UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, May 5, 2016

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P R O C E E D I N G S

(9:03 A.M.)

MS. KEPPLINGER: Good morning all. Welcome to the PPAC meeting, Patent Public Advisory Committee. We're pleased to have people here in the audience and any of you out there who are joining us online and should anyone have any questions or comments, please let us know and we'd be happy to try to address those. Perhaps we could go around the table and just announce ourselves and our position, our PPAC or whatever, and maybe, Kathy, we could start down there with you.

MS. FAINT: Cathy Faint, NTU245 and PPAC.

MS. SCHWARTZ: Pamela Schwartz, Patent Office Professional Association and PPAC.

MR. GOODSON: Mark Goodson, PPAC.

MS. CAMACHO: Jennifer Camacho, PPAC.

MR. WALKER: Mike Walker, PPAC.

MR. SOBON: Wayne Sobon, PPAC.

MR. HIRSHFELD: Drew Hirshfeld, PTO.

MS. KEPPLINGER: Esther Kepplinger, PPAC.

MS. LEE: Michelle Lee, PTO.

MR. FAILE: Andrew Faile, PTO.

MR. THURLOW: Peter Thurlow, PPAC.

MR. LANG: Dan Lang, PPAC.

MR. POWELL: Mark Powell, PTO.

MR. BAHR: Bob Bahr, PTO.

MR. SEIDEL: Rick Seidel, PTO.

MS. KEPPLINGER: Okay, well we have a full Agenda this morning, and I would like to turn it over to Michelle Lee, Under Secretary and Director of the PTO for opening remarks. Thank you.

MS. LEE: Thank you very much, Esther, and good morning everyone. It's always a pleasure to join the quarterly PPAC meeting. We have a lot of progress to report on, on so many different fronts and of course throughout the day you'll be hearing lots of details about each of our initiatives that we have planned for you. Before I turn it over to my super talented colleagues and team members, who always know more about the topic than I do, I do like to touch upon some of the highlights for you as I look ahead for the day.

Last week we hosted a patent quality symposium. The event provided an opportunity for us to conduct an all-day review of the major quality programs we've launched since last year's patent quality summit, and there are a lot. Almost a dozen initial initiatives. It also provided us with the opportunity to assess the progress to date, to reinforce the vital role of our patent examiners in helping us to execute on this initiative and to look forward to our future progress. We had tremendous attendance from examiners as well as the public. Over 2200 participants in person or via web, which I think reflects what I have been saying since we started the enhanced patent quality initiative, that this an important matter to be focusing on by the agency at this point in its history. The success of the symposium and the enthusiasm from the participants both, both internal and external, are sure signs that the quality initiative will be embedded in the permanent part of the USPTO and its operations and its culture, now and in the future.

As another part of our continued

commitment to both quality and being responsive to stake holders, I am also pleased to tell you that we will be shortly rolling out another round of training on Section 101. While, in the past, we have focused our training on how to apply the legal standard in light of major Supreme Court rulings, we are now focusing on the mechanics of drafting a clear rejection and then subsequently how to clearly respond to an applicant's arguments reversing the rejection. We've been given a short break between major new Court decisions and we are using the time to double down on fine tuning our processes as well as enhancing our training. As always, this training will be available online once we've provided it to the Corp and we anticipate that coming out in a few weeks. We will also shortly be updating our Section 101 guidance. In particular, we are focusing on providing new examples, especially in the bio-tech space. We think you will like what you see, but we invite your feedback and comments on how we are doing and what we can do better as always. Implementing the shifts in Section 101 case law is an on-going process and we need to hear

all of your perspectives to make sure we are headed in the right direction. In addition to our patent symposium, we just wrapped up our patents training at headquarters, or PATH, a two-day training event yesterday with more than 400 patent examiners and managers in attendance. Events emphasized team building, trust, efficient communication, and best practices, and it allows for personal contact between our hoteling examiners and our managers. Our goal is to further engage hotelers, teleworkers in the USPTO workforce, and to strengthen the quality of our patent examination process. I do want to highlight a couple of new developments on the Patent Trial and Appeal Board front. After extensive public outreach the USPTO issued new final rules proactively addressing concerns raised by users on improving the proceedings. A few highlights of these rules include, that we are allowing patent owners to include in their opposition to the position to institute testimonial evidence addressing concerns that patent owners had about being disadvantaged by the previous rules that limited such evidence to

petitioners. We're also adding a Rule 11 type certification for papers filed in such PTAB proceedings. We're also clarifying that the PTAB will use a claim construction standard used by District Courts for patents that will expire during the proceeding and therefore cannot be amended while using the broadest reasonable interpretation claim construction standard for all other patents. The USPTO will amend its Office Patent Trial Practice Guide to reflect what these rule changes, as well as developments in practice concerning how the PTAB handles motions to amend, additional discovery, real party and interest, privacy issues, and confidential information.

On the topic of motions to amend, you will be glad to hear that the Board has conducted a study to better understand when and why the Board grants or denies motions to amend. Interestingly, this study reveals that not that many motions to amend have been filed. Only in about 13 percent of the cases, and decided on the merits, only about 61 percent of those 13 percent of those decided on the merits and denied in full

or in part, in more than 80 percent of those cases the Board denied the motion because of the proposed claim failed to meet a statutory requirement of Title 35. This is as it should be, and it is as Congress intended.

Finally, as you are aware, last week the Supreme Court heard oral arguments in Cuozzo addressing the issue of the appropriateness of the broadest reasonable interpretation BRI claim control standard for interparty review, and whether PTAB decisions should be subject to judicial review. We expect a ruling, we think, some-time in June. So, clearly it has been a very active time for PTAB and I want to say thank you to all of you who provided comments and input at the Patent Trial Appeal Board. As you can see, we've been very busy at the PTO. There's a lot of information to cover today, not just on quality, not just on PTAB, but on important updates on our international efforts, as well as updates on our patents end to end system, along with updates on legislative priorities and our financial plans. We appreciate the good work of the members of our PPAC, I thank you for your

service, we look forward to the continuing dialogue, because you truly do help us do what we do. So, thank you and with that I will turn it back over to Esther.

MS. KEPPLINGER: Thank you, Director Lee. As you can see, the office has been very busy on the quality front and also the PTAB changes which will be welcomed by the community. The PPAC applauds the efforts that are being made on quality and, in fact, we got to participate yesterday at the Quality Subcommittee from the PPAC in giving us a short summary of our background and taking questions from the examiners and we had, I believe, nearly 900 people. It was a tremendous outcome of response with the examiners being engaged. So, we hope to be able to do something like that in the future, and thank the USPTO for that opportunity because we really enjoyed interacting with the examiners.

MS. LEE: And, if I may, I would like to thank PPAC. It's critically important that our examiners hear directly from all of you -- from all of your various industries. I know they very much enjoy it. I know it is very

informative, so thank you for that.

MS. KEPPLINGER: Our pleasure. We are here to do whatever we can. So, I would like to turn it over to Bob Bahr.

MR. BAHR: Thank you, Esther. First, I am just going to give you an update on a patent examination policy. There are two issues that are sort of justifying update. The first is a written description in design applications and next, as Michelle Lee mentioned, on subject matter eligibility update. First, I am going to discuss the written description issue in design applications. We published a Federal Register Notice April 15th, this is responsive to concerns that have been raised -- I'm going to say the last two years -- from members of the public concerning how the written description requirement was being applied in design applications and this notice basically sets out our proposed, or the approach we are taking and requests public comment on it. Specifically, in regard to examples. These are, of course, design applications so the claim is the picture for the most part and so you can articulate in words what a legal standard is for

written description, but really you need to sort of have examples to see in the pictures what the words are really talking about, to truly have a meeting of the minds between examiners and applicants. So we are really hoping to be able to come up with some good examples for the public that are helpful in showing the line between when there is adequately written description and where there isn't. The focus here is not so much when the application is filed and has an original claim or an original drawing. It's more when the applicant amends that drawing, mostly by directing the claim to a sub-set of the disclosed elements, or when the applicant files a continuing application where the claim is only to a sub-set of the original disclosed elements. The question is always: how much removal, or what types of removal of elements is too much removal to the point where we say that there is no longer written description for any original disclosure for what's now being claimed. Basically the approach, or what we have stated in the notice, is that we think that in many or the majority of situations where you're simply

removing elements from the drawing, that there will be written description support or the later claim design, but we recognize that there are situations where the original disclosure is to sort of like -- we like to use as an example -- an array of blocks where in the continuing case or in any amendment basically it's limited to a selected group of blocks that in essence form a new design, that we think that the applicant will have gone too far and there is no longer written description support. But, the question is always: what is the appropriate line? Hopefully, we will get some good examples and we will be able to come to a consensus on how much change or how much removal is too much, or what subjective removal is too much. The notice is set for June 14 date for public comment on this proposal. Are there any questions on that before I move into subject matter eligibility?

Okay, thank you. The next is subject matter eligibility. Yesterday we issued a memo to examiners and we posed materials on our internet website concerning subject matter eligibility, and I know I am catching you all in

transit, so Peter was kind enough to ask for a copy of it, and so I made folders that contain all the materials for you, so if you're having trouble getting to sleep tonight, it's helpful material. (Laughter)

Basically, what we did is, first, we published what we are doing in a Federal Register Notice. It will publish tomorrow, but it's after 9:00 o'clock, so it should be available to the public in the Federal Register's reading room right now. What we have issued is, first, we issued a memorandum to the Corp, which discusses what I'm going to call best practices in formulating eligibility rejection in evaluating applicants' response. Sometimes we focus too much on --I'm going to call it the prima facie case -- and what needs to be in an office action. I wanted to stay away from that deliberately because I don't want to say this is the minimum, do the minimum, because that's not really what we want to do. We want to do a good job. We want to clearly convey our position to the applicant and fully treat their responses, we don't want to focus on what you have to barely do to pass muster

under the patent laws and regulations. So, that's why it's worded the way it is on what is the best practice rather than to do a prima facie case, you must do x, y, and z. I kind of wanted to stay away from that language.

