one -- both different directions. So the pendency numbers only become numbers when that pendency is concluded, so the filing rate part going in that direction probably doesn't have an effect. The fact that we have slower incoming receipts makes more firepower available for other things and that can drive some of those pendencies down. But we won't actually see those trends until they get completed and we have a data point there.

MS. MAR-SPINOLA: Okay.

MR. FAILE: So we'll see that as more of a delayed effect.

MS. MAR-SPINOLA: So you will factor it later when you have the data?

MR. FAILE: Oh, absolutely.

MS. MAR-SPINOLA: Okay.

MR. FAILE: Good question. Looking at our attrition rate again, part of our firepower examiner, fire power to bring to bear on our incoming receipts in our backlog is our ability to retain examiners. We're doing pretty well on our attrition rate. We do note, it's starting to creep up a bit from last year. If you see, the second to last data point on the right, moving all the way to the right, it's creeping up a little bit, not a huge cause for concern, but something definitely to keep an eye on. We're probably around the four percent range in attrition rate historically. As you can see from the graph part on the left -- very low, some of our historic lows.

Moving into track one, the big thing to take away from this slide is, these are the receipts per month for track one. That's very hard to read, if you could read that, you would see in FY15 our receipts per month are on pace, or even outpacing the receipts from FY14 in the

same month. So we're marching towards our 10,000 cases that we have available for the track one program. We anticipate being right up at that number by the end of the fiscal year. Another interesting note on the secondary line there and it's hard to read but we have a 52 percent participation rate of small and micro entities in our track one filers. So we have a healthy representation of small and micro entities on the track one program -- 52 percent.

This slide shows kind of the benefits of track one and it basically captures the time that one spends in prosecution on the left -- this is without an RCE, on the right with an RCE. On each one of those panels, let's take the left panel -- the left most set of graphs is the 12 month average pendency for a regular case and then onto the right of that the 12 month average pendency for a track one case. So just a visual there shows you the speed at which one can move through prosecution using the track one option.

So a couple slides on interviews. It's a little difficult to see, but this is interviews, number of interview time that we spend by fiscal

year. The very top pink bar that is sitting over the blue bar is our progress so far in FY15. That's why it stops about the March timeframe. The big takeaway here is we're still on pace for the amount of time and number of interviews that we're engaging in from year to year.

MR. SOBON: Andy on this, I think last time we talked about having alternative data here, one because this is really just the linear functions through the year for each year. But I think it would be very helpful to have this more of a chart by year, normalized by the number of average examiners in that year to know whether you are actually having a percentage greater of interviews per examiner or less hours spent per examiner in each of the years. And I think also if you could break down by TC or other technology units as well to see if there are patterns. Some are more active in this than others.

MR. FAILE: Okay.

MR. SOBON: It would be very helpful data to understand.

MR. FAILE: Okay, in addition to what Wayne said, we've just gotten through a survey

from the outside on interviews we've had up on our website. We're busy crunching through that data. So at the next PPAC I'll be able to not only present that but also from the practitioner and applicant standpoint -- what do they think of interviews and what are some focal points for us -- particularly through some of the quality initiatives.

In a little bit of an attempt to normalize these are the percent of serial disposals or applications that have at least one interview by month. So we go back when a case is finally either abandoned or allowed -- we look back to see if there was at least one interview in that prosecution of that case. If so, that's a data point. So the statement here is we have about 29 and half percent of those cases that are finally concluded as in on allowance or abandonment that have at least one interview. You can see the trend line steadily moving up. There's a lot of jumping around since this is a month by month look, but the general trend line moving up.

So the next thing to spend a little bit

of time on -- I have a couple graphs on AFCP and the quick path IDS, or QPIDS program. Let me hit those graphs and then come back and we'll pause for a minute to get some input from you guys. The first one, this shows the -- this is a look at RCEs that had no prior after final submission. So just thinking about that for a second, we looked at the RCEs and we went back and said are there any after final submissions? And the red line is the implementation of our current version of the after final consideration, file 2.0, about May of last year -- about a year ago. So as you can see prior to that line a pretty high percentage where after finals weren't attempted if an RCE was subsequently filed. Kind of the AFC 2.0 started, it looks like a trend line of more activity in the after final space prior to an RCE being filed. So one of the takeaways here is it seems like we are getting some more activity in that after final space. Probably some of it due to AFCP, some of it due to the height and visibility in the RCE outreach efforts et cetera, so more activity in the after final space prior to the RCE being filed.

Let me walk you through a little bit of this graph -- it can be a little complicated. These are the allowance rates for different categories. Let me kind of walk through starting at the bottom. The blue trend line you see at the very bottom is the allowance rate for the after final continuation pilot in total. These would be all of the submissions that were accepted into the program or not accepted into program. So that denominator would be the total number of submissions in the AFCP. The green that you see there is the combined after final allowance rates from both the program cases that went through AFCP in the non-program, all after finals that we have allowed outside of the program. The non-pilot allowance rate you see in the red there kind of moving from bottom to top, those are the cases that were allowed or disposed of apart from the program. Then you see this interesting kind of purple jump line all the way to the right. That is the cases that went through the after final consideration program, got accepted into the program and subsequently went allowed. So you can see that you have a pretty good chance if you

get into the after final consideration program, you request the examiner accepts the case in, takes the time, does the interview works towards allowance. You have a pretty good chance to get that case allowed. We thought that was an interesting data point in talking about the overall value of the program. The red line you see there is the introduction of the new form that applicants get back that lets them know the decision of their status in the program and the decision of that particular amendment. That's helped us enormously, that and the opt-in form that you guys fill out to opt into the program, has helped us enormously get some data to the right of that red line much more specifically than we've had to in the past.

Just moving really quickly over to the quick path IDS, we've had since the beginning of the program in FY12, we've had just under 6,000 -- 5,929 submissions into QPIDS and we've saved about 4,500 RCEs -- 4,531 RCEs have been avoided when applicants filed that IDS submission after allowance. And we were able to look at that art, determine there was no patentability effect

and move that case along without having to file an RCE to get that level of treatment. So 5,431 RCEs saved as a part of that program.

I'm going to do a quick pause here, Marylee, if it's okay for a quick discussion. Again both of these programs are up at the end of our fiscal year on September 30th. And to the extent you guys have any input on these programs -- how they're working, that would be helpful for us in informing moving forward.

MR. THURLOW: I think we would all recommend that they be renewed. So based on the numbers, they seem to be quite successful and when you tie everything together with what's going on with the RCEs it's easy to tell the story of what's going on. We're doing more work after final that we didn't in the past so we don't have the necessities to do the RCEs and based on the usage I actually haven't used QPIDS, I use AFCP 2.0 but it seems like both programs are successful. Stakeholders like having this option as compared to in the past, once you got a final you pretty much -- it was difficult to do anything without getting an advisory action.

MS. JENKINS: Okay I'll be quick. We also appreciate the office's efforts in addition to push examiners to call us to seek allowance. So that's sort of outside of the box a little bit, so I just want to say thank you publically for that. So, anything else? No? Keep going. Oh, Mark, go ahead.

MR. GOODSON: Track one. I've used it. It's a success. Filing to letter -- with the allowance, three months. That's outstanding. Thank you.

MR. FAILE: Thank you.

MS. JENKINS: You have one minute.

MR. FAILE: One minute -- last slide. Perfect timing. So one thing I wanted to highlight here is, we have a dashboard with a lot of different stats for the patents org on the website. The best way to get to it is go to our website and the search engine, just type in dashboard; it'll be the first or second hit. Pop that up. We've just redesigned this. We had a Federal Register Notice asking for comments on our goals of ten months to first action -- twenty months overall prosecution. The comments that

came in basically were drawn to -- we'd like to see more data in general. Prosecution metrics, quality metrics data, et cetera. So as a result of that Federal Register Notice in the comments that we've received back, we've revamped our dashboard site. You'll see a lot of different pendency data that we didn't have on there before. You'll see our traditional measures that have been up there for some time now. And in the bottom right there's a very new category I'd like to bring your attention to real quick and that's our petitions data. We've had a lot of requests for petitions data -- pendency in the petitions data arena and we've taken a first shot at that. This site is under development. There's a number of different items up there -- petitions in data associated with those petitions and this is really just the start of that. Drew Hirshfeld's group is working on expanding this even more. So we've got a first cut out there so you can see what that looks like and I would encourage you guys to go to the patents dashboard, send any feedback you have for further improvements or other things you'd like to see. Thank you.

MS. JENKINS: Thank you Andy, we need to -- we're still running late, but thank you. We need to segue to Mark. I'm going to move our time if you all are all right. So we're going to go into our lunch period to give you more time to talk. So you have until 12:10 -- okay? Then you all have to eat real quickly.

MR. POWELL: Okay my duty here is an easy one today. Simply to introduce my colleagues, Charles Pearson and Amber Ostrup to discuss a couple of programs, the Hague implementation which occurred yesterday and some of our collaboration pilots with two of our Asian office friends. Charlie?

MR. PEARSON: Thank you, and I will be quick -- as quick as I can. I just of course just very briefly in case anybody in the room may not know -- design protection -- it's for ornamental design. It doesn't deal with the structure or function of an item. It can be the configuration or shape of an article or it could deal with surface ornamentation. And of course the U.S. issues a design patent -- much of the rest of the world just has a registration grant -- some sort

of protection abroad.

Now the basic concept of the Hague system is basically the centralized acquisition and maintenance of industrial design rights. You have a single application that you file -- you get a single international registration and it has the effect of a regularly filed application in one or more contracting parties -- a system basically similar to the PCT but the details are much different. Skip through slides here a bit. This is the world of the Hague treaty. As you can see the United States is now a member and that occurred yesterday and also Japan became a member yesterday also. So when I submitted the slide it was correct, there were 62 contracting parties, now there are 64. And of course South Korea also recently became a member.Now, the road to U.S. membership has been sort of a long and tortured path. The treaty was concluded in 1999. The U.S. Did sign the agreement at that time, and it wasn't until 2007 that the Senate finally gave their advice and consent and then ratified the agreement. The implementing legislation wasn't passed by Congress and signed by the President

until late in 2012. And then, of course, yesterday was the effective date of the Hague Agreement in the United States.

A few statistics here: As you can see there aren't many applications filed under the Hague system currently. It's really small potatoes stuff. Less than 3,000 applications were filed worldwide last year; compare that to the 36,000 domestic design applications filed in the U.S. And it's going to be interesting to see what happens if U.S. practitioners pick up on the Hague and start using it. It could inundate WIPO.

MS. JENKINS: Was it still just one yesterday or did it go to two?

MR. PEARSON: We think that -- no, there was one application filed with us yesterday. However, WIPO, they had four applications filed that designated the U.S. So they will result in national applications here, too.

MS. JENKINS: Great.

MR. PEARSON: As I said the Hague is a filing system for filing one application that has

the effect of a national filing in many jurisdictions. It's a procedural arrangement, a filing mechanism, and it does not determine the conditions for patent protection. We will examine the application under 35 USC 102, 103, et cetera. And it does not dictate the refusal procedure to be applied when deciding whether we are going to grant a patent or not -- that goes through the normal examination process -- and it doesn't dictate the rights that result from the protection. Rather all these issues are governed by the national office of the contracting parties.

Now to use the system, an applicant needs to have some sort of attachment to a Hague member state and that can be in the form of a nationality of that state domicile, habitual residence, or the possession of a real and effective industrial or commercial establishment.

Now the Hague application, there's three official languages. It can be filed in any one of the three -- English, French, or Spanish. It can be filed directly with WIPO. They have an

electronic filing interface, which is actually very nice. It can also be filed on paper, or the application can be filed through the USPTO using EFS-Web or on paper. Currently, the great vast majority of cases are filed with WIPO through their electronic filing interface.

An application can contain up to 100 different designs provided they're of the same International Locarno Classification. A single set of formal requirements will apply to the application, and a single set of fees can be paid to WIPO in Swiss francs.

Now, if the applicants choose to file through the USPTO, of course, the applicant must have an attachment to us with residence, domicile, habitual residence, et cetera. We do charge a transmittal fee of $120, and the international fees required by WIPO may be paid through the USPTO or at a later point in time directly to WIPO.

The contents of the application: There is an official form -- it's a DM/1 form -- available at the WIPO Website here. Basically, this form is where you designate your

states -- you have a claim there. You have a description that sets forth a bit of data concerning the applicant and the creators of the invention, the inventors. And what you do is you fill out that form. You attach a set of drawings. And there may be annexes to it such as the U.S. declaration form that can be filed, but that's the entire application.