The next is we published some life science examples. We've gotten a lot of public comment asking for life science examples, and we are trying to be responsive to that, and I'll discuss them more in detail later.

The next is we've done something different in this notice. Normally, we say 60 day or 90-day comment period, we've left that out, we've made it more open ended because nothing is going to happen in 60 or 90 days in this area that we can predict. We just don't know when something is going to happen. So we simply are asking for comments on an ongoing basis and if we see from our own practices that something needs to be changed, we'll change it. If we see from a comment that something is not going right that we need to change, we will change it, and obviously if there is some judicial change, we would react to that. I wanted to time our next

action in response to something that requires it rather than an artificial date. That's why we have left it open ended, and also we get calls at 100 days and if someone has a good comment we still want to hear it, we don't want you to feel that the comment period is closed so I can't respond, I can't write in anything anymore.

Finally, I wanted to mention that as one of the Enhanced Quality Initiatives there was a request for suggestions for topics that we should study. We have selected six and three of them are directed to patent eligibility issues, so it is not an issue that is in the back of the mind, it is an issue to the forefront and the ones that will be done is the consistency of office actions across the technology center -- not so much consistency of decision making and the office actions -- but whether or not they are conveying enough information to the applicant when we make patent eligibility rejections, and then there is another topic summation on compact prosecution, whether we are doing compact prosecution in our office actions that contain patent eligibility rejections.

MR. THURLOW: Hey, Bob, just to interject, so last Wednesday I was up in Harlem, 127st Street where there are 25 start-up companies in the bio-tech area, and we actually were talking about this and saying be patient, the Patent Office is going to give us some examination guidelines in this area. So it is very helpful information. Can you give us a sense -- we haven't read it -- is there hope in a diagnostic area? That seems to be a particular area of concern, or is it a fleeting hope?

MR. BAHR: Well, I hope it is viewed as more than fleeting hope, I hope, I hope, too much hope here. (Laughter)

It was our intent and our design to -- I'll get more into it later - to show what we feel would be patent eligible in the subject areas where they are of most concern in the life science area. So I'm hoping that they're viewed as not negative, but to sort of shine a light on what we think would be patent eligible. I'll get more into detail in there.

MR. THURLOW: Thank you.

MR. BAHR: No problem, feel free to

interject whenever you have a question. With respect to the memo, we have clarified two things. Primarily to examiners, with respect to when an eligibility rejection is made, or when its eligibility is analyzed, it's basically from two parts of the Mayo/Alice framework. The first is when you identify and explain what the judicial exception is that is at issue, and that we want to make sure that -- especially in the abstract idea area -- that examiners stay close to the concepts that have been identified as abstract idea in the case law, and do not try and expand the case law to other areas. Second, is when you look to the additional elements to see if they provide significantly more. There is a concern that applicants are looking at these additional elements in isolation, and finding each one of them to be separately conventional, and then dismissing all of them, rather than looking at the additional elements both individually and in combination. Because as we all know, even in an obvious rejection often times the individual elements are old, they're not novel, and so it's not enough to say that each of these is

individually known, you have to address the combination before even making an obviousness rejection. Certainly it is appropriate with equal force to do that in a patent eligibility rejection. I remember at our last PPAC meeting, Wayne brought up the raccoon story, where sometimes he would mentally see that wild raccoon and think he saw a raccoon once trying to wash cat food in a bowl, and that mental picture stuck with me. I wanted to include that in the memo but I just could not convey it as artfully as Wayne did. It was a great story, I wanted to talk about raccoons but it just wasn't working out. (Laughter)

The second part of this is how to respond to an applicant's argument. I think that what happened in the earlier training is that we stated that Section 101 issues are a matter of law, and many things are a matter of law. I think that Guide taken as, it's a matter of law so your arguments and evidence don't matter, obviously that's not the case. So we wanted to make it clear to examiners that arguments, and certainly any evidence submitted by the applicant, needs to

be considered before a decision is made to maintain the eligibility rejection, and this sort of emphasizes that to examiners.

Finally, we plan to do workshop style training. As I mentioned, that should be coming up. It's eminent in the next few weeks that we'll start this training. That's the memorandum.

Next is the life science examples, and these, of course, are responsive to a request from the public that we give some examples. Six of these are drawn from the case law and we've made hypotheticals, and what we've tried to do in each of these examples is we basically have a fact pattern. And then we have an initial claim, that I am going to say is ineligible, because it fits right into one of the cases that the court would claim to be ineligible, and then we have another group of claims following it that show how that subject matter could be claimed in a manner that we would consider it eligible. So we tried to stay away from just saying, here are 10 examples of ineligible and here are 10 examples of eligible, good luck sorting them out. Rather, we take the same situation and we show ineligible

claims dictated by the case law and eligible claims to sort of shine a light to both examiners and applicants on how to draft an eligible claim in these particular areas, rather than just random examples of ineligibility and eligibility. Also, we did get some requests for --

MS. COMACHO: Just a quick comment. I wanted to thank you as well as Peter on the life science examples. I wanted to also give you some very early feedback. Apparently they went up yesterday afternoon and I had an email from a former colleague of mine, and she had gone through all of the life sciences examples and was very appreciative of the efforts that went into it and she thought that several of them were quite helpful in her own practice on the life sciences front. So they are out there and at least the early feedback is very favorably received. So, thank you.

MR. BAHR: Obviously I appreciate it when people are happy about the results, but I am also interested in giving examples that are actually helpful in a day to day prosecution of

applications and examinations. It doesn't really help to have examples that are positive but inapplicable in situations, so it may sound obvious but it's a comment that we get at times: That this is nice but it doesn't really help us in our day to day jobs.

MS. KEPPLINGER: Thanks, Bob. I haven't looked at them yet, but the approach that you described sounds like it would be very valuable and thank you for doing that.

MR. BAHR: Thanks, I appreciate it. I have to say it wasn't my idea, my predecessor came up with a lot of it.

(Laughter) Now, I'll just discuss briefly the specific examples in vaccines. Here we got a lot of concerns, and certainly I have been out at a lot of pharmaceutical and biotech conferences where there was a lot of concern because it was the best vaccines are those found in nature. They seem to operate the best and so there was great concern that, wow, suddenly these are patent ineligible, so we tried to draft some vaccine examples that would be different than something that is just found in nature and that

we felt we could treat as patent eligible. So that's the vaccines.

Also in the diagnostics method area we had some claims that illustrate the application of the significantly more analysis in these cases. Similarly, in the dietary sweeteners that was similar where it was a product of nature, to where you have a broad claim where it's just a product of nature, and then some modified claims where there is enough added to it where it is no longer just a product of nature and it is something that has marked difference and we view it as it would be patent eligible.

Finally, we had a screening for gene alternations, where it was similar to where we do the method claim for Myriad, and then we contrast it with some hypothetical claims that have other than conventional data gathering, and something that we feel could provide significantly more in this area.

Finally, I want to mention judicial development. As Michelle Lee mentioned there hasn't been a lot on this front. You could say the courts have been quote "giving us a break"

unquote, or you could say they haven't been helping us out, it's two sides of the same coin. Basically as far decisions, since our July 2015 update, there's only been three Federal Circuit Precedential decisions in the patent eligibility area, they were Mortgage Grader, Smith and Genetic Technologies, and these decisions really didn't -- I'm going to say change -- our understanding of patent eligibilities, so there's no change in our guidance from a -- I'm going to say what the law is on patent eligibility -- because these cases didn't really require that or necessitate that. There is also another case, Sequenom v. Ariosa, as most of us know, there was a decision by the Federal Circuit, I think last June, there was a request for rehearing an en banc hearing that got denied by the Federal Circuit, now there's a Certiorari petition pending at the Supreme Court. There are a number of Amicus briefs encouraging the Supreme Court to take up the issue. The response by Ariosa is due May 20th, so we would expect a decision as to whether or not the Supreme Court will take this case probably sometime in June or

late May, that's usually their timeframes. So, obviously we are not waiting for this decision because if the Supreme Court takes it up they will be months before something comes out, so there is decision to quote "wait for this' unquote, we certainly have our eye on this case as the rest of the patent world does.

Are there any questions on any of this?

MR. THURLOW: So, Bob, due to the importance of this area and the interest in Section 101 overall, of course in the particular for life sciences, is there any plan on having a web cast with you, and maybe one or two other people, and kind of walk them through the examples? I think you'd get a pretty good attendance from the audience on that.

MR. BAHR: Thanks, that's a good idea. That's something certainly we should look into doing.

MR. SOBON: Similar to that we had this very successful first interaction with the Quality Subcommittee and a large number of both in person and on the phone examiner core people, I think you might think about some sort of

targeted further interactions like that. It might be very useful to have something like that for these continued enhanced guidelines to talk about practitioners using them and examiners using them and have an exchange that could be actually very fruitful.

MR. BAHR: Were you thinking about the format that we used yesterday? Okay. That's an interesting idea, we'll think about that too.

MR. THURLOW: Do you still have the working committees? Years ago, maybe I just missed out on somebody, the business method used to be a medical device, there was different working committees where the practitioners could actually meet with the examiners in those areas, and I haven't seen them so much in maybe a few years.

MR. BAHR: We have those, we have partnerships, we have the biochem partnership, we have software partnerships, I'm not sure when they met last, I know the biochem partnership just met. In fact, we were trying to get these examples out in time for them, but the timing just did not work.

MR. HIRSHFELD: I was going to add that we have numerous ones and they have been going on, we've just recently had the design day here, which is one of the partnerships last week was BCP, and Bob and I have been asked specifically about having another joint group of public and PTO that would be directed to subject matter eligibility itself. We were discussing whether that fits in the software partnership or probably not, I think we would separate it out, but, anyway, it is something we are in the early stages or moving forward with.

MR. BAHR: The question I would have for you is, if we were to do a patent eligibility partnership, would it make sense to have a general one or would it make sense to have, I'm going to say, the big groups, one for the software, one for business products, one for life sciences? Because while it's all the same law, the issues sometimes are very different.