Now, during this process the International Bureau -- the International Bureau is at the Hague Registry at WIPO. They will do a formal examination of the application, and they will also prepare translations of the applications into the other two official languages. If it was filed in English, they'll prepare French and Spanish translations. They record it. It will go into the International Register. They will credit designation fees to the various designated countries, the contracting parties, and they will publish the application in the International Designs Bulletin.

Then the application is transmitted from WIPO to the designated states. When it gets

there, the states perform whatever normal substance of examination they do. Of course, we will give it the full examination just like we would with a regular national filing. We're not going to review the formalities. That's already been done at WIPO. And assuming everything is in order, we will issue a Statement of a Grant of Protection. Now, if we choose to refuse the application, we'll do so on the same substantive grounds as for regular national filings. This refusal under the treaty is to be communicated to the applicant via WIPO within 12 months.

Just one point here: The rocket docket, which is available for regular national design applications, will be available also for these Hague applications.

Just a few other things here: The patent term for applications filed on or after yesterday will be 15 years for design patents. This applies to all U.S. design patents whether or not they were filed through the Hague system or as a regularly filed national design application. And, of course, our U.S. design patent rights will only begin upon issuance of a

patent.

The last item: The color drawings. Hague provides for color drawings. We'll have to accept them. And the final rules that came out also allow color drawings in all U.S. design applications, so it will apply both to Hague and regularly filed national design applications.

And there's one aspect of the Hague system that might be very attractive to the savvy practitioners out there and that is the availability of provisional rights. They may start upon publication of the international application by the International Bureau. These provisional rights, of course, would provide for reasonable royalty. This is something that will not be available for regular U.S. design applications. We don't publish them and provisional rights do not accrue. So this may be very attractive for applicants. It might drive them to use the Hague system. It will be interesting to see what happens.

MS. JENKINS: Just stop there for a second. Any questions? No? Okay, Amber. Thank you, Charlie.

MS. OSTRUP: Hi, good morning. I'm excited to be here this morning to talk to you about a couple of pilots that we have that are going to be starting this year. We're calling them the collaborative search pilots, one with KIPO and one with JPO. Dan Hunter was here during the last PPAC meeting and went through the details of the program, so just based on our time constraints I'm not going to go through all the details of the program, but want to give you an update of where we are and some next steps.

So with the pilot programs they are going to be different. With the KIPO pilot we're going to do basically two independent searches and provide those results directly to the applicant. The only caveat is when there is going to be a first action allowance from the USPTO examiner. Then we will look at that KIPO search results to ensure that we don't provide something to the applicant that's being cited by KIPO. Otherwise, it will be two independent search results going to the applicant.

With the JPO pilot, this will be a collaborative search effort. For the first

office, we will do a search report and send that over to JPO. The JPO examiner will look at our search results and do an enhanced search and do their own search and then provide those search results back to the USPTO. We will then provide the results to the applicant.

We're doing two different pilots just to see what the applicant wants. We've heard from the applicants that they want to get the prior art and they will determine what the next step is within prosecution. So we want to look at the two different pilots to see how we evaluate them and what's most beneficial to our applicants.

The pilot programs are going to be based on our first action interview program. It will have the claim limitations of three independent with 20 total. Of course, the claims must correspond. There might be a slight difference with JPO and KIPO. The pilot is going to start with JPO on August 1 and with KIPO on September 1. With the JPO pilot, we're going to do 200 applications, or I should say 200 granted petitions per office, which is going to be 400

total each year, a combined total for the pilot program of 800. With KIPO it's going to be 200 for the year, total of 400.

The timeline: I want to thank our POPA colleagues. We have been working with them and they've really helped to get this pilot program in place this fiscal year. So thank you to our POPA colleagues. POPA signed the MOU with management, Andy Faile, on Monday, and next week we will be signing the Memorandum of Cooperation with JPO and KIPO next week at the IP5 deputy and heads meeting. We will have a press release shortly thereafter and then we'll have a Federal Register notice going through the details of these pilot programs by June 1. We'll be using this time between now and then to really get the pilot program -- test the programs with the two offices and make sure that we have the information up on our Website.

So the one thing that we're going to ask our PPAC colleagues is to help spread the word. We really want to utilize this pilot program and get the feedback. We will be doing evaluations with our external and internal stakeholders

throughout the pilot programs, so we'll look to you to help us spread the word and make this as successful as we can.

Are there any questions that I can answer now, please? Wayne?

MR. SOBON: Maybe I misheard. On the KIPO program did you say that you've got the two search reports and if there's an overlap we see from the U.S. side on the KIPO one you would subtract the overlapping --

MS. OSTRUP: I apologize if I was not clear. So the only time that we're really going to look at the KIPO search results is when the USPTO examiner has indicated a first action allowance. That's when we will look at it because we certainly don't want to send two independent searches to our applicant. We're saying allowable and KIPO finds art that we could have actually put in the office action. So the only time that we will look at it is when the USPTO examiner has indicated a first action allowance.

MR. THURLOW: Is the overall plan -- I know it's starting with Japan and Korea to kind of do this pilot and possibly expand it to others

and so on. I think it's a very good approach. It's a good idea. As I mentioned yesterday in meetings, most companies realize that the IP system is just not U.S. It's international. So to the extent you have these programs and they're successful, I think they're a very good approach, a very good idea.

MS. OSTRUP: Thank you, Peter. Yes, our hope is that this will be successful. We'll look at -- after these pilot programs we'll work with our POPA colleagues, of course, to look at our evaluation and our internal stakeholders of what we can do and determine any adjustments and then hopefully have additional offices join the CSP.

I would like to highlight a couple of benefits that I may not have done. One, this is going to be a free petition. It's also going to be accelerated. The translations are really going to be when the USPTO examiner wants to note that reference on the search result, then we will have that information machine translated and provided to the applicant.

Are there any other questions?

MR. BUDENS: Yes, I just wanted to clarify -- make sure something was clear from Wayne's question, too. Keep in mind that when we were talking, because it's going through the first action interview program, this thing's going to happen probably fairly quickly, the actions going forward here. It's going to be accelerated. But we did not want to get into a situation in any way, shape, or form where a U.S. examiner might be indicating allowable subject matter in the first action interview pilot here, and then have Korea pop up with something from one of their databases or something that might actually be relevant prior art. And that's why we wanted it fed back into the U.S. examiner so we can take a look at it one last time and say yeah, that doesn't work for us under our law so we can go ahead and allow it or something. But it's kind of a safety valve to make sure that we don't have something going out.

MR. GOODSON: Amber, you're too young for this, but we had a President of the United States one time refer to many people -- he wanted to call us all citizens of Berlin. He called us

all jelly donuts. And it was over one definite article.

I've been through this. I'm going through it right now with machine translation versus manual translation in Japan on semiconductors. There is all the difference in the world. What we thought were allowable claims were not and vice versa based on whether we relied upon the machine translation or the manual translation. So caveat emptor.

MS. OSTRUP: Thank you, Mark, thank you. We have agreed in-house that when examiners deem it necessary to get a manual translation, we certainly will do so. But we understand and we heard the comments yesterday about any relief regarding the translations. We'll certainly that into consideration, so thank you.

MR. BUDENS: Mark, you raise an interesting question and that's one that we didn't really pursue when we were discussing this. My impression from what you were saying is be careful of the machine translations because we could be a jelly donut by accident.

However, the reason we've been looking

at machine translations is pure and simply a resource issue. If we expand this program away from 200 applications per country or something and we decide wow, this is really good, and we start expanding it, do you have any ideas, anybody on the PPAC have any ideas, how we deal with that then? If it's really going to be a situation because when I was talking with the, it was kind of the understanding we're going to have to deal with the machine translations just as a resource, a pure resource issue. So if that's going to be a critical issue, I think we need to figure out how we're going to address that going forward if this program is indeed as successful as I suspect at least aspects of it are going to be. Any ideas?

MR. POWELL: My understanding is machine translation has come a long way, that years ago it was some basic information that was helpful, but due to the increased use it has gotten much better. I agree with Mark and Amber. It's definitely not 100 percent, but as you said, and I think is the real issue, it's the resources. I do think it's the only practical approach at

this point.

MR. GOODSON: I would agree. It's a quite practical approach. The caution is when we're emphasizing on quality of claims and the ability that claim would withstand scrutiny, these little things that we don't understand in Japan and they don't understand about us, these little nuances, make the difference in claims construction.

MS. JENKINS: I also just want to put a plug in for Global Dossier. The pilot programs are something that hopefully will provide insight and knowledge for the development of Global Dossier as well, so I would encourage every PPAC member to consider what they're talking about, share it with others, and keep in mind that this is helping develop the future of our system. So it's very important work. Any questions such as jelly donuts, which actually again segues quite well to lunch, I know we all appreciate.

So thank you, all the international folks. I know they're off to Korea and I think China very shortly to represent us well before all the IP5 activity. Correct? Yes. So we are

very -- I think one thing you should also hear from international is the travel and that we're very well represented, which we had issues with sequestration for that. Right, Mark? Off, off, off on your journeys, right? Thank you so much.

So lunch now quickly. I'm going to start our speaker at not 12:25, but 12:30, so I'll give you a little bit more time. Thank you.

(off the record at 12:13 p.m.)

(on the record at 12:33 p.m.)

MS. JENKINS: Let's get started. Sean has not, so he is our entertainment so to speak, right? So, Sean, I'd like to thank you for agreeing to be our luncheon speaker. We're a very attentive group and hopefully we'll ask some questions -- hint, hint, hint -- at the end of his presentation. But we also have to thank Peter because he invited you, so I thought it made sense for Peter to do your formal introduction. So, Peter, all yours.

MR. THURLOW: So we are not the most formal group, Sean, and for those on the Webcast, but I'll read a little bit about Sean's -- the formal stuff I guess.

Sean Reilly is the Senior Vice President and Associate General Counsel of the Clearing House Payments Company. The Clearing House is owned by 24 large banks and clears roughly $2 trillion -- Robert, that's a "t" in $2 trillion, that's a lot of money -- in U.S. dollars across its network each day. He works closely with the Financial Services Roundtable, which represents 100 of the largest integrated financial services companies that provide banking, insurance, and investment products and services to American consumers.

That's the formal introduction. The better introduction is I actually met Sean several months ago at a CLE conference in North Carolina. He gave a presentation on patent quality. I was aware of what the PTO was doing with patent quality and the focus on it, and he represents and works with the financial services companies. In my opinion it's -- I'm sure it's subject to debate -- but it's an area that's been under attack over the years with patents and it's been underrepresented or not given enough of a voice, so those two things. And then when I spoke

to Sean, obviously he's a great guy, but he told me his background. He was an examiner for many years and has a lot of experience. So I thought for this group and for those on the Webcast, Sean would be a nice lunchtime speaker. So, Sean, the floor is yours.

MR. REILLY: Great. I appreciate the introduction and really appreciate the committee's time today.

As Peter mentioned, I'm in-house counsel at the Clearing House, and the Clearing House is just -- to give people a little more color on the Clearing House -- it actually wears two hats. One hat is the operating entity. We do clear over $2 trillion U.S. a day across our network. Our primary competitor, a bit unique here, is the fed. We compete with the fed on wire transfers, and we also compete with the fed on what's called the ACH network. Just to bring that home for everyone, that's very likely how you get paid every two weeks through direct deposit. It either flows across the fed or our network. We run half the volume. The fed runs the other half of the volume.

We also are building out new technologies that are emerging in the market. A perfect example of that is tokenization as it relates to credit cards and debit cards. Tokenization is embodied in Apple Pay today and as an industry, we're looking to see tokenization proliferate at a much greater scale than it is now. Card numbers have tremendous value today because they are static numbers. Hackers are targeting those numbers. The breach points around the country and the world are in the hundreds of millions. We want to take that and make that to be no longer a valuable resource for hackers.

The other hat that the Clearing House wears is we have the Clearing House Association. It's owned by the same large financial institutions, mostly domestic, but also multinational owners. We are a lead trade organization that advocates on behalf of those entities. And as part of the thought leadership of the Clearing House, we developed what's called the Patent Quality Initiative. It's an initiative that's housed in and run out of a new

LLC, a wholly owned subsidiary of the Clearing House Payments Company, Askeladden. I get questions often on where we got Askeladden LLC. Generally in Norwegian folklore, Askeladden is the youngest of three sons and he does outside-the-box thinking, creative solutions to complex problems. In terms of financial services, we think we are facing some unique challenges. There are a lot of common challenges in patents, but there are some unique ones in financial services, which I want to get into today. And happy to answer any and all questions from folks, so please feel free to interrupt.

So let's jump right in here to the third slide. A lot of folks don't realize it, but banks are very big users of the patent system. We're big users because we directly patent. Here's a look at patenting in financial services in 2010 through 2014. We'll get into it shortly here, but it really is starting to ramp in the space. But we absolutely directly patent and in general -- so that's banking entities, pure banking entities like Bank of America or Visa, your credit card networks. But in general in the

space, it's also a very, very busy space. You've got others patenting there. Take a look at the chart here. You've got IBM, eBay, Microsoft on the top three. So it is an active space and Class 705 here at the PTO sees the most pure financial services-related patents, but obviously that spans out. We are broad technology users.

One of the main things I want to stress around patenting is that banks and the financial services sector, we really believe like other sectors that strong patents, quality patents, fuel innovation. Top of mind in an area where financial services is really leading the world is in cybersecurity. And just to put an example of our leadership in the cybersecurity space is a cross-sector initiative and it's also going to be spanning other sectors is Soltra Edge. The financial services sector today shares thousands of threat indicators and believe it or not that's daily, and believe it or not that's mostly a manual process. We launched through FS-ISAC and DTCC the Soltra platform. It's a hub platform to route in an automated, real-time, fashion threat indicators. It's also a client-side device that

sits at financial institutions and other entities around the world, receives these threat indicators and other intelligence, and then spans that out across the networks. We wanted to deliver this platform out there far and wide. It's built on open standards with very minimal fees associated with it. So that's an area where we are directly innovating.

We also separately want to see innovation really continue at the edges there so when the threat intelligence comes in and we put it into our very complex networks, we want to see the likes of Cisco Equipment, HP Equipment, and any other equipment that we're buying and putting into our infrastructure be able to respond and adapt to that. And certainly as the volume of threat indicators begins to scale at just an enormous clip, we're going to have to have better analytics, better intelligence around our algorithms as we feed that into the systems. So that's just an area where we really want to continue to see innovation growing aggressively.

As far as banks and financial services go, everyone likes to say that they are tech

companies. But in financial services, you'll see -- and Goldman Sachs is an example. Roughly 25 percent of their staff is devoted to technology and operations. It's huge. Really at the heart of every financial entity is a massive amount of technology. So it's something we're constantly thinking about and working with.

In terms of financial services being indirect users of the patent system, I just wanted to throw up here a chart that goes to the revenue that traditional technology companies are getting. IBM is clearly number one there. It's estimated that roughly 27 percent of IBM's revenue comes from financial services. Pretty much everyone uses them in some form or another and obviously rely on a whole host of other technology companies, large and small. We're seeing a lot of great innovation from the large companies, but there's been a lot of great partnerships that have been happening coming out of financial services around small tech companies, startups, venture capital, JVs are being done. And then the bottom chart here on this slide really illustrates the amount of money

that's flowing in and also goes to the convergence that everyone likes to talk about between banking and technology. That convergence is absolutely happening, but it's really been there for a very long time. It's just coming out more to the consumer-facing world now and that's why it's getting a lot of headlines. But that's a lot of bank money being poured in there, but certainly is a lot of money from other sources. And, of course, banks provide numerous loans to small businesses. Actually bank lending in small business dwarfs significantly venture capital money. So folks often want to chase the VC money and it certainly is interesting, but traditional loans and funding come through banks primarily.

As far as investment by financial services, it was estimated that roughly $188 billion was spent in 2014 on tech. That's globally. To bring it closer to home and as it relates to cybersecurity, JP Morgan Chase has very publicly stated that over the next few years it's going to be doubling its cyber budget from $250 million to $500 million. So the money's real and the innovation hopefully continues to

move forward at an aggressive clip.

This next slide here -- I think most companies when you're looking at your posture as it relates to others, you're looking at it as it relates to your peers. You want to know where your litigation, where your patent portfolio, how do you stand up against your peers, your competitors, and certainly when you report to your boards, you want to know that. What I think is interesting about this chart is that you start to take a look at the velocity of litigation as it relates to financial services versus tech companies, but also as it relates to revenue. When you take a look at the velocity of litigation as it relates to revenue and financial services versus tech, you start to see that there's a lot of similarity to it and the revenue is a good indicator with respect to velocity.

Banks are really in the same ballpark as a lot of tech companies. You've got the clear outliers there at the top of slide 6 -- Google, Microsoft, and Apple. They're manning litigation loads of nearly 100, 150 cases a year. Banks aren't quite that high, but we certainly are

there proportionate to revenue. So I think this is really interesting data and something that I often like to present and talk about.

I'll pause there. Does anyone have any questions? So we're at the Patent and Trademark Office today.

I want to talk about post-grant proceedings and the importance of financial services. Historically, financial services hasn't litigated a ton. We do have a propensity to settle. That is changing significantly, but the rules of engagement have drastically changed as a result of the America Invents Act in a very positive way for our sector. We think IPR and CBM proceedings are excellent. It's really truly fantastic how quickly and efficiently the PTO has stood that up, and the Chief Judge has done a phenomenal job in terms of hiring and onboarding and sticking to the timeframes. These programs really are critical for efficiently eradicating low quality bad patents that should have never been issued in the first place, but just are an inevitable consequence of the U.S. patent system.

And one of the things I want to point

out here is it's often looked at that the CBM program is a carve-out for banks. It's really not the case. We think we have unique challenges in our space. Section 101 is a big issue with respect to our patents. Even more important, though, is the evidence that you need to invalidate a patent. As I'll get into in a few other slides here, it's really not written down in a lot of places what we have implemented in our infrastructure going back decades. We often do have to rely on evidence of prior use or prior sale. So that was just something fundamental in reform that we needed. That got carved out because folks didn't think they needed that across other sectors, so we ended up with the special program, CBM. But as you can see from the statistics here, it is widely used and financial services as a whole really only represents roughly 20 percent of the utilization of it.

And then with respect to banks, you're down to 10 percent. So there are a lot of folks that like the program, certainly around post-grant proceedings. The programs do have to evolve. The number one priority for financial

services is to preserve the integrity of the programs and make them user friendly for all sectors. But with respect to our sector, we think they're great. Keep the pedal to the metal, and just very thankful for the PTO's and the PTAB's efforts on those fronts.

Turning squarely to prior art accessibility, we think this is the biggest challenge for financial services. It's a challenge in every sector, but when you go back and you look at the history of patenting, especially at the technology sector, you've got going back decades you see the patenting. It's gone at a regular clip. There's been ebbs and flows based on the technology area, but it has just been nonexistent in financial services. State Street is the inflexion point, but if you take a look at all of the technologies that we use and take for granted -- credit cards, check, your stock trading, your ACH systems, the ACH system that the Clearing House operates goes back to the '70s -- that infrastructure is not really written down and memorialized in patents and not readily accessible to examiners. And examiners,

obviously, the first place they look is issued patents and PG Pubs, and they certainly are turning their focus to NPL and we'll get into that. But we think this is a big challenge for us because we are missing decades of history that wasn't memorialized and easily accessible. It's really the main cause of the low quality patents that we see in our space, so we're trying to shore that up.

One of the areas we're trying to shore that up is with respect to NPL. With respect to NPL, we think we are, again, an outlier in comparison to other sectors. Other sectors do have robust databases. You do have academics regularly publishing in the space. We certainly have that in some form in financial services, but it's a gaping hole. It's not as simple as having the PTO cut a deal to turn on a new channel to patent examiners. The channel doesn't really exist. There's no equivalent of an IEEE for financial services. So that's an area that we are really are laser- focused on.

And that leads me to the Patent Quality Initiative that we launched last year. The

Patent Quality Initiative is a product of the Clearing House's thought leadership. We started a new company. It is bank funded. I'd say our core focus is on prior art accessibility and education and that's both with respect to USPTO examiners, examiners around the world, and also other critical stakeholders. That is the main focus.

We also have a robust set of amicus filings that we've been going in filing on important industry issues. And then we've been challenging low quality patents in our space that we believe are invalid through IPR proceedings. We're often asked why we're not using CBM. CBM does have several restrictions at the initial point. Askeladden is a non-practicing entity. It's really about education and advocacy. So we do not meet the requirement to have a threat of litigation or have been sued, so that's why we're utilizing the IPR program. But, again, both programs we think are great.

As far as the Quality Initiative we launched last year, we have filed nine IPRs. We have cut deals to load prior art into known

databases, one of which is IP.com. The PTO continues as we understand it to grow their relationship with IP.com, so we thought that that was one clear avenue where we would be able to collect prior art and get that in the hands of patent examiners. Today we are collecting prior art from Clearing House owner banks and others in the industry. We have already loaded up some of that art, and we will continue to load that art into our systems and then ultimately into the IP.com system and other channels that are appropriate.

And what we want to do is we want to collect that prior art, that legacy, the history, that was missing and couple that with training for the examiners. So we did a training session last year on ACH and wire transfers. It was very well received and I think one of the reasons why it was received by the examiners was it was action oriented. Everything we presented in that training was tied to patents and NPL, so the examiners could reject those concepts if and when they see them in pending applications.

Some of the technologies that we're

committed to teaching in 2015 are tokenization. As I mentioned, tokenization is red hot and something that we want to see proliferate in the industry. There is going to be a lot of activity there and a lot of latecomers to the patenting game. For EMV in the United States, we are rolling out the chips on your credit cards. Your banks are probably issuing new credit cards with the chip. EMV has actually been around for 20 plus years in Europe. There's a wealth of documentation that we're collecting on that and training the examiners. EMV just as it relates to tokenization, the two really go hand in hand because with EMV you have your chip and if someone steals your credit card number and they go and create a counterfeit card, plastic card, that card won't be usable at an EMV terminal. But that number that they stole could still be used online. That's why in a tokenized world where that number is moving from being static to dynamic, you're significantly mitigating your exposure there. So EMV and tokenization go hand in hand, 20-year-old technology that's being merged with something that's cutting edge.

We're also going to do training on the early online banking systems. Some of you may remember in the '80s and certainly the late '90s where you got a disk in the mail and you could do some transactions. We've collected prior art on those systems that are not readily accessible. And really just on the prior art, we've really gone and looked at what cases have been problematic for the sector. And it's very telling when there's this frustration, the initial frustration that how did the Patent Office issue this patent. This is absolutely ridiculous. But then we as a sector go off and spend millions of dollars and hundreds of hours to find that reference and we can't find it even though we know it's been in use for so long. So I don't know how we expect an examiner with very limited time, not having access to the resources that we do at that time, to find that reference when we can't do it ourselves. So that was when it was like we have a real problem here. We need to do something to shore this up; otherwise we're going to continue to have major problems in patenting in our space.

Finally, around the education piece, we are going to be partnering with some academic institutions. We've got a couple that we're finalizing research with. We do want to look for other areas to improve patent quality, and we're going to drive that through research with some institutions and we'll be publishing white papers on those topics in the coming months and years.

MR. THURLOW: Sean, let me maybe stop you right there just for a quick question. When I heard you speak in North Carolina many months ago, this was the intriguing part to me because -- I mean many areas are intriguing -- the one where -- and I think, Dan, you mentioned something about what Cisco's doing and some others -- gathering the prior art to make it available to the Patent Office. Robert, quite often when we do file applications, we get back prior art in the form of U.S. patents for published applications. So to the extent we have this Quality Initiative and we use NPL stuff or other things that are available, I almost wish John Owens' group was here to see if we are there yet as far as you guys making this prior art

available so that Robert's examiners can access it?

MR. REILLY: So we're there in the sense that we're going to be publishing actually in the next month a bunch of documents on IP.com, these documents that we've collected, and we're going to continue that. But we'd like to continue, especially with the PTO, to explore what the best channel is to get to the examiners. We identified that as one channel. It's our understanding that the PTO wants to grow their IP.com relationship. I think one of the things I'm focused on -- I'm pretty dated here, but this is one area where things haven't changed -- EAST is the primary search tool by examiners. That's where they go, and they really should have one interface that they look to. We want to get this pertinent prior art into that primary search interface, whatever it is. We took the opportunity to file comments, and I think that was our number one. We really want to get onto the main interface for examiners.

MR. THURLOW: For the patent quality and the Federal Register you guys filed comments

at that point?

MR. REILLY: We did. I think that really needs to be the focus because examiners have limited resources. We realize that. Obviously there are a lot of improvements going on in a whole host of areas there, but this is a big ticket item for us to get the actual documents. There's just no way we can improve the quality without having the prior art.

MR. LANG: Cisco is also working on a very similar initiative to gather prior art and make it available to the Patent Office. I know of one other, at least one, actually two other big IT companies that are working on that. I think that one of the next steps is I think to help consolidate that and make it available to the PTO as conveniently as possible. At first it's going to be through external Websites, whether it be IP.com or the companies themselves, but the long-range goal is to get it so it's part of a next generation search tool for examiners to use.

MR. THURLOW: Right. I know a lot of companies asked for defensive publications where it doesn't go on this Website, IP.com. But if

they ever get sued, they have a library to review to see if there is prior art. But this is something, quite frankly, new to me and that's why I thought it'd be helpful.