MR. WALKER: In my view the TC 1600 would be separate. The biotech partnership outreach meetings are very, very good and something like that to cover patent subject

matter eligibility for biotech in particular, I think would be very helpful. I mean, it would really take some time to work through these, I know you talked about vaccines as nature based products, but there are a lot of other nature based products in the agricultural industry, industrial enzyme industry, that people would, I'm sure, like to have the opportunity to ask very specific questions.

MR. BAHR: Thanks.

MS. CAMACHO: I concur, but I would say that it would be helpful potentially to have some communication between the two groups, because conceptionally there is some overlap, and I'm sure as you've been watching, there's some discussion between the analogies between software, for example, and DNA screens and that sort of thing.

MR. BAHR: Yes.

MS. CAMACHO: So I think that so long as there is some sort of a bridge so to the communications that might be helpful, but I agree the issues are at the practical level so distinct that it would be probably more productive to have

separate groups.

MR. BAHR: Thank you. Thank you all.

MS. KEPPLINGER: Thank you very much, Bob. I was remiss in giving your title, you're Deputy Commissioner for Patent Examination and Policy, so thanks for that report.

Next, we have Rick Seidel, Remy Yucel, Tony Caputa and Marty Rater. Rick is the Acting Deputy Commissioner for Patent Administration.

MR. HIRSHFELD: If I can jump in there for a quick second, breaking news off of the press, the acting is removed from Rick's title, and that was just announced yesterday. (Applause) So this brings my team of Deputies to be filled on the first time since I took this position, but I'm really happy to have Rick on board.

MS. KEPPLINGER: Congratulations, Rick.

MR. SEIDEL: Thank you. I'm going to have trouble, I can tell. We have several topics we wanted to share today. I thought we had a first slide with our quality agenda. Let's see if I can back up. All right, so we have several

topics we will be covering today. I'll start out with the patent quality community symposium, add a little bit more detail to what Director Lee's opening remarks were, talk about quality metrics again, not much new to report there. We're more interested in feedback on the Federal Register Notice and the direction we're moving on. Next, Remy Yucel will talk about reevaluating FCP 2.0 and pre-appeal, Brian Hanlon will join us, or I guess, Tony, you're going to cover topics submission for case studies, and then lastly Marty Rater will talk about some of our external survey results.

So, with that, as Michelle said, we had our Patent Quality Symposium last week right here in Alexandria. We web cast to all four of our offices, approximately 2200 attendees. I think we had about 1800 or so online and 400 to 500 folks actually in person here in the regional offices. A variety of folks attended, we had patent practitioners, inventors, academics, and examiners as well. A really good discussion about patent quality and again, as Michelle said, to assess our progress to date. We covered many

of the topics. Next slide. Much of the updates on the enhanced patent quality and initiatives, so really segmented it in a few different areas. The first topic was some of the search and training enhancements. One of our initiatives, as you all know, is our stick awareness campaign. Really, that's just getting the word out, leveraging all the value that our scientific and technical information centers have out to the examiners. So, that was part of sharing our efforts in that regard.

The second piece, we went through technical and legal training. In addition to many of our technical programs we have our site experience efforts for examiners visiting various technologies, but we also went through a lot of the legal training as well. Covering 112 A, B and F. Some of our efforts, I think, with in the past year or so, and then, of course, subject matter eligibility under 101. They were some of the highlights of the training that was covered.

From there we switched to prosecution enhancements and really one of the big topics for

discussion was the clarity of the record pilot. Talking about the goal of that program is to identify the best practices and really study the impact: what is the impact? What does that look like and how do we move this forward once we get some results from the pilot.

Next, we talked about some of the post examination enhancements, the post grant outcomes pilot, really leveraging what is done in some of the PTAB hearings and proceedings, sharing that information with examiners to learn of the outcome as well as just be aware of what happened to their case downstream.

Next, we had a presentation talking about big data, specifically our efforts to use big data analytics to improve quality. How can we leverage that? What are the right areas, what are the right opportunities to really leverage and improve our quality? Continuing on with the day, we then moved to a really neat interactive session, the master review form, and participants had an opportunity to test drive the master review form, just a very short one pager. Here is the office action --I believe a 103 rejection was

applied -- so walk through the appropriate portions of the master review form, test drive, we got a lot of good feedback. Actually, some of the feedback will be incorporated into the next generation of the master review form as we continue to evolve this process.

Last, we had another interactive session that was moderated by Deputy Director Russell, where we had patent practitioners talk about their perspectives of quality: what makes an improved quality process. So, basically, if you missed the event, if you go to our patent homepage, the quality area, you can click on the link and I believe it is segmented in five separate sessions, from introduction to some of the topics, to ultimately at the end of the day the discussion. It really captures the happenings throughout the day, so you can see the event live and even take a look at an abbreviated version of some of the slides in that regard. I purposely skipped the quality metrics -- that will be part two of the presentation -- here we are. Many of the same things are many of the same things I believe we talked about at the last PPAC

meeting. Again, just to review, we had the seven components from FY 11 to 15, they added up or they factored into a composite score, as you all know, moving forward we are not going to continue to use the composite score but as an outcome of that we have talked about the master review form. We will really dive into product -- not only statutory compliance or correctness -- but also the clarity in which we explain the position and the justification for applying the statutory compliance. We've talked about the transactional QIR data, the big data, leveraging the data we have on a variety of issues, and last the perception indicator, it's a survey results. Marty Rader will be sharing some more details later in the presentation.

Just to review, again, we talked about last time we've been very good about capturing correctness of the office action, so really what we see in the master review form is a compilation of many of the same questions -- many of the same items we've been looking at for many, many years -- probably the past 20, 30 plus years we've been looking at many of these things. Certainly

updated over time with case law and more efforts, but really, the biggest thing in the master review form is some clarity questions, you know, really trying to capture clarity. We talked last time about the transactional QIR, moving forward our three areas for focus will be process indicators, opportunities to really investigate. As with any of our quality index reporting one of the biggest things is to take a deep dive, investigate, look at the case, and part of our strategy moving forward is actually identifying outliers, looking at root causes really, not just driving to a number but digging in and looking at root causes and trying to identify why are we seeing reopening or multiple re-openings, or additional rework and then looking at consistency of decision making. So, again, the idea would be to identify some outlier type behavior, take a look at some of the cases, and try and get to the root cause, and with that as a passport, how do we build upon that, how do we improve that, how do we address some of those things moving forward to address enhance quality.

Then lastly, the perception

indicators, again, validating what we are finding in our master review form. We're doing it internally but perception indicator surveys, both external and internal, would be a good check and balance if you will. If we're seeing one thing, but then our survey results show something different, we need to reconcile that. So I think it is really a good opportunity to validate and verify what we're finding in the case reviews.

So, lastly, I just wanted to spend a little bit of time on the quality metrics. We sent out a Federal Register Notice on March 25. I always flip the two -- but cutting to the chase -- really we go through a lot about where we've been and where we're going, but what we're really interested in is feedback: Is this the right approach? To replace the quality composite: Is that the right thing? So, we are interested in what folks believe is the right path forward. The challenge, I think, is how do you objectively measure something that is so inherently subjective. So we are really interested in ways we can identify -- moving that forward -- something again going back to

meaningful transparent, and much more simple than our past quality composite. And then lastly, if you haven't already, I would encourage you take a look at the master review form. Really interested in your feedback: How we can improve that? Are we hitting the right things? And more importantly, I think everybody has a different idea of when you look at the master review form, what the certain items are. What are the key drivers? So one of the things in there is: Are we using the right form paragraph? I would submit that perhaps that is not a key driver of quality. So there are other things in there, you know: Is there item to item matching in a 102 rejection? Perhaps that might be so. Really interested in when you take a look at the form and you see the items, particularly in correctness and clarity, think about what are the key drivers. We'd be interested in your feedback there. What key drivers could we pinpoint to better assess the quality of the work product that we are assessing through the master review form. So with that --

MR. THURLOW: So Rick, just on that point, one of the key drivers to most applicants

is just the need for a good search and good examination, just kind of break it down in those two main parts. Yesterday when we had the conversation with the examiners -- one of the examiners made an interesting comment I was actually thinking about last night -- where he said can you acknowledge that the AAA the world of prior art has grown significantly, which makes their searching much more significant and challenging, and I said, sure, I can acknowledge that, it's very basic. But then looking back, I wish I had said to him -- but when I see my office actions I still see, for the most part, U.S. references, patents and published applications, I'm not really seeing global art being used in that. I don't know if anyone else has feedback or no, but I was trying to reconcile those two, so can you refresh my memory just on the test to see if they're getting the search done correctly and I'll just stay focused on that.

MR. BAHR: Yes, I would have to go back to the form for the details of it, but certainly we have several items that look at the effectiveness of the search. I don't know if

Marty or someone can jump in that remembers the specifics of the form, but I believe that one of them looks at was foreign art cited, or NPL, I believe that's one of the things in there that we would assess as well. I don't know if I answered your question.

MR. THURLOW: No, no, I think you did. It's just something --

MS. LEE: Thanks for that, Peter, and on that point Mark Powell will talk too about global dossier and we are very excited about global dossier because addressing your exact concern, right, recognizing that our examiners, obviously they are English language speaking, it's easier for them to search English language prior art, but with Global Dossier you've got the top five patent offices across the globe and now you've got their applications online assessable to the public as well as to the examiners. So when our examiners are looking at an application, you can imagine that one of the first things they are going to do is probably go to Global Dossier and see what these foreign offices have found, Japanese patent office, Korean patent office,

Chinese patent office, and European patent office, and find those prior art references and the strength and the beauty of it is that often times it is not in English language, so you are getting really across the globe, at least in these five offices, examiners who are searching in their native tongue and then having our examiners have the benefit of that, and we think that increases quality not only of the U.S. patents that issue, but patents that issue in Europe and Japan and Korea because they too will also have reciprocity and access to our stuff so everybody's patent quality is going to increase. I hope you will see more and more of those form references going forward.