MR. JACOBS: Since the IT folks from USPTO aren't here, I want to clarify a few things about this. So I'm sort of the IT guy from the committee, right, so just submitting stuff to the office doesn't mean it's going to be searchable. So even now we have IDSs that come in, which contain a lot of valuable stuff, but they don't get searched for the most part. The examiners don't have access to that through EAST and WEST.

So when he mentioned IEEE as the kind of software guy, what's going to happen if a software patent is examined and the examiner's looking in NPL, they'll look at a database like ACM or IEEE or whatever that they know of and they have access to. It's separate from what they search in EAST and WEST. It's searchable, but it's searchable just the way we would search it if we were logging into IEEE Xplore.

So one of the problems for the examiners is they have to know where to look. They don't

have any uniform search engine that's going to search all the relevant databases. They're going to search EAST and WEST, which is basically for patents, and then they're going to do a separate search on say an IEEE database if that's the technology area that the patent seems to be relevant to.

So what he's talking about is really providing another database that examiners can use and that's why you have the training issue. They've got to decide whether they're going to allocate part of their precious search time to searching this particular database.

MS. JENKINS: But you have another issue, too, Robert. You know what I'm thinking because you brought that up the other day. The clear error, remember?

MR. BUDENS: There's lots of things -- well, are --

MR. JACOBS: I wasn't exactly finished because I was going to make a couple of suggestions. Just so you know, this is a moving target. So EAST and WEST are slated for replacement, and we have a new set of tools coming

in two years from now that are going to make it easier to ingest other data into these search tools. But that means that it's going to be more than two years before say you could take the NPL that you consider to be important and actually have it searchable from within the examiner's search tools. And until then you're left with what I think is the method that you're presently envisioning, which is to provide a separate database with your own search interface and then try to give the examiners access to that. But that was just a clarification.

MR. REILLY: I think that's exactly right. There's a lot of complexity to search and accessibility to art. We wanted to start tackling this problem now, but we realize that there will be an evolution with respect to the search tools that are available to the examiners. We'd love to see that move to that single-search interface that searches patents and NPLs from all sorts of sources.

With respect to the IEEE example that I had there, that to me is just an example of at least there's a channel, there's a database, that

exists that doesn't -- we don't have the equivalent of that in financial services. So that in and of itself is a problem, but then there's the problem of once you have the channels, how are you feeding that into the examiners' search interface? And then there's the responsibility around examiners -- you know, all of a sudden they have access to hundreds of millions of documents. How could they possibly search that? There are clear error issues.

So there are other issues there to be discussed, but I do think technology ultimately does hold the solution here. Technology around combining the channels, the single interface, but also culling through the documents to ferret out the most relevant ones and any clear error standard is going to have to be built around that new technology that ferrets out what is supposedly the best references.

I think there's another great point there, Paul, with respect to growing the PTO's own database based on submissions that are coming in through other applications that are pending. So when an IDS -- someone takes the time to file an

IDS, let's get that in. That is not being uploaded and utilized in a main database that's tech searchable today. That's another suggestion that we had filed in our comments last week or the week before.

So, again, it is an evolution there, but those are all things that we're thinking about as are others and really hope that that progresses and at an aggressive clip.

MR. BUDENS: Did you have a follow up?

MR. JACOBS: Separate, I have a separate one.

MR. BUDENS: Okay. I'll follow on to this then. The first thing I'd do is congratulate you. I mean I'm blown away by this conversation here and this talk and the work you're doing and the work that Cisco's doing. And on behalf of the examining corps, I applaud it and thank you for it because trying to find the prior art in business methods, it's a problem in all technology. In business methods it's been a nightmare since the first day of State Street for exactly the reasons you said. There's no clear databases that have ever been put together and

stuff that are analogous to our patent databases or even the STN dialog kinds of databases.

The sooner you would get working with the PTO I think and make more of this available -- because in order to really make it available, I think Paul's right, it's going to need to be working with CIO ahead of time to make sure that the database is set up so it can be indexed exactly similar to our patent databases or whatever so that we could be searching. We do have in the EAST and WEST the capacity to search a number of different databases simultaneously, but then you also have to have it indexed in a way or set up in a way so that you can remove duplicates pretty quickly. Otherwise, all I do is end up looking at 25,000 documents instead of 50 or some manageable number.

But I do want to commend the efforts that are going in here because this is something that's sorely needed I think to get some of this -- all this old history.

And one of the questions I do have is even in this old history and stuff, when you do file your patent applications, do you submit IDSs

with a lot of this old documents at least so the examiner who gets your case has got access to some of this older information that may not be readily available?

MR. REILLY: So because we've just started collecting it, the answer to that directly, it wasn't even accessible internally in the institution. So the short answer is no and obviously each of our owner banks has their own patent strategy, but I do think now that we're collecting these documents and they are available and people are aware of them, you'll certainly start to see more robust submissions on that front, at least that's the intent anyway.

I really appreciate the comments there and certainly welcome probably through coordination with Valencia here, engaging on the technology conversation and bringing any weight to bear that we can from the banks and our enormous technology resources there. There are other complexities that we had to sort through that I know other companies are sorting through. If it's a private sector database, who owns the database? Is there attribution when it goes in?

Are there copyright issues? Those are all issues we sorted through relatively quickly, but that has been a gate in other sectors and we're helping to talk through those if anyone would like to do so.

MR. JACOBS: I had a related question about this. So you mentioned that sometimes you'll see a patent that you think the claim seems invalid and seems like oh, haven't we been doing this all along. And then you look through the literature and it's hard to find something that really teaches or even discloses the elements that you expect to find. So I've had this experience many times and sometimes I'll search press releases. And a company press release that came out prior to the priority date will seem to indicate that they're doing this, but there's nothing like really more than that.

In one case that I worked on we found a professor who had published a paper that was related and he reconstructed his system. This was in district court. He reconstructed his system and demonstrated in the district court that this was publicly available and that he was

implementing all the steps as a 102 use. Now, you can't take 102 uses into IPR, right? So I was wondering whether you had had this experience and whether you had any ideas on how to deal with it where particularly in an industry where people don't publish these ideas completely, what are some of the other ways that you might deal with this in terms of finding them either as 102 art or other kinds of art?

MR. REILLY: Absolutely on the IPR point and that's in particular why we find the CBM program to be so important to us because we do want to be able to produce evidence relating to prior use and prior sale. But just finding that evidence is difficult. I put on one of the slides here that some of it is written down, some of it is available through various manuals, compiling everything together. But, unfortunately, in some cases it just doesn't exist.

So we are still sorting through the best way to identify and ferret out the best evidence along those lines, but it is a challenge and in some cases it just cannot be done. But at least once we have the collection of documents,

especially around these manuals and specs that have been floating around the sector, but mostly under NDA and not published anywhere, that's probably the best resource and that's what we've been trying to focus our energy on.

MS. JENKINS: I guess one thing when you were talking about earlier that -- and Robert hasn't -- maybe Robert has trained me pretty well -- is you were talking about poor quality patents in this space. And I guess my first thought was well, how could they really write or accept a good quality patent when they didn't have any of the art. So I was just -- and I think what you're trying -- I think very importantly you're trying to educate, you're trying to improve searching, I think that's all great. So I guess when you think about explaining what the earlier part of the financial services area and the challenges you faced, I guess I wouldn't want to see the word "poor quality." I mean maybe there's another way to -- I'm saying because I'm giving defense to the examiners. If they didn't have it and as Paul would say, they didn't have the searching ability to do it, is it really fair

to call them poor quality patents in a sense? So I'm just saying that just for the future as one way to think about it.

MR. REILLY: Fair enough. It used to be perfectly clear. That's exactly what we're saying, though, it's like no fault of the examiner.

MS. JENKINS: Yeah, do a disclaimer.

MR. REILLY: Yeah, I mean absolutely no fault of the examiners.

MR. BUDENS: I really like this conversation.

MS. JENKINS: See? You trained me well, Robert. And it's funny, too, because you are not alone. I have had many, many clients who have spent much money searching and searching and they know it's out there. And I'm like, yeah.

MR. REILLY: And look, that's why we need to collect it. We do think, though, more broadly -- so outside the PTO universe because you've got the life of it beyond the PTO -- we do think it is a fair characterization, though, overall because ultimately we believe the patent is invalid. It's just a question of getting the

evidence to invalidate it. And how much is that going to cost you and how much leverage is it going to have in the context of a complaint being filed in district court against potentially hundreds of defendants at any one time. But, again, absolutely no fault of the PTO or the examiners there. And we're doing everything we can to shore it up and really welcome any and all thoughts from others in the PTO.

MR. THURLOW: So my comment is more for Valencia. I think going back to your earlier discussion about patent quality and the feedback I received on the Patent Quality Summit was extremely positive from those that attended and those that listened to the Webcast. There were a lot of questions on whether it's all fluff or window dressing or what are the next steps. But I think this example and many other examples to the extent you have industry and large companies and organizations wanting to help the government not at the government's expense -- I'm sure there'll be some with IT and so on -- to get the prior art so that the court comes back to a good search and a good examination. I think welcome

them with open arms and so on.

MS. MARTIN-WALLACE: Great point and I agree completely. In fact I've had -- I'm meeting with Sean later on today to look more into it and the work that Mark has been doing, and I'm working on now with international and sharing work there. You're absolutely right. It's the world we live in now that we can know the things we didn't know at the tip of our fingers, but we have to work together to make sure that we have the resources to get to that information.

MR. REILLY: Great. Just moving to the last slide here as it relates to the Patent Quality Initiative that we kicked off, we have been pretty robust in our amicus filings, a lot of strategic issues out there developing in the case law. I've just listed a few here that relate to the Patent Quality Initiative and also previous filings from the parent company for Askeladden, the Clearing House.

I think just the one thing to note here, which has just been completely embraced by the PTO, is a devotion to education and the constant change in the law to educate the examiners. We

just applaud the effort and want to see that continue and really thanks for that effort there. That's just going to continue to have to be a lot of devotion to resources because I don't think it's going to get any simpler, especially with respect to 101 because nobody really knew what 101 meant even 5 years ago, 10 years ago, 15 years ago. Everyone thinks they know, but it will continue to evolve in the courts. So devotion to education just needs to continue and applaud the efforts.

So I'll pause there. Any other questions on this or anything else that I presented on? Any questions around financial services generally?

QUESTIONER: I have a question. Do you have any thoughts about newer technology around currency, for instance, bitcoin? How does your organization see bitcoin and the future with respect to financial services?

MR. REILLY: Sure, obviously a red hot topic in financial services, crypto virtual currencies, a lot of innovation happening in that space. Bitcoin is actually being utilized not

only as a currency, but as a platform to share information, a lot of interesting things happening.

I think as a whole, especially in the United States -- you're seeing a different reaction globally, but in the United States we're seeing that the regulators are embracing it. You are seeing a lot of banks embrace it. Banks, though -- and this goes to just generally there's a tail effect. Banks are slower to adopt innovation in some areas. We're aggressive in cyber. This will be an area where we're going to take it a little slower, primarily because we're concerned about the safety and soundness of the ecosystem for consumers. But it absolutely is being embraced and many entities are doing research around it. I hope to see that we can leverage the good stuff and adapt it into the ecosystem.

MR. THURLOW: A quick question: So Dana Colarulli is going to be speaking this afternoon on legislative issues. Are there some major developments or things that you guys are focused on? Obviously, CBM, but other things?

MR. REILLY: The Patent Quality Initiative we don't do any lobbying efforts out of it. It's purely about these core principles. The Clearing House and the other financial services trades are lobbying and very active on the Hill. We have drawn a very clear line. CBM is our number one priority. If we don't see CBM in the legislation, then we do not think making CBM permanent or extending it for a very long time. We don't think the legislation's adequate and will not support. Our hope is that we will be out there whipping votes and supporting legislation to move it forward. We think there's a path forward in both the House and the Senate on CBM.

But in terms of other areas of focus as well, demand letters is a big issue especially because in financial services you've got the largest banks in the world down to the smallest. Some of the smallest don't even have any counsel on staff let alone an IP person or a patent lawyer. So they're dealing with the exact same issues that other companies are, so demand letter reform at some level is important and a priority for us and

is already in the legislation and we're supportive of that.

But then finally as it relates to post-grant proceedings, IPR and the integrity of the IPR program. Again the program should continue to be enhanced primarily through rulemaking. Michelle and the PTO as a whole are looking at rulemaking changes there. We think that's great. We want to preserve the integrity of the program at the rulemaking level and the legislative level. And some of the things that are being proposed legislatively really would undermine the integrity of IPR in our opinion, so we're going to stay tuned on that and see whether or not we can support the legislation there.

Those are our main priorities. And just to make it clear, the litigation reforms are nice to have, but don't make our top list and are just tagalongs for us.

MS. JENKINS: Any other questions?

MR. REILLY: Thank you. Really appreciate the time.

MS. JENKINS: We appreciate your time and appreciate all the efforts in the industry to

help the PTO.

So we're actually running early, so we are not set to start again until 1:40, but I see Chief Judge Smith here. So let's take a 15 minute break and we'll start again at 1:30.

(Recess)

MS. JENKINS: So, I believe it's about 1:30, so we now have caught up and have maybe extra time, which I think everyone from the PTO will appreciate.

So, we're now transitioning to Judge Smith and appreciate your being here and providing update on PTAB, which is always an interest for this group. So, thank you.

JUDGE SMITH: Good afternoon. Thank you once again for having the PTAB to provide an update to you. We welcome the opportunity to hear from the subcommittee, as we do on the days before the full committee meetings; and we certainly look forward to, very pleasantly, the exchange that takes place at these meetings, being able to share with you the things we have, and also to hear from you to help guide our activities going forward.

To provide you a quick summary of things happening in recent times and the state of things, I think our view is that the state of the Board continues to be good. Let me direct your attention to a few things that we believe are indicative of the state of the Board.

First, with respect to ex parte appeals, and let me just say that notwithstanding the great public excitement over the AIA trial proceedings and the attention we pay to them at the Board, we continue to be very interested in and very focused upon the work in the ex parte appeal area.

Recently, in speaking to our judges, I framed our level of interest as a Board and certainly the management of the Board in ex parte appeals this way. If the Board were a parent, perhaps AIA trials would be our newest child and therefore receiving the kind of dedicated attention a new child receives but that we should not lose sight of the kind of attention and care we would give to our older child, the ex parte appeals, who should not believe, because of the focus given to the newest child, that we have any

less love for that first child.

Our level of attention to ex parte appeals is shown in part by that we have continued to achieve reduction in the backlog of ex parte appeals. The slide on the screen shows an ex parte appeal inventory of 24,056 cases.

This slide already is old, even as of the date of its submission to you. As of 9 a.m. Wednesday morning, we dropped below the 24,000 mark. We're now at 23,950 ex parte appeals in inventory roughly. You would observe, if you were to look at the granularity or look with further granularity at the decline in the ex parte appeal backlog recently, that the pace of the decline is increasing. We now very much have our focus set on reduction of the ex parte appeal backlog to below 23,000 over the course of not more than the next two months, which the current rate is something we would be able to achieve.

We think this progress is of special note, because throughout the time that we have been achieving this reduction, the number of AIA trial petitions being filed has not much declined. We're somewhat fortunate in that it is

not increasing at quite the same rate it had been increasing at the end of 2014.

In any event, we continue to receive somewhere between 150 and 170 AIA trial petitions per month, which means fundamentally that we still receive about three times as many petitions as were predicted we would receive in years three and four. And we have so far not missed a single deadline with regard to either the decisions to institute the trials or the final written decisions and while doing that still managing an increasing rate of decrease in the ex parte appeal backlog.

Meanwhile, we would note that our outcomes at the Federal Circuit continue to reflect favorably in our view across all areas of our jurisdiction. Specifically, in the AIA area 14 decisions from AIA post-grant trials at the PTAP have gone up on appeal and been decided. All 14 of those decisions affirmed the decision of the lower tribunal, namely the PTAB, and 12 of those decisions were summary affirmances under the Federal Circuit's rule 36.

Our results on appeal in other areas

continue to be along trends already long established in the Board's practice. (Inaudible) in this calendar year so far we've had only two cases which were not affirmances -- one reversal and one reversal in part.

So, overall we think that the status of things at the Board continues to be very good. We continue to work, as we'd indicated we would be doing last time we met, on rules changes or possible rules changes, and we have provided some specific information about where those rule changes might take place. The specific progress being made in the various areas of rule changes for AIA trials proceedings has been the focus of and explained in some detail in a recent blog from the director of the Agency.

We would refer the members of the public who wish to know some more about what specifically is coming and when it is coming, when those things are coming, to that blog, which is available at the PTO website.

So, generally, that's a thumbnail sketch of where we are. With regard to some other things -- for example, motions to amend in AIA

trials, a subject of very substantial discussion right now not only with regard to things that are happening or might happen legislatively but also generally in the practice community -- we would want to have stakeholders be somewhat more informed and therefore possibly of a little more relief in their concerns as to motion amend practice before the Board.

One thing that is sometimes discussed or put forward about the state of motions to amend in AIA trials is that there have only been three substitutionary amendments on motion in 3,000 cases. And we want to point out and will undertake more effort to point out than the fact that that's not really a meaningful statistic, although there have been 3,000 petitions for ex parte trials, more than 3,000 -- I think we may be up to about 3,200 now.

It is not the case that motions to amend have been put forward in all those cases -- in fact, not even half or a quarter. The number of cases in which motions to amend have been forward are actually fewer than a hundred, some 80 in IPRs and something like 14 in CBM proceedings. And in

fact, we're now up to four motions to amend with substitutionary amendments that have been granted. So, the difficulty often spoken of in obtaining a grant of a motion to amend is perhaps not as dramatic as has been described, and I think it is very fair to say that if one looks at those decisions more carefully, one notices that patent owners who are able to provide amended language with support in the specification to provide a construction and make appropriate representations as to patentability actually have achieved regular success in the grant of motions to amend.

Let me just stop there, because of course we don't have a lot of time and we certainly want to use it to discuss the things you want to discuss. So, let me invite you to point us to the things that you would like for us to address or respond to.

MR. THURLOW: Thank you, Chief Justice Smith. We had a lot of discussion yesterday in the subcommittee meeting about motions to amend and so on. I think there's an expectation in the public that there are going to be some changes in

that area coming this fall at least proposed in the Federal Register Notice. As we discussed yesterday, I think it would be helpful somehow, someway that the information you just provided -- not only at the PPAC meeting, whether it be through the Board chat, whether it be through the blogs, which are really well read -- to get out the facts on the claim amendment process and at least your position. The thing I've learned from being on PPAC is I actually think sometimes -- and a lot of times the PTO has a good story to tell, and the history was just how do they convey it to the public.

Specifically, on the claim amendment side, if it's the PTAB's position that maybe keep on trying and follow the three or four cases where the claim amendments have been allowed and look at them for guidance, I think that would be helpful for the public to know. There may be a sense in the public that the claim amendments -- you're not going to get it, so why try it. If the feeling is that you will get it if you do it correctly, then please try. I think that's the message that needs to get out even

more.

Mark?

JUDGE SMITH: The PTAB will undertake to be more intentional in providing that kind of information.

Let me also speak to perhaps some misperception that the director's blog sought to address. Specifically, there seems to be some misperception that the requirement for amendment in AIA proceedings involve some representation by the patent owner with regard to all prior art known by mankind. I've heard that said many times, many places, and I've seen it in print more times than I can recount.

The PTAB decisions do not reflect that at all. I think an accurate reflection of the requirement in our cases never goes that far and is much more aligned with what the director affirmatively announced, art of record being the thing that needs to be overcome by the patent owner seeking the amendment, with the important reminder to patent owners that the art of which the patent owner is knowledgeable should be made of record as part of the proper duty of complying

with the duty of candor before the Office.

But the focus then is on what part of the proceeding as a result of a properly developed record and not some universal unknown of whatever prior art may have come up that the patent owner is not in a position to have in its knowledge base anyway.

But generally to your point, those kinds of things that are part of the misperceptions are certainly things we can seek to address more affirmatively.

MR. THURLOW: And just staying on one more point, then I'll let others chime in.

During the Senate Patent Reform Debate, one of the witnesses talked about the opportunity for a petition to be submitted and then through some procedure that I don't frankly understand how it would work, the procedure would be stayed, and then the patent owner would be given an opportunity to amend the claims and the reissue of a reexamination proceeding. I haven't examined all the details and so on, but frankly my initial reaction is it raises some concerns for, I don't know, gamesmanship or just you have

a lot of parts.

There were -- you're going outside the PTAB and you're going to the Central Reexamination Unit for the reissue and reexam, and my reaction is I'm not sure if that's the best approach. I'm not against thinking of anything, but my initial -- you don't even have to respond. It just -- I think that approach may raise some concerns, considering timelines and everything.

JUDGE SMITH: Let me just say these couple of things in response. One, Acting Deputy Chief Judge Boalick has been very involved in helping the Agency arrive at positions or certainly to assist with the consideration of various legislative proposals. We are very appreciative of the substantial work he has been doing in that area. And as you know, that is work requiring particular skill, because it involves frequently many stakeholders, most of whom are not in agreement with each other as to what the ideal solutions are. Let me just invite Judge Boalick to comment on those things if he wishes to do so.

JUDGE BOALICK: So, I guess, Peter,

what I would say is that the Agency is certainly looking at all of those proposals and is engaged in a dialog. There are obviously pros and cons to the approaches, and of course one of the things to keep in mind is that the AIA trials as originally conceived were designed as a faster alternative to district court. So, to the extent there are proposals that have the proceedings take longer, there are certain consequences that flow from those proceedings taking longer than they do at present.

MR. SOBUN: So, I think -- just to go back to the amendment issue, because I think it is an issue that does exercise, as you no doubt know, a number of people in the constituent communities -- I think some people may have over-exaggerated the issue of just the -- you have to aver against the entire universe of prior art. But even known prior art in the record can be voluminous and especially for an important patent that may have had actually a very thorough examination, have a very large record in the (inaudible) should -- would nicely have a large record in the primary examination and then

perhaps even litigation and a huge amount more of prior art.

The concerns of the patent holders are that even -- and I think this is very welcome to a quick-fix proposal to expand the number of pages and to simplify some of the procedural parts of the amendment. But substantively I think to the extent you can helpfully even further clarify what exactly you are requiring even in making a record against known prior art in performing an amendment, my view is that if the voluminous record was done in the prior examination a simple statement that your claim amendment is narrower than any claims allowed in the prior primary examination of the art that was of record and that that would satisfy your burden, that might be it should be that way. But anything more strenuous than that does -- I think that's what people get -- people that are concerned I think from a more reasonable standpoint of concern, that's the trouble they have with the current procedures.

SPEAKER: Let me offer this. I would invite stakeholders to try to get through the PRPS web-based docketing system, case management

system, just to get their hands on, say, a dozen or so of the final written decisions in which motions to amend were granted or not granted. And I think just a review of those decisions would alleviate and a careful study of them would alleviate so much of the concern.

I think if one looks at the instances in which the motions were granted, one develops an appreciation that it's perhaps not nearly as difficult as has been described. The only thing points even more strongly in that direction are the many decisions where the motions were not granted, at least half of which involved the patent owners bringing forth some new terminology for the amended claims never used before and having no support in the specification.

Another substantial number of the denials have to do with instances in which, although there may have been support in the specification for the new terms for the amended claims, the new claims are not able to overcome the two or three pieces of prior art that were the basis for the removal of the claims for which the amended claims are being offered.

That knocks out about 75 percent of the denials, and the remainder largely have to do with the failure of the patent owner to make any assertion with regard to patentability over the art of record, which means in most instances, if not all, there hasn't been any challenge from the Board as to the assertions made by the patent owner patentability. The patent owner hasn't made the assertion.

Again, I don't necessarily invite stakeholders to believe what I'm saying on this, because I'm not inviting belief; I'm inviting a study of the opinions, the decisions on which these statements are based, and then the stakeholders can decide for themselves whether what I've represented here is accurate.

MS. MAR-SPINOLA: Your Honor, good morning -- or good afternoon, actually.

So, yesterday on the subcommittee we did talk about some of these issues, and one of the discussions that we had was about having the PTAB put together an infographic, a one-pager, that comes out consistently and often, maybe at least on a quarterly basis, very simply providing

the data, the facts or, rather, the statistics for each type of motion filed and the basis for granting or denying. And I think once that catches on, you won't have to even -- I don't think this will be as big an issue.

JUDGE SMITH: And I know our deputy chief judge is already hard at work at developing ways for reflecting that information. In part, it is easy for him to do so, because for some time he's actually been directing the collection of the statistics which would support the graphic representations of how the decisions have come out and the various bases for them. So, I think we could probably expect in the fairly near future to see added to the information available from the PTAB the kind you described and the fairly regulating updating of them.

MS. MAR-SPINOLA: And I would offer, although, you know, I'm new at this so maybe I'm overstepping, but I would offer for the PTAB to help review that infographic to make sure it reflects the critical information that's being targeted.

JUDGE SMITH: Thank you very much.