MS. KEPPLINGER: That's a very good point, the Global Dossier does assist with that. The challenge will be the timing of when different searches are available. If we pick the case up first then we won't have it, but hopefully through the prosecution. And I didn't say it to the examiner yesterday, but of course that art always had to be considered. Before, it just was tossed out because it wasn't eligible under the stature

at the time. Now, it becomes eligible but they always would have, presumably, found that art and said that it couldn't be used. One point about the search is -- that I know back in my time in the patent office -- the statistics that we had from QR were that half of the errors were art that was already in the record, and half of the errors were for newly discovered art that was found because quality review did an additional search. So what I would do is encourage that you do a robust number of additional searches in order to identify whether or not the search is adequate because just looking at what the examiner found isn't necessarily going to tell you that the search was complete.

MR. CAPUTA: One of the things we're actually looking at for the master review form is for the admitted rejection, if that is the situation where the reviewer finds it, what we actually do is identify what the source is, but also the search logic, so that when it goes to the examiner they can actually get that feedback as to how that reference was found in the admitted rejection. So I think we are trying to address

it in the master review form.

MR. WALKER: On the master review form -- I looked at it and I think it looks pretty comprehensive. The thing that I thought that was good was when you think about measuring data, it seems like the data that you will be able to collect from this master review form will be a lot more comprehensive than the data you had before, if I understood that right, and I think that is a huge step forward. Because when you are measuring data it goes to the quality of the underlying data and it seems like that review form will give you a lot more meaningful data that you're collecting. That's my take on it. I thought it was very positive. Is that the right assumption?

MR. SEIDEL: Certainly in an end metric we would like -- best world -- we would like to roll that up but not necessarily into a single but maybe into subcomponents. Certainly we can share the data, you can take a very deep dive and see what we found, but ideally I think we would like to have some roll up data, so perhaps under 102 what percent were statutory compliant.

Right? And then perhaps 103 or maybe we combine 102 and 103 as a collective prior art assessment. So there's still a lot of ways, there's a lot of options, if you will, but you are absolutely right, we have a treasure trove of data to slice and dice and report in a variety of ways and it's just figuring out what's the best outcome for that.

MR. HIRSHFELD: I'm going to jump in here too. What we have been doing in the past is we only use 112 as an example. You'd have 112 correct or not correct, and maybe I'm over simplifying it, but when we wanted to say if we gave training on 112 and wanted to go see those results the data that we were capturing wasn't granular enough, and it wasn't enough, so there were two issues that we needed to look at, so we really had to pull people off line, have them do deeper dives themselves to look at particular issues, and that's not a very effective way to have the organization run. Every time you want to get some information on something that you trained on, for example, or you get feedback from the public on, you now have to go do a separate

study on that. What we'd like to be able to get to the point with the master review form is Europe capturing all of this data in real time, and you can easily pull it out any time that you need so that you don't have to do those necessarily deeper dives. This way just crunching the numbers you can see where we are doing well, where we need improvement, et cetera.

MR. FAILE: Sorry, Esther, to add into Mike's point, not only are we going to collect more data with the more specific granularity of the master review form, but if you look at it another way, the master review form kind of takes all of the inquires you do when you are reviewing a case and standardizes them across a large platform. So I think one of the benefits that hopefully we are going to get on the side of this, and maybe it's a big benefit, is that we're basically putting out a blue print for everyone, examiners, reviewers, the public, to say these are what we think are important parts of office actions and here is how we are going to look and score them, so hopefully we will be able to use that and for the first time kind of harmonize

across a number of different groups of what we are looking for in an office action. That's why I think Rick's comment to get some feedback early on the ground floor from everyone is really important so we can dial that in as best as we can, knowing that's going to be a narrative process over time.

MS. KEPPLINGER: I believe we have a question from the public.

UNIDENTIFED COMMENTER: Yes, just a quick comment from this examiner 2012 and I don't know if it's still the same, but and this is going to be really in the weeds, just to improve the breadth or quality of what's cited in an IDS is there a mechanism or is there a mechanism contemplated in the global dossier and any of the NPL to automatically transfer the results that an examiner deems pertinent directly into the IDS? Because that's general how stuff gets into an IDS it's like doc review and an examiner will go through and click yes, no, no, no, yes, no, yes and often times an examiner is overworked and doesn't get a chance to review those results but it does make it into the IDS and it doesn't for

NPL just because there's no click.

MR. POWELL: I will be discussing that very topic in a new initiative regarding that just before lunch.

MR. SOBON: I guess I have a couple of related questions. One is -- it is a quite extensive form. Have you estimated how much time it's going to be taking the primary examiner as well as reviewing staff to be completing this forms? I imagine it is going to be done on every single case or is it samples, or is it part of the core of every single case that gets through?

MR. CAPUTA: In terms of for the reviewers in OPQA, and I am the Director of OPQA, currently for the (inaudible) we give them 3.5 to 4 hours for review, on average. For the master review form, to actually look at the case, so it's not only the recordation but also to actually to review the case, so it's that type of process.

MR. SOBON: One question I also have then is -- it seems that some of it is ripe for automation given the patents end to end processing, in that when you are actually selecting certain things that are going into your

office action, that it would just automatically populate what was actually used. Is that also being contemplated, to have part of it being pre- filled, or an integration between the master review form and what actually the system is generating?

MR. RATER: I'll be glad to answer that one. Yes. So right now we have the reviewer -- the reviewing entity -- will maybe at least tell us what rejections were in the case. Obviously, when we go end to end and everything is in there we will automatically populate that form with what sections were in there. A lot of that has already taken place, if we know it is a final rejection it'll poll up certain sections of the form right now. So absolutely we are trying to make this as efficient as possible and make this as smart of a form as possible. What you see in the PDF for a diversion -- it's been shared out there on the website -- is 25 pages. Typically, in a review you might have three or four of those pages that are actually completed in a standard review. And to just kind of answer your other questions, yes we are doing a random sample of

office actions. Right now we are doing about 600 - 650 every two weeks. That is basically what our capacity is to review on those cases and that is just from the OPQA side use of it alone.

MR. HIRSHFELD: I can also jump in a little bit, Wayne, about your questions about SPEs using this, and what type of actions, and how it is being rolled out. Tony mentioned time that we're giving to the OPQA reviewers -- those reviewers have been using some sort of data collection, albeit not this extensive and not all in one place like we have with the master review form -- but they've been using it, but we've relied on them first to test and get an approximate number of hours that we believe it will take people to go through a review and do the form, then we've had supervisors, SPEs from Patent Operations, come in and test it and this way we're trying to gage the number of hours. The way this will proceed is: we will start with looking at some cases that are completed cases, and what we mean by that is at the end of prosecution, doing reviews and phase this in over time. So starting, I believe, now, immediately,

we will have some supervisors looking at a subset of the cases that are being reviewed to be able to fill out the form and use the form and give us feedback and we'll use that feedback to integrate and make it better and hopefully continue to increase the rollout. Just as an aside, one of the challenges that we are running into is most of the back and forth between a SPE and an examiner on a case is ongoing in real time and so using this comprehensive form is better at the end and so that's why we are starting it that way.

MR. LANG: Is there an objective in terms of relative time efficiency compared to the old way of doing things for the MRF, I mean, do you anticipate it is significantly more efficient?

MR. HIRSHFELD: I think that for our supervisors in patent operations it has pluses and minuses in terms of efficiency. It's going to take more time for them to be capturing this data on the cases they review. They're not -- as I mentioned OPQA is used to going to a data base and capturing all the data -- our reviewers typically have not done that. So, I believe -- I

don't know if decrease of efficiency is the right word -- but it's going to take them time to be able to do that. There will be efficiency gains however, when you are able to better judge the quality and the output of your art unit of your area so you can better focus training, et cetera. So, Andy, Phil and I talk at least twice a day about how we are going to roll this out in an effective way because it is going to be more work for SPES, over 600 SPEs, and to just throw this out to them would not be an effective way, so we are working on how to do this in a measured, careful manner.

MR. FAILE: So, to add into that Dan, what we're really looking at is kind of a trade off in kind of an upfront investment cost for people to understand from, understand how to use it. The thought is, over time they will become more proficient and then it's going to take them less time, and then the value of grabbing the data at a certain level where it's not just at the aggregate TC level, being able to go into TC's and into work groups and look for trends and identify training opportunities and lean up processes, is

that that equation makes sense over the long run knowing at first there's going to be some kind of investment of upfront cost of people getting used to the form and being able to use it efficiently.

MS. KEPPLINGER: If I could add what I think the value is, I think it provides a uniform evaluation form for all cases, because in the past the SPEs were evaluating but weren't necessarily recording what they found in those cases, and there was not a uniformity across the Corp for that, so this tool will provide that and provide a picture of all of the evaluations done in the agency.

MR. THURLOW: That sounds very worthwhile.

MR. HIRSHFELD: Another advantage that I see with the form is you will be able to give back much better feedback and I'm not only talking about correct or incorrect, but I'm talking about how to just better -- how to be more clear and also we'll be able to use the form to give positive feedback more than what we've done in the past. So, personally I'm really looking forward to the examiners being able to get much better data on

their cases, much better feedback so they can say: Okay, maybe I've done everything correctly, but how do I even do better? How do I get more efficient for myself in the future? I think that's going to be huge for us.

MR. SOBON: That was one of my concerns. It is always a tweaking of how the form is structured, because it can actually engender effects rather than just capturing it, it actually effects the experiment, and my casual read through it, it seemed a little more biased toward where all the errors were, which can actually lead you to search for errors and actually come with create errors, but I think that if your focus is that it should be balanced in terms of what did they do right, where is there an error, I would prognosticate that you may be tweaking the form a bit as you adjust that, because I am always concerned that the experiment actually, you know, the actual measurement check effects the experiment.

MS. KEPPLINGER: One thing --I don't know if you are going to do it -- when we used to get that letter, when a case of ours was reviewed

by QR and found to be correct, as an examiner I received a letter that said hey, we reviewed your case and everything was great, so I think that's a positive thing to your point that could or should be done if it's not currently.

MR. HIRSHFELD: We've done that to varying degrees. What we'd like to get to is not only a letter saying you've gotten this case and it's good, we want to say the serial number, and what you did well about it, and really give some meaningful positive feedback. We have heard from some that we love what we always call -- and I'm sure you did to, Esther -- the atta boys, but it was a very broad: Hey, we picked the case and it was good, congratulations. It didn't really give you more meaningful feedback than that. I think to say something is granular as great motivation statement or great element to element matching, something like that, would go a long way.

MS. KEPPLINGER: In terms of atta boys, I would remind the public that if you work with an examiner who is particularly good, does really good work, is very helpful, you can actually write

a letter in to their supervisor, or what I call an atta boy letter, that tells the supervisor the kind of work that they're doing and that it's really good, and that can be a valuable pat on the back to that examiner too.

PUBLIC COMMENTER UNIDENTIFIED: Is there any thought to giving a work flow or point reward to the examiners for that type of atta boy?

MR. HIRSHFELD: I'm not sure how you would work it into work flow, I will take that as feedback as to what we can do, but at this time tying it to work flow or any kind of points, we haven't actually given that thought yet.

MR. WALKER: I think Wayne makes an interesting point that be careful what you measure, you may change that which you are measuring. So, it's something that we want to look out for, so in addition to getting data and looking for trends and training opportunities there's also the possibility, on the other side of the coin, to look at trends that we think are really going well in certain areas may become best practices that one rolls out to the rest of the Corp. So I think that you are going to

get -- hopefully by standardizing the review process more broadly than we have in the past -- we're not only going to find areas where we need to look at and tweak, but we're only going to find best practices that we can extrapolate and roll out in the Corp, and hopefully the combination or those we're starting to identify things on both sides of the coin and get our processes dialed down even more.

MS. YUCEL: Okay, good morning. I'm just going to take a few minutes to give you a brief update on a collaborative effort that our team is working on with POPA, our examiners union, on reevaluating two programs. Namely the After File Consideration Pilot 2.0, and our pre-appeal program that's been in place for quite some time now. Essentially, what this collaboration between the union and managers involves is looking at the various different attributes of both programs and seeing whether they can be combined to not only streamline our after final prosecution options, but also how we can best leverage the strengths of both those programs into a single program.

We are considering parameters to a potential pilot, and the pilot period would be used to test various different parameters to see whether or not indeed we are going to be getting the benefits of the strongest traits of both those programs. The ultimate goal would be to fashion a pilot that would leverage the strengths of both those programs, but really the ultimate goal here is to increase the understanding and crystallization of the issues on both sides of the table so that it really informs everybody in the room of facts that are perhaps debatable, or facts that are facts that are not going to go away, so that both sides can make the most accurate decisions subsequent to that.

So, some of the things that the team is considering is in direct response to a lot of comments that we've heard over the last several years from the public. Namely, that the public would like to have more participation, especially when we're talking in the realm of the pre-appeal conference, because right now you are able to do a five-page submission but you are not part of that conference. So one of the features that is

under consideration by the team is that applicants would be able to be present, at least to present their five-page document or any other kind of argument limited to that five-page document, and potentially a limited set of claim amendments if there are a couple of claims that might be in question. So, this we hope will address, if it comes to pass, a long felt request from the public to have some sort of participation in a pre-appeal like setting although it will not be a pre-appeal time conference.

Another long felt request and need and persistent ask from the public in the last several years has been to get better and more detailed information coming out of the pre- appeal panel. So basically what we've done is work very closely with the union in a collaborative manner to kind of give more granular feedback form decision that would not only tell you which rejections are either withdrawn as a result of the five pager or which grounds of rejection are being maintained, and which ones will be appealed or that we're potentially withdrawing, and however many grounds of rejection, and potentially what

allowable subject matter there is. So, instead of just a straight yes, we're going to be going to appeal or, no, we're not be going to appeal, which is what the current form is. You will be able to get a much more detailed set of information coming out of the panel to see what kinds of arguments were persuasive and which were not, so that if ultimately a case did up going to appeal you would be writing a much more focused appeal brief concentrating only on the grounds of rejection being maintained as opposed to the entire final rejection, working off of that.

Those are the two biggest features that the public has been asking for and they are under very heavy consideration by the team. Other features of the pilot would be that we would not wait, as we did for pre-appeal, until a notice of appeal was filed but it would be within two months of the final rejection. So we are moving the entire process earlier in close to the final, so that the issues are fresher in everybody's minds and will lead to, hopefully, a more fruitful, more productive panel. That's the highlights of it, we're still working closely with our partners

from the union, we hope to be able to announce something in the near future. Thanks.

MR. THURLOW: So, Remy, just on that note -- and forgive me if I missed this -- when you make that request within a two-month time are you filing a notice of appeal to stop the time from continuing to run? Because a lot of times we file, and have to file a final amendment, and that doesn't get entered, and we pay extension fees and we refile.

MS. YUCEL: The time tolls from the mailing of your final rejection, so it's two months from that.

MR. THURLOW: Right.

MS. YUCEL: So if you file your request within that two-month period you're going to be good.

MR. THURLOW: Okay.

MR. BAHR: Actually, the time for responding to the final rejection would continue to run. So if for some reason it got lost and it ran out, all six months, the applicant would need to file a notice of appeal.

MR. THURLOW: My question is more -- if

we file an amendment after the final and it doesn't get entered, and then we get the advisory action. and they say refile and then we have to refile with an extension fee.

MR. BAHR: There is a process for amendments after final, where if you file within two months of the final rejection the time is basically, for extension purposes, tolled until we file the advisory action, and that's something we're thinking of here also.

MR. THURLOW: Right.

MR. BAHR: But ultimately it's a six-month statutory period.

MR. THURLOW: It's more of a budget issue.

MR. BAHR: We are considering a similar approach here.

MR. THURLOW: Okay.

MS. KEPPLINGER: Thank you for this. We -- I, the PPAC -- have been pushing for something like this for years. We are so grateful that you are looking at it. Obviously, the distinction of presentation first as a real interview we get, but if we have to do it in a

step-wise fashion this is a valuable addition in any case because I think having the opportunity to present to the three people, I think, is a great step forward. I actually -- when we talked about this yesterday -- missed the fact about the amendment. I saw it but it didn't register -- the two months from final rejection, so it would make it difficult to file an after final and then do the pre-appeal conference, so that's one consideration, but we will work with that. Thanks for this, and thanks to the union too, Pam, for talking about it.

MR. THURLOW: One last comment. This came up yesterday. This data driven organization of the Patent Offices and we make a lot of decisions in practice based on the data. I don't think -- and please correct me -- I don't think the data for the AFCP 2.0 and particularly the pre- appeal is readily available, we ask for it and PTO always gives it to us, but if that information could be available it's helpful. For example, when we advise clients that maybe consider the pre-appeal and we could show them the latest stats indicate that 30 percent of the cases

are reopened or allowed that's justification for doing it. That's really a helpful step to us.

MS. YUCEL: I will check with data visualization center people to see whether or not we can add a piece devoted to those kinds of statistics. Thank you.

MR. CAPUTA: Today what I'm going to cover is the topic submission for case studies. So what I'm first going to give is a brief summary of it, followed by what is a case study and then also the goals and then the six topics that were selected. So in terms of historically what the office has done for case studies is that they were typically done in house and what we were looking for was identification of best practices as well as any quality issues. Again, I just want to reemphasize I think Andy was much in the stand point too, we're looking for quality issues but also for best practices. What we are looking to see is how can we improve the work product and processes as well as revealing areas where there is further training which is needed. We previously have not actually asked external stakeholders and with the Federal Register, which

was published on December 21st, this was the first time we're actually asking external stakeholders their ideas in terms of topics that they want us to look at. The time period ended in February and we had actually over 135 submissions, which was great. In terms of what is a case study -- I think that is another question we have -- it's a review of a single targeted issue. This is different from what we typically do in OPQA, which is we're actually reviewing a specific office action, a specific application, and what we're doing in OPQA with the master review form is we're looking at correctness and clarity. And unlike the OPQA's review of specific actions in the case study, we're investigating how a particular issue is being tested or addressed in a large sample of applications.

MS. CAMACHO: Tony?

MR. CAPUTA: Yes.

MS. CAMACHO: Question. What will be the output from the case studies from the public submissions?

MR. CAPUTA: I will touch upon it when I go through the six studies, but I think what

we've actually going to do is it's anticipated that we will go out with a report on the findings, so that's our anticipation. So, we are looking at, for instance, if we're looking at 101 for compliance we'll probably do an analysis, and then once we find the results the anticipation is that we will go out with a case study. That's just an example.

The goal of the program is to use the stakeholder experience to provide a wide range of topics to consider and improve our understanding of the quality of its work product, and where appropriate take the action to remediate any quality issues or formulate the best practices to further enhance the quality. Again, as I mentioned, we received over 135 topics and what we had was we had 110 submitters and what we considered for each of the submissions is -- I would say there were basically three buckets. One was a topic which could be studied. Also there were just suggestions, and also what it was in terms of the topics for case study, there were some of them which we are performing. For instance, we had some submissions with regards to

claim interpretation and those we file to the clarity pilot record and we also had some situations like in the lack of unity which we file to the office of patent cooperation under Mark. So, we had sort of two buckets in terms of topics we received and what we decided to do with the six topics that are here is those which we have not been looking at within regards to the office. And here we have the six topics, three of them which are under 101, one is under 103, there is an additional one with 112A, and then also with the 112F. In terms of the rejections, the compliance rejects with 35USC101, what we're looking at here is we're focusing on whether examiners are properly making subject matter eligibility rejections under 35USC101 and are they clearly setting forth the rejection. The results of this focus study will be used to either improve the accuracy and completeness of the 101 subject matter eligibility issue by the office and also, it gives a clear understanding of what the examiner's position is, which will help the applicant more effectively respond to the office action. I

In the second one, where we are looking at the consistency of the applications, what we are looking at in this study is to see those situations where there are similar claims in one technology to the other, and looking to see are they treated any differently from 1, 2, C to another. What this will allow us to do is to help improve the consistency in the applications throughout the whole office.

In the third study what we're looking at is compare prosecution with making 101 rejections. What we're looking in the first office action is the examiner not only making the 101 rejection but are they also addressing all the other statutes. What we are trying to look at to see is the situation to where they make the 101 and then maybe perhaps they are making other rejections or are they making them all at the same time. And what we are trying to do in this, we can use this to identify identifications and applications where they are not doing compact prosecutions and also can we reduce the pendency of the application itself. So that is for the third study.