MR. POWELL: I just have more -- one general comment. It's probably for -- it's not for PTAB itself, because you're not going to be changing the statute, but there's an expectation, based on the recent House and Senate patent reform debate, that there may be looming changes to the IPR process at least, so I wish you, I guess, good luck with that, because around the table -- just around the table there are different views on VRI and very convincing evidence and standing issues. So, having to grapple with those issues is not an easy task.

I will say -- just my last comment is that -- more general comment -- I think we're all here representing we want the best patent system possible because it's so important to our country and the economy, and I think there's a disdain a little bit for maybe some that may try to gain the system. So, to the extent that the AIA has provisions in there for abuse of the process or other things or others do not fulfill their duty of candor in any such petitions, we would encourage the PTO to review that.

SPEAKER: I would just say thank you,

Peter, for your well wishes. I will say that, you know, whatever happens in the legislation, our focus has been and will continue to be implementing the legislation as Congress intended. So, to the extent Congress makes changes, we will implement it to the absolute best of our ability.

JUDGE SMITH: I would add this further comment that with regard to, for example, abuse of the process, there are of course things that are being contemplated, proposals being contemplated by Congress. In the discussions, I think we have undertaken to point out that there are already rules for the proceedings, which allow the Board and its judges to sanction misbehavior of various kinds and that it has never been our attention not to, where appropriate, point out and sanction parties for things that represent abuse. There's the duty of candor. There's just the duty before the tribunal in the proceedings, all of which are fairly already stated somewhat expressly in the rules.

We do want to be careful that we don't overstep to the extent Congress states more

expressly things which are prohibited and makes clear that our policing of the activities would not be overstepping. Then certainly, as Judge Boalick says, we would certainly live to the statute.

MS. JENKINS: We have about four minutes -- four minutes? -- still in the schedule. Are there any other slides that you'd like to focus on in those four minutes?

JUDGE SMITH: Yes, ma'am. Since we've talked quite a bit about the AIA matters, just to provide a little more picture to the things we've been describing, you will see that there are a number of very large bars showing AIA monthly petition filings, several of which approach 200 petitions per month, but we've never exceeded that amount in any month. And we have been hovering in a period where, as I mentioned, we are between about 150 and 170 for a while. If this continues and we do not pass 200, we will be able to continue to do the things, accomplish the goals I mentioned earlier including, for example, meeting the various AIA deadlines for decisions by the Board and also having sufficient Board

capacity to handle the targets we have with regard to ex parte appeal reduction.

The technology breakdown in the cases continues to be about the same, so that doesn't pose a changing management challenge, merely one of keeping about the same level of resourcing across technologies as we have been doing.

Let me also point out that when we look at the judge resource going to the different areas -- and I think we have a slide on that in this particular set of slides. If we don't, it's one that has been part of the package before and where perhaps its absence may cause some to wonder exactly how is the judge resource being distributed.

We continue to give about 40 percent of the -- about 32 percent of the judge resource going to AIA proceedings and about 51 percent to ex parte appeals. Of course those are not our only areas of jurisdiction, and we give the other areas an appropriate amount as well.

It's important to remember when looking at this slide that this is not a strict division of judges, which is to say the slide is not saying

32 percent of the judges are allocated to AIA proceedings, because in fact many of the judges of the Board handle cases in various areas of the Board's jurisdiction. So, this is really an allocation of judge resource and not necessarily of specific judges, that the division of the resources that way allows us greater flexibility, which is to say not only is there the opportunity to adjust the dockets of individual judges as between the areas, there's also the opportunity within any judge's docket to vary the areas of jurisdiction being handled by that judge.

We will continue to look, in the next few months, as to what the right allocation of resources is. You will observe, looking at the petitions and institutions from 2015 in comparison with 2014, that we have many more of them. And what this means, among other things is not only how many we received in 2014 and are receiving now, but it means that in the fall of this year, starting about September and through to the end of the year, the Board will have the first-time requirement of deciding more than a hundred decisions to institute and considerably

more than a hundred final written decisions in the same month for many months, which will substantially tax the capabilities of the Board.

Our view is that we are ready and that, to the extent we're not, we will be ready when we meet that challenge. We continue to bring new judges to the Board so that our current level of judge staffing, which is 231 judges, should be about 255 to 260 at the time that a substantial full bolus of decisional work comes to the Board.

JUDGE BOALICK: One other thing that I might like to point out on the slides here is just the outreach of the Board continues. We have our "Boardside Chat" series that continue. We have the next one upcoming in June. We're going to have a panel of practitioners and judges speaking about discovery in AIA trials.

Also in June -- it's not in our materials here, but we have a joint program on June 18th with AIPLA. It's going to be here in Alexandria. It's a PTAB bench-and-bar program, and the advertising has sort of begun on that. So, the outreach efforts will continue just as they have over the past several years.

MR. WALKER: Hi, Chief Judge Smith. Just a quick question around PGRs and expectations for fiscal year 2015 and 2016. Any idea toward the projections for PGRs that may be filed, assuming no legislative changes?

JUDGE SMITH: I don't recall, at the moment, the specific numbers in the projections. We did develop them during the rulemaking phase, and we certainly are expecting them in increasing number. I think our expectation was built comparable to the ramp-up of First Invention to File patents as they would begin to issue. So, we certain have in the plan that the expansion of the size of the board would not only, in the first instance, help us with ex parte appeals and the larger-than-expected AIA docket with IPRs and CBMs but that the continued expansion also would help us meet the projections for PGR.

I think the same we need to consider next is whether the unexpected PGR factor should be as large as the unexpected IPR factor turned out to be, that is, whether we should go back and put a times 3 in front of the PGR expectations that we had outlined. In either event, it's a

question of continuing expansion, just a matter of how much.

MS. JENKINS: One final question. Wayne?

MR. SOBUN: Yes. Chief Judge, one thing I think would be of interest to the panel. I think it's true. It came to my attention that you actually have a rather interesting, elaborate for forming the three-judge panels in terms of different sorts of diversity -- geographic, technical, and other areas of expertise. I think it would be of interest to us and certainly the general public to maybe at the next session have an explanation about how that exactly goes about and maybe also if there's any kind of elucidating statistics across the distributions, what actually get created for the panels, because it's a little bit different than how some appellate courts deal with this, and so I think it would be of interest to understand that.

JUDGE SMITH: Sure, and we can certainly elaborate on that a next session.

Let me just say very briefly something about what we're not able to achieve with paneling

that would make the lives of the Board and Board's management much easier. We're not able to say, okay, how many permutations of 231 can you come up with and let's just give the cases randomly to the various permutations.

From the outset when the new offices opened, we were very committed -- for example, as you mentioned -- not to have a geographic identity where one might expect a different kind of outcome from our California bench as opposed to our Colorado bench, which drove a careful mix of geographies in the cases.

We also have a substantial and even bigger challenge with regard to how many of our judges are new, and we were committed from the outset not to have anyone randomly draw a panel that had three judges who had not sat for more than three months.

So, you put together all those different directives in order to avoid problems and you end up with a very complex algorithm for composing the 11,000 panels per year or the panels that come to hear 11,000 ex parte appeals in a year plus all the AIA cases, and it's really quite

literally the full-time work of at least one person with substantial input from judges and management, including Judge Boalick.

MS. JENKINS: Thank you so much. We appreciate all the insight that you always provide.

So, we must transition if I am going to keep the ship on time, if that's possible.

JUDGE SMITH: Thank you very much.

MS. JENKINS: Yes, thank you, thank you. Tony, are we ready to hear the finances for the U.S. Patent and Trademark Office? I think you're next, am I right? Yes, financial budget. Or maybe we're not. (Laughter) Are we ready or not?

MR. SCARDINO: I'm ready.

MS. JENKINS: You born ready? You born ready?

(Laughter)

MR. SCARDINO: Thank you for the opportunity to brief you today. I'm just looking for the clicker. Okay.

So, as usual I want to talk about three years of -- three fiscal years actually. This is

one of the times of the year where we're living one year -- fiscal year 2015 -- waiting to hear what Congress is going to do on '16, and we are internally developing or formulating our budget for '17. So, it's a busy time. And we've also got a fee review in the process, so that makes it even busier. So, I want to go through a few things here.

There are no official changes to our fee estimates since we met last. Having said that, we've just experienced a mid-year review. Halfway through the fiscal year was March 31st. So, there we look at spending; we look at fees; we look at filings. And we're seeing that filings are a little bit lower than we had projected, so we're in the process of reestimating or refining our estimates. You know, there are two major fee implications. There are filing fees, right -- applications coming in, and then there are maintenance fees. So, we look at both sides very closely. And when we do decide -- if we do decide -- to change our official estimates for the year, we'll certainly let you know. So, that's kind of where we are,

in '15 on projections.

In terms of spending, we're spending a bit more than we've brought in to date, which was planned. We are dipping into the Operating Reserve. You'll recall last year we added to the Operating Reserve, and even with our projected spending we'll still have a patents reserve of $462 million if spending and then fee collections are as we currently anticipate. We still of course have four and a half months left of the fiscal year, so a few things can change, but we monitor that daily. So, things look good on that perspective.

For fiscal year 2016, coincidentally today we're going to go to '17 on this chart. For '16, the House Appropriations Subcommittee on Commerce, Justice, and Science is actually marking up our budget request. And we've seen what they're going to review today or propose and vote on. It's actually higher than the President's budget request for 2016. So, that's excellent news. A lot of support from the Hill. That means if we actually collect more fees than we even proposed in the President's Budget, we get

to keep them. And they also included language for the Fee Reserve Fund. So, even if we collected more than they appropriate, they would provide that vehicle for us to access those fees. So, that's a very positive sign. Continued, strong support from at least the House Appropriations Subcommittee.

So, moving on to '17, as I mentioned we started our budget formulation for 2017. Annually there's a budget request due to the President's budget office, OMB, the first Monday after Labor Day, so this year it's September 14th. So, we will be getting a draft budget to the Department of Commerce as well as PPAC and TPAC in August for your annual review. And then of course all fall we continue to refine that. The President's Budget is not due for fiscal year 2017 until the first Monday in February. So, we've got time to work on that.

So, as I alluded to a bit earlier, we are in the process of a biennial fee review. Fees were set for the first time ever after AIA was enacted. It went into effect in March 2013, so we are in the process of reviewing them.

Reviewing them could mean we introduce new fees; we eliminate fees; we reduce fees; we increase fees.___

So, there are a lot of proposals that have been submitted, and we are in the process of fine tuning them. And PPAC, of course, could play a major role if we end up proposing new fees or increasing fees, somewhat similar to 2012 when we reviewed a lot of fees and changed a lot of fees under Section 10 of AIA. If we go that route again, we will be notifying you formally in the early fall, and of course PPAC would have to have a public hearing and produce a report.

Many of you in the room have been through this process. We don't anticipate that no matter what we do it would be as extensive as it was the first time around, 2012. That, of course, was very elaborate. We looked at every fee. This would be a refined process a little bit -- (a) We've been through it before and (b) we'll be looking at fewer fees. There are no guarantees that we're even going to go this way, but that's what we're reviewing now to see the revenue impacts, the change management, what

would be involved. But stakeholder impact, of course, would be very, very important for us.

So, if we do use this authority, PPAC would have 30 days to basically deliberate and then consider the merits and then hold the public hearing, accept written comments from the public. And then following the receipt of your comments, we, the Agency, would be drafting an NPRM -- Notice for Proposed Rulemaking -- as we did in 2012, and that requires cooperation and clearance from several government agencies.

And then there's a comment period after the NPRM, so all told we'd be looking at probably late winter 2017 for when actually new fees or any adjustment to fees would be implemented. So, it's a bit of a process. There would be some work involved. And we wouldn't take it lightly. We would only do it if we obviously think that there's real merit to whatever adjustments we wanted to make.

And I know as usual that the New Yorker in me went through at land speed record. If you have any questions on any of the fiscal -- there we go. (Comment on the Rangers/Capitals

Playoff.(Laughter)) We're not going to go there. Sorry, I'm a serious Caps fan.

Any questions? Yes.

MR. SOBUN: Thanks, Tony, this is very fast and clear. I think there are obviously a lot of dimensions, you say, for fee setting. One question I have at the outset -- it was one of the major (inaudible) issues we focused on heavily during the initial phase, was the growth rate and trajectory for the Operating Reserve. Can you comment on where the Operating Reserve is now, given current fees and current structure?

MR. SCARDINO: I will. Our goal of course in fee setting was to build up, over time, a five-year period, a three-month Operating Reserve on the patent side and four to six months on the trademark side. That's somewhere around $800 million for patents. And of course when we set fees initially we had no idea what was going to happen in terms of elasticity of setting new fees, introducing new fees. There was of course First Inventor to File that was going into effect. A lot of things were happening. And then of course the economy, which is something that we're

subject to on a daily basis.