With the 103 what we are looking at is whether the reasons for combining the references under the 103 are set forth in the rejection and are they correct and also with a clarity.

In the fifth one in terms of written description what we are looking at here is the situation where you have a series of continuing applications and let's say in the earliest child applications and most recent is there support in the parent application.

Lastly, in the final one what we are looking at is for the 112F, is it a situation where the examiner is properly interpreting and treating 112F.

So those are the six topics that we have.

MR. THURLOW: On four, so I do a fair amount of work in the PTAB area, Judges have told me that they deny petitions in Section 103 when there is no obviousness of proposals in the petitions. They say they deny the petitions when there is no motivation to combine the references, so I use that for prosecution. When I see a 103 rejection by the examiner I see whether they

provide a motivation to combine the references and quite often that's a challenging area. What I get a lot of is that well, there's nothing specific but they are in the same field of endeavor, field of art, so there is motivation and I say well, that's a debate we have quite often. If that's something that you can hone in on that would be great.

MR. CAPUTA: I think one of the things we're doing to do that is in regards to the master review form. Under the 103 we're actually looking to the Graham Deere analysis, is there the motivation statement.

MR. THURLOW: Right.

MR. CAPUTA: So that is one way we are trying to address it also.

MR. THURLOW: And it's one thing to have the motivation statement, it's another thing if it's correct.

MR. CAPUTA: That's actually worth looking at, so we're actually looking at that.

MR. THURLOW: I don't think there's motivation, and maybe Bob and others can chime in, I don't think there's motivation just because

something is in the same field of art.

MR. CAPUTA: Right. I know too we are looking at that.

MR. THURLOW: I think there needs to be motivation.

MR. CAPUTA: To see if it is correct and also to see is it clear.

MS. KEPPLINGER: I would make one comment and I think using the argument that there's no motivation to combine, I don't ever use that argument and I try to tell people I'm working with not to use those words, you just couch it in a different way. You need to use the arguments like there's no predictability, there's no reasonable expectation of success (inaudible) away, things like that which will resonate but after KSR the words motivation, I think examiners just kind of don't --

MR. BAHR: Yeah, you want to say no reason to combine or no valid reason to combine these days.

MR. LANG: You learn something new all the time. Great prosecution tips here.

MR. BAHR: Right.

MR. LANG: I'll put in a word of support for what we're addressing in five and six. I think that's a tremendous opportunity to add value and improve the patents coming up out of the office and address some of the issues we have in litigation now.

MR. THURLOW: Of the five the big issue is from provisional to non-provisional. Provisional is normally a few sheets and then non- provisional is sometimes much larger.

MR. BAHR: Right.

MR. LANG: We're also seeing a lot of time wasted on people litigating on continuation cases that have really steered far afield from the parent or any concept of what had been invented at the time.

MS. KEPPLINGER: Marty?

MR. RATER: Okay, so let's just take a quick look to the external quality survey and I'll try to tie in a few things how this relates to the master review form, how it relates to the cases studies, and some of the other things we're looking at. First of all, this is a semi-annual survey we've done. We've done it since 2006. A

lot of you will know this is actually a metric we had in our quality composite. We survey about 3,000, what we call frequent filer customers, agents, applicants, attorneys. Typically, our sample frame on this is anybody or individual who has six or more patent applications in the pipeline at any given time. What we're asking is those stakeholders, these customers, of their snapshot perceptions over the past three months, so we kind of look at this so it usually relates to the first quarter of our fiscal year as well as the third quarter of our fiscal year. Again, snapshot is a perception much like you'll be satisfied with my presentation if I get you out of here in five minutes for the morning break. Right, Esther?

MS. KEPPLINGER: Drew assured me we can make up time this afternoon.

MR. RATER: Perfect then. Because I've got all kinds of data and they gave me a laptop too, so you guys are all in trouble.

MS. KEPPINGER: You're fine.

MR. RATER: So as I mentioned it's been part of the patent quality composite and it plays

a little bit more of an importance role this year because as we're not generating some compliance rate metrics out of what Rick had mentioned that were used in the old quality composite, this is actually one consistent quality metric that we have from the prior years through this year until we build our new quality metrics for next year.

One of the things we do in the survey is we do ask basically at the statute level soundness of rejections being made and what you'll see here is roughly, you know, this is the percent of customers that say that examiners are sound in these rejections by statute all or most of the time. What's interesting about this is -- obviously there is a couple of points. One, we've made some slight improvements up over the previous quarters, which is a good sign that we're going up. A lot of you, though, that we familiar with the compliance rate metrics that we've used in the past, the 96 percent compliance on correctness, as you can see we don't have any metrics there on customer perceptions that we say were 97 percent satisfied with us. So we know there is a little bit of a disjoint in some of the

old metrics which we had and what we've been measuring in terms of customer perceptions. That's where the master review form comes into play in our larger sample sizes this year, because what we're doing now is going to be able to do more reviews and have the more granular level details where we can get better quality metrics at the statute level. So we should be able to see some leading indicators and you can see the bottom line there, the pink line the bottom dropped out on the 101s, and we know its perception is not necessarily all the result of a decision making or the offices, there are other impacts in play here. But this is always a look backwards and what we're hoping to do with the master review form and through the use of our big data and much like these case studies it's taken a more proactive approach and find these leading indicator of quality so that we don't see the bottom drop out in some of these statute level metrics that we're doing. Again, we'll continue to monitor this. It serves as a little bit of a validation if we're doing the right things. We understand sometimes these things are slower to

improve just because you're going to require us to show a continuous improvement before you're willing to give us that A. Right? You're not willing, just because you saw one good one come through the door that you approve of, ok, now I'm going to rate them good or excellent.

That's one way it kind of maps into the master review form. One of the other things we collect in the quality composite, and again, this goes back to maybe more of the -- what are we doing well -- as opposed to finding what issues do we have. In our most recent survey we asked what do examiners do to help advance prosecution and you can see collaborative constructive makes suggestions, the examiners are doing that to advance prosecution with the top topic and that supports a lot of the things that we've been doing here at the office in terms you'll see well written responses. The focus on clarity, the interviews, these are all things and we can usually kind of ping those off on the survey just to make sure that we are getting the message across and it is we are achieving what we were hoping to achieve through some of these

initiatives.

Consistency. This will be my favorite slide. This and another couple of slides here. I'll show you on consistency because, again, this speaks to where we're going. A lot of the case studies mention consistency. The master review form -- what we're hoping the do is collect enough data so we can detect anomalies or the lack of consistency. We're going to use big data to do the same thing. Do we have rejections being made in this art unit that should be being made over in this art unit but they're not, or vice versa? What you will see is historically we have had about -- I'll start with the purple line there, the customers that say we have a small degree of consistency. Historically that's been about 45 percent of our customer base that says there is a small degree of consistency. We've got in the the red line there, about 35 percent of the folks have always said, hey, there's a large degree of inconsistency, and that's going to come into play in the next slide. And then we've got our folks down here in the yellow line there -- the 20 percent of our customer base, and I don't want all

of you to raise your hand that you're in that group -- that say there is no inconsistency. We'll look at that in just a minute, but I want you to keep those categories in mind.

What we've done and what this shows is just what percent of the applicants are reporting that our quality is good or excellent. On the upper line you can see it's now at a level of 54 percent of our customers surveyed said that it was good or excellent quality. The quality of patent examination, if you will, and I think that is an important differentiation to make where it's the examination process what we're trying to measure quality on here. And then we have about 9 percent of the customers that say that quality is poor or very poor. And those of you that are familiar with the quality composite, historically we use this as a ratio. We always had a goal of we wanted: at least five people to say it was good or excellent for every one individual that said it was poor or very poor. We are achieving that and I guess we are kind of looking at the quality metrics now as why did we just have that as a goal and really should we have a goal included as our

quality metrics for customer satisfaction or quality satisfaction when really the ultimate stretch goal should be 100 percent quality is good or excellent. I think we are really looking at this survey now as more of that validation of how well we're doing. So, you can see we saw a slight improvement over the previous quarter from a kind of a steady if almost a decline a little bit on the percent good or excellent. So that's what we're kind of looking at there, and obviously the group in between, are those that are reporting quality is fair.

So, how does this work, and I'll put Peter on the spot there, because you know he says the key driver of quality is search and I will go one more and say we're really seeing the key driver of quality perceptions, if you will, is consistency. And remember that 20 percent of the population I said that has no problems with consistency, they say there's no inconsistencies of examination, 75 percent of them report that quality is good or excellent. However, as we start to see the level of inconsistency increase all the way over there to the folks that say there

is a large degree of inconsistency, only 27 percent of them feel that quality is good or excellent. So we know we have a lot of work to do on consistency, we know there is a lot of data we need to explore by what is meant by consistency and I think that's where we're going to start doing that in some of the case studies. We know that there's other things other than just correctness that we might have reported before in the compliance rate metrics. There's clarity, there's other issues, you know there is a pendency component in what somebody's perception of overall quality and those are the kinds of things we're trying to accomplish with some of our quality initiatives this year. So, I think this is a repeat really of what was said earlier, either by Rick or by you all, is how we're going to kind of use some of these external perceptions. Again, we're going to continue to monitor your perceptions as a snapshot of where we're at, not use them as a stretch goal in quality metrics per se, but continue to make sure that we're aligning our reviews. I think Wayne had mentioned this, how are we going to make this review. We're going

to look at this review form. Well, what happens if we see everything that we're capturing in the master review form is giving us the indication that maybe 101 quality is going up, but we've got external perceptions saying 101 quality is going down, then we're missing something in our review form, and that's where we might have to come back to you all or explore with examiners, explore with whoever, to find out what are we missing in these review forms. And then finally, we're going to use this, obviously, to say: What can we find in this master review form that are these leading indicators of quality, and what data points can we share out of this master review form that you can make determinations of what is quality? That's kind of really all I have there on the external quality survey and Tony will be glad to take all your questions. (Laughter)

MS. KEPPLINGER: I would reiterate what Peter said. I think one of the strongest drivers of quality, at least from what I hear, is the search. However, what I would note with consistency is it kinds of wraps up all of those things. I think from an outside perspective what

is frustrating to applicants is that they'll get an examiner that hits them with a whole lot of rejections and then they are struggling to get their case allowed and this other examiner who their competitor has just allows all the claims a broader scope, doesn't apply all the art, that's I think where the consistency comes in. It really matters which examiner you get because you can have a totally different outcome, a quick efficient examination, or, you know, five RCEs with endless problems. That's a serious problem but does come back to search.

MR. RATER: Peter, I do actually have a note here. I wrote that down just because I do think maybe even externally that's one of the things we want to explore more in this survey that we haven't done, so that we can match that component as well. Include search, include clarity, in the external quality survey so we can make that full connection.

MR. THURLOW: I was going to say it's really not fun when a client points out that a competitor is getting past but we're not. So fortunately it doesn't happen too often, but

never a fun thing.

MR. RATER: I also just want to point out that Rick went through some of the quality metrics, one of those as you recall that were using the transactional QIR for is consistency and this we went down this path in direct feedback that we received from many locations and it also was feedback that was received to topic submission for case study as well. That is something we are going to be focused on.

PUBLIC COMMENTER UNIDENTIFIED: Good morning everyone, thank you very much for this important discussion on patent quality. I think one of the things that I'm not seeing in the discussion so far, and I think this young lady here, Ms. Kepplinger, was looking at examiner work flow, and I know we talked about granularity, so what I mean by that is the number of actions in examiners producing, you know, is it number of appeals that they're handling, number of fist action reviews, I don't know if that is included in the quality assessment. I know we talked about clarity and correctness, but that doesn't to me address workflow and time management issues

that the examiners are facing. I think any real composite of quality has to also consider examiner production requirements or the actual output that they are putting out. Are they putting out briefs, are they putting out first action reviews? I think that's very important as you continue trying to assess what quality is. Thank you.

MR. FAILE: Yes, thanks for that. It's a good question, so in looking at what types of actions our examiners are doing, whether they are efficiently prosecuting certain cases, you really go back to what Rick talked about earlier in kind of the three looks at quality, it's in that middle look, I believe we're calling it transactional QIR, it's our Quality Index Reporting where we're actually looking at the actual transactions examiners do and we are measuring things like reopening rates, rework and efficiency in the prosecution part. So, there is a lot of work being done in the TCs and has been done for 10 plus years. I'm looking at data, specifically tied down to workgroups and at the examiner level, and looking at ways the examiners

are prosecuting and how efficient that is. The next iteration in the quality composite actually brings that up and we're trying to overlay some big data techniques to give us some more targeted areas to look at. It actually brings up a good point to maybe tie in at a high level a couple of different points that we have been discussing this morning. So, Rick had shown kind of our new look at quality, and if you think about it, we're having a quality set of initiatives here looking at patent quality and ultimately we want to evaluate how are we doing in patent quality. We're in a very subjective area as everyone would say. Some would say we're on this side of subjectivity, some would say we may be on the extreme side of subjectivity, but are in a subjective area compared to pendency, which we can tell you very specifically what our pendency number is, what units have moved and what time frame, very specifically and very objectively. In the quality we have a level of subjectivity there. In trying to define how do you measure quality and what does that look like, going back to Rick's graph, we've kind of taken it in three

parts. We are looking at the products that we put out. We're measuring that. We're looking at the processes that underlie the examination process, and how are we doing there, and then an important third component that Marty just went over, is we're actually looking at perception data. Since we're in a subjective area, the perceptions that people have of the quality of the office really are important, and they also feed back in, and we can draw up larger themes, and Marty has just correlated a couple of pieces of the data from the perception survey that indicate that consistency has a large bearing on what people think of as quality. So, if you look at these three different components, we have for the first one 8300 examiners putting out literally millions of pieces of work in a given fiscal year. There is a lot to sample there. What's the smart way to figure out what population to sample and how do you feed that back? It's kind of a product review piece.

The second piece is looking at the processes. We have a lot of data and we can leverage a lot of our big data techniques to look

at prosecution data. How many finals did the examiner write? How many non-finals? How many allowances? How many appeals, et cetera, et cetera? Looking at that, rolling those up and trying to figure out how do we lean our processes to make sure people are working efficiently? How do we draw best practices from those processes and extrapolate those across the Corp? That's all in the process arena in defining quality.

The third part, again, is looking at the external perception. As we do and continue to function day to day and put out work products and lean our processes, what does everyone else outside of the PTO think of the result of that effort.

Then the three of these are kind of our attempt to redefine how we are looking at the quality metrics based on the input basically from a lot of you guys as opposed to our seven composite metric we had before. So product reviews, process reviews, perception, are kind of the three major components that look into what is the quality output of the USPTO. So as we continue to refine that I think that's an important kind

of high level point to keep in mind.

MS. KEPPLINGER: On thing very, very quickly with respect to your question. We have been talking about those particular things, like actions per disposal, and you can look at someone who has very low actions per disposal as a best practice, but we never want to use that number as a measurement because we don't want to discourage the examiner from doing the correct thing. If they need to add a new reference or a new rejection, we want them to do that.

MR. GOODSON: Quick question and then a comment. How many patent applications per year are being handled or filed pro se or percentage?

MR. CAPUTA: We can try to check and follow up on that, because I'm sure we that, we just don't know if off hand.

MR. GOODSON: And that's fine, it's just when you look at the quality metric those who perceive less than optimal results at the patent office, I would suspect some of these are -- you know, you have gad flies that are dealing in a system that they are completely overwhelmed by and that does not reflect well on the office, when

in fact the office does very well, you just have persons not knowing what to expect.

Mr. FAILE: So, Mark, just for quick ballpark numbers, the split is about 75 percent large into the about 21 percent small entity and then the balance in micro-entity. So you are looking at about a quarter would fit into the small entity plus the micro-entity status and multiply that times approximately 420,000 applications filed per year, it's about a quarter of that would fall into the small entity, micro- entity bucket.

MR. BAHR: That not pro se, though.

MR. FAILE: If you're just looking at pro se, it's probably more in the micro-entities, so you're probably in the single digit part of that.

MR. GOODSON: And my question would be -- are they generating a large amount of the perceived poor quality just because they are in a system they don't know anything about?

MS. KEPPLINGER: It's a good question, although, as I thought I heard from Marty, it's someone who has six applications that gets

queried, so they might not even represent much of a response in the survey.

MR. RATER: You're absolutely correct and right on this particular survey, but we are actually -- with the pro se assistance, we've actually got a program there where we are looking at quality just to see -- you're right, and it takes both. Sometimes it's what is the applicant's perspective and I think that goes back to what Andy was saying, now that we've got the data and we will have the volume of data, we'll be able to parse that data out now, not only the quality actions we look at in OPQA, if we have the volumes now where we have a sizeable number of those reviews that we've done so we really can look at it. Because historically our reviews in OPQA have been very good at the Corp level, if you will, somewhat useful at the technical center level, but beyond that you couldn't make any other breakdown of that data to say quality is good here or quality is not so good here. So, that's exactly what we're trying to get after, is all those little data points to say: Where is it broken? Where is it better?

MS. KEPPLINGER: Okay, it's been a great discussion. We're quite a bit behind schedule, let's come back at 11:00 -- that's 10 minutes.

(Recess)

MS. KEPPLINGER: Okay, welcome back. We have Remy Yucel, again, Assistant Deputy Commissioner for Patent Operations. Thank you.

MS. YUCEL: Thanks, Esther. So, this part of the program, we'll be going over the nuts and bolts of where we are on our, like the most popular statistics, but before we launch into the data set, I was, it was requested that we do a quick demo of our patent initiatives, PAI, Patent Application Initiatives website, and then show how that links up to our Patent Dashboard. So, we'll do a live demo and then we'll go to the slide deck.

So to find our Patent Application Initiatives webpage, you'd go to our main page; then you have this very subtle little link on the bottom that says, see more patents resources, click there; and you come to the initiatives. So, I think everybody was handed out an extra

handout so you can kind of proverbially click along with me, it kind of shows in red the links that I'm clicking to get to these various webpages.

So, once you get to the Patents Initiatives website, you see a little thumbnail of the actual timeline; and what this timeline shows are the various different programs available prior to examination, during examination, and after the closer prosecution. So, we have a color-coded scheme for this. You got the mauve-salmon color for the prior to examination, green for during, and blue for after closer prosecution.

I'm going to come back to this timeline, outlook, or layout. But you can also access this information via our matrix; and what this matrix does is it lists the different application initiatives, and pilots, and programs; again, where in prosecution they're available; but it also provides a thumbnail sketch, do you need a petition, do you not need a petition. Thumbnail sketch of the different programs so you can compare and contrast, and hopefully, zero in on

the program that best suits your needs. And the way you thumb through this would be to click on the top of the matrix and there'll be an arrow that advance. So, this is now the during prosecution offerings, and then we get to the blue portion of the matrix. So --

Mr. THURLOW: Hey, Remy --

MS. YUCEL: Yes.

MR. THURLOW: -- I'm sorry; I stepped in a little bit late. Just, so I'm familiar with this. You've, done this, I think, last year or so. Is this just recently enhanced is that why we are focused on it again?

MS. YUCEL: The ask was to show how this links up with our Patents Dashboard, so --

MR. THURLOW: Okay.

MS. YUCEL: -- and to give a refresher that we do update this with new programs that come on, and certain programs will come off.

MR. THURLOW: Okay.

MS. YUCEL: And this was just a refresher on how to operate the website. So, you have the timeline here. So, for example, Track One is a very popular program. You can click on

Track One, and it'll take you directly to the Track One webpage where you can find Track One-specific information. At the very bottom of this page it says see statistics on Track One on our Dashboard," you click here, ta-da, you end up at the Dashboard. So, if you, and there's various other programs, and I'll show you what this looks like from the other side. But, basically, you can see our Track One pendency from petition grant to first-offer action; you can see the pendency from petition to final disposition, as well as pendency from grant to, you know, petition grant to allowance, et cetera. You can see how they, how the Track One cases over time have, you know, what buckets they've fallen into in terms of right now our current inventory, how many are under final rejection, how many have been allowed, et cetera. And it'll give you a 12-rolling month, 12-month look at applications received into the program.