So, at first -- when we first set the fees, the Operating Reserve started to grow. The last couple of years it has grown to the tune of roughly half a billion dollars on the patent side going into this year, which was great because now we're intending to actually use some of that Operating Reserve this year and next year.

The nature of our business is cyclical, all right, so patent applications come in of course, and it's not a one-year thing; it's several years. And we've noticed this year, especially with filings down a bit, we've still got things in place to (a) meet our operational needs and targets, right? The 10 and 20 months are still the goals. We're still pushing towards that, so we're still hiring. And then on the IT side, you know, not to constantly use as an excuse, but we're still making up for some of the effects of sequestration. We lost $148 million, which would be sitting in our Operating Reserve right now, so we'd be that much further along towards our goals. And (b) it's a fact that the IT development is going to cost us more than it

would have if we hadn't had sequestration.

So, that's my, for me, longwinded way of saying the Operating Reserve grew, and now it's going to decrease over the next couple of years, and then hopefully it will grow again. Over time, it's almost like an accordion. The whole idea is that it helps smooth out any rough edges either with the economy or whether a court case, whatever it may be, or just operational needs any particular year are greater than what fees come in.

MS. JENKINS: Listen, Tony, it was helpful yesterday of how you explained -- I'm sorry, the other reserve, what did we call it?

MR. SCARDINO: The Fee Reserve Fund.

MS. JENKINS: The Fee Reserve Fund, yes.

MR. SCARDINO: So, the Fee Reserve Fund -- last year was the first time ever -- fiscal year 2014 was the first time we ever tested it. We put $148 million into the Fee Reserve Fund, because we collected more than was appropriated, and then Congress supported us and enabled us to transfer the money back to our Operating Reserve

last December. So, that's just a short-term mechanism -- the Fee Reserve Fund. While the Operating Reserve is a planned expenditure, we want to build the reserve so that we can weather any storm economically.

MR. LANG: So, we're seeing a couple of early signs of interesting and potentially very impactful trends. I mean, one is the small but I think notable slippage in filings whereas before we had seen pretty much continuous growth for years.

MR. SCARDINO: Correct.

MR. LANG: And also we heard earlier about the Patent Office's success in controlling RCEs.

MR. SCARDINO: RCEs, yup.

MR. LANG: How are you -- you know, as you're beginning to think about FY17 and how you're planning out your budget in further out-years, how are you dealing with projecting around these two potentially important inflection points?

MR. SCARDINO: That's a great question. I believe it's kind of a bit of a new

frontier for us, right, with the first time we ever had fee setting. So, we met just yesterday on it in fact with the Deputy Director, and the thinking is there's a longer tail to maintenance fees, right? It's four-year windows. And since we only set fees and they went into effect 26 months ago, we still don't know the full impact, especially when it comes to things like stage 3 maintenance fees, which were -- you know, they did go up, not dramatically but certainly sizably when we set fees. So, what we're trying to do actually is get a little more granularity into certain tech centers, tech categories, let's say, to try to figure out what section 101 and some other things -- you know, will things be viewed as maybe less patentable or, you know, some of the value to keeping a patent in force. Industry trends aren't quite available yet but are certainly something that we're going to continue to dig into.

MR. LANG: So, from an industry trend standpoint, though, I would say, you know, corporate budgets are going to be managed aggressively on the initial filing statement.

But now that you mention it, it occurs to me that the State Street maintenance fees are another important area where companies are going to be looking to (inaudible). I mean, there simply is only a subset of patents that warrant that kind of value so late into their term.

MR. SCARDINO: Yeah, so, as I mentioned, we were talking about this yesterday. When filing applications go down -- when application filings go down, we can control that a little bit with hiring fewer examiners or reducing overtime. When it comes to maintenance fees all it is, is lost revenue. So, from the CFO's perspective of course, you know, that requires us to plan that much more accordingly and, not to be a Debbie-Downer today but sequestration could come into play in fiscal year 2016 again. So, that's something we're also keeping our eye on.

You know, 2013 sequestration meant a 5 percent across-the-board cut for most federal agencies, so we lost -- like I mentioned earlier, $147+ million was sequestered. If that happens again in 2016, that would be less money available.

So, we are keeping track of this very, very closely.

MR. THURLOW: So, one last question. In preparation for the work that we do this fall, I actually was on the Bar Association side working on the fees at that time. This year it will be different. I assume that you keep pretty -- you track the cost of certain events and filings and so on. In particular, I've asked in the past, the AIA had some specific provisions in there that the fee for, for example, and IPR should match the cost of conducting the IPR. With all the IPRs being conducted and so on, it seems like -- well, I guess my first question is: Are you continuing to track those fees? It just seems like it's more than what the fee is.

MR. SCARDINO: You bring up a great point. I guess I should just remind everyone. USPTO is required to have full cost recovery at the aggregate level. So, there are some activities that we actually kind of discount. We don't get full cost recovery. There are some that we try to charge at full cost. And then there are others, like maintenance fees; of

course we make money off of that. There's almost no effort involved in that. So, when you talk about IPRs and such, we do continue to track costs, and through any fee-setting process that's our starting point. What does it cost us for each activity, and then do we want to -- in some way, shape, or form -- continue to do full cost? Do we want to somehow modify behavior, change management, something, induce people to do things differently such as electronically file or reduce the number of claims, whatever it may be. So, yes, we will be looking at that. We continue to look at that very closely.

MS. JENKINS: Great. Thank you. We always look forward to receiving your report, and obviously this committee plays an active role in helping to advise the USPTO in the area of fees.

MR. SCARDINO: No, thank you for the time yesterday. It was very helpful to hear from our stakeholders in terms of trends. We love to hear the feedback and we're going to do our best to implement it.

MS. JENKINS: All right. So, then we segue to Dana -- thank you -- on the legislative

front.

Dan.

MR. COLARULLI: I have less New Yorker background than Tony, but I'll try to also find a new land speed record. I also often refer to Tony as Debbie Downer, so feel free to do so. (Laughter).

MR. SCARDINO: I got sick of the skunk at the picnic, now, so.

MR. COLARULLI: Thank you. Good afternoon. So, I'm going to spend most of my time today addressing the issue I think you all are most interesting in, which is giving an update on where the legislative discussions are on addressing abusive patent litigation. I'll make a couple of comments the fees, because I think that relates to your discussion here. We'll spend a little time just identifying the bills and then lightly touching the issues and then talk about a couple of things that my team is working on. So, let me start there.

So, patent litigation abuse. The discussion around legislation continues to be very active since I last addressed this group.

The House, as you all know, earlier this year reintroduced their legislation. They've held a few hearings on the issues, both on substance and then on actual text that was introduced.

The Senate followed suit -- more recently introduced the Patent Act -- there's an industry in acronyms for legislation, by the way -- introduced the Patent Act more recently, which reflects the discussions that ended last May, and they're picking up basically on that draft and making some additional improvements.

An additional Senate bill was introduced earlier this year, somewhat in opposition to the Patent Act by Senators Coons, Durbin, and Hirono -- the STRONG Patents Act -- addressing issues focused on changes to our IPR proceeding. They had included provisions on our funding as well as a number of other issues.

So, both the House and the Senate are moving forward with the discussion. I think, according to Politico just today, the House may be in a position where they might mark up their bill as soon as next week. The Senate, we know, also is eager to move their bill through a process

that may take a few more weeks. As of today they haven't noticed a markup for their bill, which means it will probably be a few weeks now when they'll have an opportunity, given congressional recess.

I think the House started where they ended off last year. A lot of the discussions in the House through the hearings and the discussions we're hearing from staff reflect that they'll likely make some changes at markup, changes that I think might be very similar to what we've seen in the Senate bill. The Senate bill did make some changes, again from last year, but I think at the end of the process you'll have two bills that will look similar. They won't be identical. Staff will need to work to try to reconcile some of the differences around probably some of the key issues.

Both bills include a provision on fee shifting, but there are some differences. Both bills include, as of now, language on discovery but, again, the language is different. Same on pleading. I think those three -- as you look at the litigation management issues, those three are

the ones that are most hotly discussed. There are a number of other issues that I'll flag as we go forward.

So, on the comprehensive legislation, this reflects the three vehicles that have been discussed and introduced earlier this year.

Demand letters. That issue continues to move on a parallel track. There is still language in the comprehensive bills but maybe not to the extent of the bill that's been marked up out of the House Energy Commerce Committee on addressing demand letters, increasing specificity. The House bill also includes language that would preempt some of the many state statutes. Some 19 to 20 statutes in states have been enacted just since this legislative discussion began. It's created somewhat of a patchwork of statutes and standards across the states. So, this is an effort to make some sense of that, some uniformity. We'll see how that's received in the Senate. A similar proposal has not been discussed in the Senate. That's actively on demand letters.

Other issues have been addressed: The

university community. It continues to be concerned with the Grace Period as it was enacted in the America Invents Act. There have been companion bills that both the House and the Senate introduced called the Grace Period Restoration Act. I think it's fair to say that that text, as written, would have a very significant impact. We've looked at some of that language. I think there's a question about whether we could actually implement it. But it certainly would move in the reverse direction of the America Invents Act. There are some discussions about alternatives, and we're active in those discussions.

And then Ranking Member Conyers on the House Judiciary Committee, along with other co-sponsors, ardent defendant of our fees and allowing the Agency to keep its funding, introduced a bill just focusing on that issue. Ranking Member Conyers and some other members on the House Judiciary Committee have been less enthusiastic about comprehensive change in the wake of the American Invents Act and have not supported those efforts. So, this is an

alternative bill that the representative introduced.

So, let me lightly touch on -- I mentioned some of these as we went through the descriptions already:

Certainly demand letter sufficiency. Fee shifting, pleading, discovery -- all again still prevalent in the discussion this Congress. Transparency of ownership. In general that goes to providing additional authority to the PTO but also additional requirements to come and update the PTO with information on who the ultimate parent entity is and some additional information. Generally supported a lot of active discussion last year triggered by our proposed rule and the extent of that language. Same provisions that were discussed last year have been carried forward this year.

Similar discussion on customer stay or the manufacturer stay. Very little changes to that language. Lots of discussion, particularly in front of the House on the scope of the stay, who can request that as an end user, how that is defined; who can request that the court stay that

proceeding upon consent with the manufacturer to proceed parallel litigation on the patentability issue. So, there will continue to be some discussion. I think the Senate conversation last year got this language to a good place. There may be some additional tweaks.

I mentioned grace period. Other miscellaneous provisions, including double patenting, IP bankruptcy, again, are some of the discussions that were teed off last year.

An increased discussion over the last few months, and we heard Chairman Grassley when he introduced with six other members the Patent Act in the Senate on the PGR and IPR proceedings, our post-grant proceedings here. Chairman Grassley specifically said, there's one issue I would like to address and that's to make sure that there isn't -- like in district court litigation -- we're looking at ensuring there's no abuse in the PTAB proceedings. There have been lots of discussions about what might be done legislatively to address -- to make changes to these new proceedings. We've said to Hill staff that we're happy to discuss.

There is a lot that we're doing here. A year ago we did the eight-city tour with a lot of stakeholders. We had discussion here in Alexandria as well. That's a lot of written comments. That's resulted in our making some procedural changes, relatively minor quick fixes, earlier this year. As you all know, we're anticipating a rule package this summer, as well, to make additional changes that address some of the concerns we're hearing in the legislative context as well.

So, the AIA gave us a lot of authority to ensure not only that we could implement but make sure that we're actively managing the proceedings. We're doing just that. Doesn't mean that there couldn't be reasonable changes in legislation, and that's what the discussion is up on the Hill right now. But notwithstanding those, we're continuing to manage the program with the authority that we have.

I mentioned that I wanted to say a little bit about fee setting and just add to some of the things that Tony said. You know, there are a number of things that might cause us to look back

at fees and decide whether they either recoup the cost or, depending on filings, whether we need to make some changes. Well, Congress also certainly can make some changes that cause us to need to change our assumptions and maybe suggest or consider fees in a fee- setting process. It goes to the wisdom of having these two provisions in the AIA of allowing the PTO to set its fees and then ensuring, to a greater extent, that the PTO can keep those fees.

That authority to set fees expires in 2018. The AIA put a sunset on that proceeding I think, as sunsets in legislation usually are added to ensure that the PTO uses that authority appropriately and to give Congress an ability to come back in. So, that's something we're certainly looking at I think to the extent that we get close to that 2018 timeframe. It puts Tony's team in a tough position, so we certainly wouldn't want to get any closer to it. I hope that comes up in the legislative discussion. It's something that we've raised.

I will add that Tony mentioned that they're going through the process of determining

what our budget is. Just this morning the House Commerce, Justice, Science Subcommittee approved, by voice vote, our budget slightly higher than we had requested, but it generally still includes the language for us to access the funds in the Fee Reserve Fund to the extent there are -- and provides us funding at the authority, again certainly above what we had requested, to our satisfaction. So, we see that as a positive movement as well.

I'll end with saying that patent litigation and reform aren't the only IP issues that are being addressed on the Hill. Lots of activity yesterday on domain names, particularly the dot-sux domain name, the impact on the IP community. It's actually an important discussion. Lots of discussion about copyright system both on the policy side and structure. All of those are things that we're paying attention to.

And then last, we've gotten a lot of continued interest in our satellite offices from our congressional community, so we're helping to facilitate those conversations. We've got two

offices that open at the end of the year, Silicon Valley and Dallas -- we're hoping to open. And there are a number of other opportunities where members of Congress have jumped in and supported what we're doing, pro bono launches among those things. So, very active even outside patent litigation abuse.

And with that, I know that Wayne Sobun has a question for me. (Laughter) So, I'm going to stop and take any questions that we have. I did not meet the land speed record, so.

MR. SOBUN: Thank you actually for a very efficient overview, and I have no questions.

MR. COLARULLI: Thanks, Wayne.

MR. THURLOW: I have a question. I always have a question. (Laughter) So, a quick comment and a question.

MR. COLARULLI: See, I was just trying to avoid Peter Thurlow's question. That was really --

MR. THURLOW: I will vamp for a while. Do you want me to do that?

Today big focus of the meeting today was patent quality. There's plenty of debate on this

one point, but the estoppel provisions -- we've talked about a PGR. The issue -- Chief Judge Smith just spoke about PTAB issues. There's going to be discussion in the future about the amount of filings in a PGR area, and that's subject to a lot of debate and curiosity I guess.

One of the things that I would say is some people may argue that the PGR may be an extension of the Patent Quality Program for a patent that shouldn't have been issued. And to the extent it's considered that and not an adjudication where 80 percent of the IPRs are in corresponding litigation, there may be arguments there to soften the estoppel provision as it is in the Senate Patent Reform Bill.

The second thing -- I said to Chief Judge Smith and Scott, good luck with the IPR, because there are various opinions just around this table as there is in the stakeholder community about VRI clear and convincing obviously standing provisions. And I think a lot of the different constituents, not to be too political, have good points, so we're watching that with great curiosity.

Last point, back to patent quality -- as we discussed, it would be interesting to see you, Drew, and others -- Russell -- say do you have everything you need in the statute now to implement some things for patent quality purposes. The example we discussed -- if you look at a European patent, they have reference numerals in there. I believe there is a provision in the European statute where they say those reference numerals will not narrow the scope of the claims. In the U.S. that hasn't been a provision that's been favored. Many litigators are concerned with that. But if there's something in there that could soften that. No one, even people in the business when they look at claims don't know what -- they're really not serving the public notice function. To the extent that we talk about claim clarity, that could be one way we can make them clearer at least in some technologies.

Wayne.

MR. SOBUN: We respectfully disagree. I actually do have one comment that we had talked about -- we've talked about before -- that I think

it's something just to watch. I don't think it's reached the point yet -- perhaps, maybe not -- for legislative action during this review. But it's something that we discussed during fee setting and also during the implementation of AIA, and it seems to be coming, to some extent, to pass -- is the amazing innovation of business models now, one way or the other, of inverse trolling of businesses designed to attack patents and one way or another for good or for ill to achieve those goals and may become abusive of the IPR and PGR processes. So, it's something obviously I know the Office is watching.

I know the stakeholder community is actually actively looking at this and watching, and I think it's something that we have to stay alive to, because it was a very big concern to us in terms of both how the fees were set but also how the procedures were created in terms of finding out real party interest, reasonable discovery, and ensuring appropriate estoppel effects are managed in a balanced way so that these procedures, which are a big change, are implemented fairly. So, I think it's obviously

a concern.

MR. COLARULLI: Yes, certainly something to watch, something we're concerned about. We want to make sure that the proceedings are serving the function that the AIA intended. We certainly don't want to undercut their effectiveness, and one of the most attractive features that we've heard from folks is -- and I compliment the judge and the PTAB for being able to both build a team and meet the time standards that actually make this proceeding effective and useful. I think that's also critical on both sides -- whether you're pulled in or whether you initiate for us to be able to do those proceedings quickly, whether it's to simplify litigation, whether it's to provide, as Peter suggested, a quality check on patents. So an alternative to litigation and a quality check were the intents of the AIA. We're critically concerned about making sure that we can still do that, so.

MR. BUDENS: Two quick questions. You'll have to put your prophet's hat on here. Care to speculate on what the chances are that we will or won't be hit with sequester, number one;

and number two, you mentioned right at the end interest in satellite offices, and so I'm keenly interested in whether that's a discussion of gee, I wonder how they're working -- or gee, I wish we had 25 more of them around the countryside.

MR. COLARULLI: Both good questions. So, the first on sequester: The two-year agreement had entered into is ending this year. Yet to be determined whether they'll meet the targets. So, I don't know. What I do know is that I think the situation will differ from last year or two years ago where Congress passed a bill that didn't meet the sequester mandates. They then directed the administration across-the-board cuts. The administration did across-the- board cuts, and that really negatively impacted the USPTO. This year I think there's a movement for Congress to -- if they are likely not to meet the mandates of the Budget Control Act -- that number -- they will likely, themselves, do an across-the-board cut that's fair and equitable so that they meet the mandates. So, there would not be some additional calculation by the administration.

That is a terrible way to run government certainly. It may not impact USPTO as much as it would very negatively impact other parts of the federal government. And that is because of the mechanism that we have, ironically, so that if PTO collects more than its appropriations, it goes into the Fund and we have a mechanism to access it. So, by order of across-the-board cuts -- of the number that is passed by Congress, that reduces our appropriations, so it would trigger that provision.

I think we have higher certainty that we will be able to access our funds. My original statement remains, it's a terrible way to run government, but it gives us a little more certainty.

On the satellite offices, I was referring to the two last offices where we don't have permanent locations open but we're well on our way to having them both in Silicon Valley and in Dallas. At this point, we're not considering opening up more offices. We'd like to see if we get these offices set up, make sure that they're working. Russ did a great job in Denver to make

sure that that office got a good running start. We want to make sure all the offices are working. It's been a learning process as we've gone through both on the hiring to meet the operational needs but then also all the opportunities that we have to extend the outreach and education that USPTO has traditionally done to newer audiences. So, I think at this point we're sticking with the four but might reevaluate that in the future.

MR. BUDENS: By the way, I don't know if I told you all yesterday, but just on Tuesday morning we signed the agreements between USPTO and POPA on the last two -- the Dallas and San Jose offices -- so that wraps up the negotiations and stuff that we had to do for those two offices to get them opened.

MR. COLARULLI: Thanks, Robert.

MS. JENKINS: Dan, thank you. Always insightful, always a changing arena so to speak, so thank you for your efforts.

Just want to take one minute, because we did talk about satellite offices, and just do a shout-out to Crystal Sheppard, a former PPAC member and in attendance for our meeting.

Now, the new regional director of the Detroit Satellite Office. Welcome.

And we're also very fortunate to have the former regional director of the Denver satellite office, right? Am I getting that?

MR. SLIFER: Rocky --

MS. JENKINS: I'm sorry, Rocky Mountain Satellite Office. And new Deputy Undersecretary and Deputy Director of the USPTO, Russell Slifer. Welcome and thank you for coming.

MR. SLIFER: Sure, thank you. I know a few of you on PPAC -- Wayne and Mike --

But I'm Russ Slifer. I'm, as Marylee -- thank you -- introduced me. I was the regional director in the Rocky Mountain office when we opened that in July. So, I was going to talk about the regional offices at the end, but I'm going to jump to that real quick just kind of as a follow- up.

We are going to open those two remaining offices this year and get them staffed up in the early part of next year. So, we're looking forward to, if you will, kind of completing one

of the last phases of the America Invents Act. Between the PTAB and the patent operations, a lot of that has been implemented and, as Dana just said, now Congress is working on changing that. But we're finally able to get these last parts opened up and excited about what that means for, not just the examining core in our PTAB that are located there, but what it means for the regions and the outreach and the community we're able to reach there.

So, this is my first PPAC. I look forward to many more with you. Since I joined the PTO, getting behind the curtain, shall we say, I've had some great experiences. We've got fantastic leadership. You've met an awful lot of the leadership over time, but we have some great leaders here in the PTO. We have a strong working relationship collaborative with POPA. We've got, as you've heard, some exciting improvements in our IT that have been in the works for a long time and we're getting closer and closer to rolling out the patents end to end and other improvements. So, I think the Agency is in a fantastic place there, moving forward on the IT,

and finally after the last sequestration able to keep the funding going in that, so we're not losing momentum there.

As you know, our patent operations are still making great headway on our pendency and our backlog, so we're excited to see, perhaps moving away from the word "backlog" and into inventory shortly, because we're starting to get to that level in a lot of areas in the Agency.

We've got success, as you've heard, on the PTAB level. We're able to keep up. We don't know exactly where things are going to go and what changes are going to happen there, but we're excited with the staffing and the ability to keep up our international cooperation and harmonization, and it continues. In fact, I'm heading off this week to visit Korea and the IP5, so I'm excited not only to be a leader of the Office but one of the faces of the Office both internationally and domestically.

So, I wanted to -- first off, I know this has been a long meeting, so I'm not going to ramble on about too many things. But I wanted to touch on quality for a minute, because I think it was

interesting and exciting that I got sworn in the opening morning of our Enhanced Quality Summit. And that wasn't by chance. We definitely wanted to bring as much as excitement to the meeting as we could and throw something unique out at the beginning.

But for my 20 years as a patent lawyer both in private practice and in the corporate world, I've had a strong focus on quality, so we're excited about our quality initiative. I think there's a strong believe not only in the leadership but throughout the whole Agency that we can always improve ourselves. There are always ways that we can make our systems better, that we can provide better tools and training to our examiners. We can support our examiners as they learn and improve. Through this, we certainly can make our decisions more clear on the record.

I think that's going to help everybody in the end to understand what the PTO is doing and why we're making these subjective decisions that we end up making. So, I truly believe in our new organization, what we're going to be able to bring

to our stakeholders by improving what we do and what our output is.

I know there's a lot of debate about what we need to do to improve quality, exactly what quality improvement is or what quality is in the patent.

I don't have an answer, Peter, by the way, to whether we're going to need any statutory changes or not, because we're still a little bit early in the analysis phase to determine what is needed, what our stakeholders think would help, and frankly what we think we need to do. We're reaching out to the community. We're involving them deeply. We certainly know that there are limitations to what we can do and should do, and so we're still somewhat in the early phases of that analysis, but we're going to continue to move forward because we know that it's something that we're responsible for.

I'd be remiss if I didn't take the opportunity to thank Peggy. I know she's not with us, but we're going to miss her. I've only had the pleasure of working with Peggy for less than a year, but every day that I do I realize that

I learn more from her in her dedication to this Agency, that she helped stand up the America Invents Act implementation, and was instrumental in making this one of the best places to work in the federal government. So, we're going to miss her, but she's done a fabulous job with her team, so I know we're going to have some continued great leadership on that.

So, with that, I'm going to stop my comments. I don't know if you have questions that you'd like to throw at me, but I'm open to questions.

Wayne? (Laughter)

MS. JENKINS: Quick. Make one up.

MR. SOBUN: I just want to say it's really great to have you in this role. We worked together quite a bit in prior roles, and I think it's just fantastic, so we look forward to working with you and with the rest of the staff collaboratively as we have been over the last several years. So, thank you for stepping up and taking on this. It's great. Thanks, Russ.

MR. SLIFER: I appreciate the comments, Wayne. Thank you.

MS. JENKINS: I think you'll find PPAC and the members to be very dynamic, very thought provoking, very challenging but all for the betterment of the Office.

MR. SLIFER: Great.

MS. JENKINS: So, we really look forward to working with you and working on all of this very short list -- I want to just tell you, I can see it -- very short list and however we can assist in any capacity, and as all the folks that we've worked with already know, we're here to help.

MR. SLIFER: Thanks a lot.

MS. JENKINS: Anything else? Nothing? No? Anything else, Russ, on your side or are we good?

MR. SLIFER: No, those were the topics that I certainly wanted to hit, so I appreciate your reserving some time for me to meet the group, and I look forward to working with each one more closely.

MS. JENKINS: Great. Well, I'm going to close the meeting, and I'm going to move and I like to have a second. Is that okay?

MR. SOBUN: Second.

MS. JENKINS: Wonderful. Thank you. Thank you, Wayne. Second. So, we close the meeting. Thank you so much.

MR. SLIFER: Thank you. Thanks so much.

(Whereupon, at 2:52 p.m. the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: July 31, 2015

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