So, this is one way you can get directly from any particular webpage of a particular program via the patent applications PAI website. To show you how to get the Patents Dashboard

directly from the PTO homepage, this would be the, you know, go to www.uspto.gov, this is our homepage. You would simply go to the Data Visualization Center -- I prefer dashboard, so we'll use that, Patents Dashboard. I should go back, just scroll it quickly. You can see there's also a Trademarks Dashboard, there is, you know, Mark's area has their dashboard on here, the PTAB, a lot of different organizations, all there dashboards you can navigate to from this page. We're going to be concentrating on the Patents Dashboard at the moment.

So, the landing page here will show you tachometers for our most popular data sets, including where we are currently on first action pendency and our traditional total month pendency. The quality thing, quality composite score, as we'd heard in the early morning sessions, we've discontinued this, so this is kind of a dormant feature now until we come up with our new quality metrics and then that would be represented once we zero in on, you know, what will be in the future.

Then we have our inventories of

unexamined patent applications, as well as the number of our CEs on hand in terms of our working inventory. Below the tachometers, we've got two columns of buttons, and under each one of these buttons there are additional data sets available for you. I'm not going to go through every single feature of this dashboard, but, for example, when we jumped from the Track One page to the Dashboard, we actually ended up in the Special Programs. So, not only is there Track One data here, there's also data from our first action, interview pilot. So, that's one group of data.

Another set of data are petitions data. So, you can see here, for example, you know, we have our PPH petitions data; we have our Track One petitions data; a number of different, you know, highly sort after data sets for various different petitions throughout the office can be found under that Petitions button.

If we go to the design data, here, all things design, you can see what our first office action pendency for designs are. You can also see of a historic view for the last two years, if you're interested in more granular data that way.

We have our design traditional total pendency, which, you know, currently in March 2016, we are about a shade under

months, 19.1 to be exact. We have the unexamined design application backlog; and you can see the monthly profiling for our design applications and various other granular data sets for designs.

Let's see. Go to our pendency data. You can see our first office action pendency. Again, this is the same tachometer that you saw on our landing page, and you can see we're right now at a 16.5 months to first action on average. This represents a slight tick-up, about a 10th of a month. Our traditional total pendency is 26.1 months and, as you are all aware, we are working towards our 10 and 20-month goals for these; and we continue on that path.

You can see other additional granular pendency data on here in terms of breakout time of, you know, after the initial wait for the first office action, how much time is spent in the office versus how much time is spent with applicants for applications. You can see

pendency data for RCEs. Another thing that the subcommittee found interesting was, you know, in terms of the predictive value, you could not only see the total pendency 24-month retroactive look, but you can also see the pendency broken out by technology center. So, overall, we have a 16.4 month average from filing to first action, but there is variation amongst the different TCs. So, if you're practicing in a particular area, you might wish to consult this more granular data to, you know, make certain decisions and advise clients, accordingly.

Let's see, certainly because of neato things on here. The quality data, I'm not going to click on because that's all going on an overhaul. If you want to look and see our inventory and our backlog inventory and all that, all that application is housed under the Backlog button. Again, you can see our unexamined application backlog. Again, this is a tachometer from the landing page. Right now, we're at about 560, I think that's creeped up a little bit. This is March, we could not update that very shortly with our April numbers. Our

RCE inventory, the, how many production units we did for fiscal year, FY 2015. So, again, you can scroll down and get much more granular data depending upon what you're interested in seeing.

So, that's kind of an overview of those two webpages and how they can be used. I think, now, we'll just go to our traditional data set and I'll try to make up some time, and leave time for John to talk to you about CRU. So, can we go to the slides?

MR. WALKER: Remy?

MS. YUCEL: Yes.

MR. WALKER: Can I ask a question?

MS. YUCEL: Yes.

MR. WALKER: I thought it was recently I saw Russ put out a note, and I'm looking at this open data portal, so, this, it looks like it's a beta site. This visualization center is part of that? Could you talk a little bit of this? This looks like it was something new, maybe I misread that; but I thought I saw something from Russ that came out talking about access to data, open data portal, here's a beta view, and maybe, I thought that'd be of interest to the public in general,

since I thought it was relatively recent, and I didn't see it on our agenda.

MR. FAILE: Yes. Sure, I'll take that one. So, at the quality symposium, Russ did talk about both big data and open data. It's separate from the data visualization center. It's a different part of the website, where we're using different big data techniques in trying to make data such as the bulk-paired download more efficient. So, it's really separate and distinct from the data visualization center. It's really just metrics on operations, petitions, and different things of in-process of prosecution applications -- so, kind of two different things, Mike.

MR. WALKER: Okay. Because I'm looking at this beautiful webpage where it says data can be beautiful, and it looks like our growing library of visualization. I just didn't know how to connect it. Okay, that answers it. Thank you.

MR. SEIDEL: I just had a quick question. Why don't you have redline on your tachometers?

MS. YUCEL: I can either talk to our dashboard people or our automotive people on that.

Okay, so going to our traditional data set here, first, I want to kind of go over the stuff that we have on hand, right. So, this is our inventory of applications. The first slide shows our inventory of unexamined patent applications. So, as of April 26, 2016, we're at 554,321 applications in the queue. You can see there're still continuing the downward trend.

MR. SOBON: Given current staffing levels, what is the target inventory that you normally, against what these numbers are?

MS. YUCEL: Oh, we have -- so, I'll get a little bit more into that in terms of like where our increased filings are, and what our hiring is.

MR. SOBON: Yeah.

MS. YUCEL: You can see at the end of last year we ended up at 550,222. We are seeing right now around the mid- year a timeframe and increase of like a 7 percent overall increase in filings which was greater than what we had put into the model for our hiring for fiscal year

2016. We are meeting all of our fiscal year 2016 hiring targets. We've got classes coming in. In fact, there's another one starting up in June; so, we'll be making the hiring for that. We will continue to keep our eye on the filing. It may stay at seven, it may drop back down. In fact, you know, our projections show that we'll probably end the fiscal year at about an overall 5 percent, even though right now we're showing 7 percent increase in filings.

MR. SOBON: Down from where -- we had been talking about that there were some slight decreases in filings. Have you now been noticing a sort of rebound in filing then?

MS. YUCEL: Yes.

MR. SOBON: Ah, interesting.

MS. YUCEL: And so now the name of the game is the size of the rebound.

MR. SOBON: Right, right. Interesting.

MS. YUCEL: And, you know, we need to keep a close eye on it. We can't knee-jerk into like over hiring because we don't know if that 7 percent trend is a strong and sustainable one, and we certainly want to have, you know, a softer

landing as we work towards the 10 and 20 month on targets, right. So, we have to have a certain amount of inventory to sustain the patent course. If we over hire, that's going to make it rougher on the backend as well.

MR. HIRSHFELD: Just a quick note on the 7 percent. I believe and anybody else can jump in if I get the numbers wrong; but, out of that 7 percent, it's a combination of the new case filings and the RCEs. So, the new case filings is higher than what we expected and it's about 2 percent or 2.- something percent, which was higher than we were last year. The RCEs is also higher, and significantly higher, and some of that is due to the Alice pushing some prosecution downstream. In other words, if we reopen the cases because of Alice, there were less RCEs at that point because cases got reopened and we're getting those now. So, that 7 percent is higher, but it's higher in both serialized and other cases; and I just wanted to breakdown those just so that you understand. I think we need to talk; in my opinion, we need to talk about those separately because they're separate issues.

SPEAKER: It's a complex picture.

MR. HIRSHFELD: Exactly.

MR. FAILE: I think, Wayne, was your question basically what's the optimum inventory level for the current staff? I think was what you are --

MR. SOBON: Yeah.

MR. FAILE: -- and that's --

MR. SOBON: You seem to have all of these charts it's (inaudible) what's currently planned optimum (inaudible).

MR. FAILE: If we had the red and blue kind of converging or diverging as it. So, just roughly, so the optimum inventory level for the current staff would be about a 10-month inventory for our approximately 8300 examiners. If you run those numbers somewhere in the 400,000 range, and we're currently around 552, so.

MR. THURLOW: To reiterate from an applicant's standpoint or what Drew said, and something we always focus on, the big difference between new applications, serialized filings, and RCEs. We had to file an RCE the other day for an after final case to get in some affidavits and

some other information. So, it's a double-edged sword, you really don't want them to do the RCE but you have to, to get the information entered into the file. So, it's always better to see the serialized filings increase the more, so.

MR. LANG: Even the serialized filings are growing a bit faster than expected. Do you have any commentary about, you know, it came up a little bit in the subcommittee yesterday about variability among tech centers, and where --

MR. HIRSHFELD: I don't. I wasn't in the subcommittee meetings, so I'm not exactly sure what you're referring to. The serialized filings is higher than last year. I just wanted to put that number in context. With regard to specific TCs, my understanding is it is, with the exception of the business methods area, very consistent across the technology centers; but we are seeing some decrease in the business methods area, and, otherwise, we're not seeing technology-specific decreases.

MR. FAILE: While we're on filings, let me just, to a couple of points were made, just to give a little bit an update there. So,

currently, as of about the 21st of April, we're up actually about 7.4 percent overall. In looking at that number, it roughly breaks down into two big pockets of filings. One is the new serialized filings, filings that get a new serial number; and then the RCE filings. That split is roughly 70/30; 70 percent of that work is due to serialized filings, 30 percent is RCEs. So, if you look at those two different numbers, the serialized growth now is approximately percent, currently. We expect that to come down a little bit more in the range Drew is talking about 2.3 percent, or so, by the end of the year. The RCE component of that, the 30 percent of that number, is about at 18 percent now. So, if you run those numbers, you come up with a 70/30 split of those numbers, you get to about a little bit over a 7-percent growth at this point. Our projections are at the end of the year, we're probably going to end up with that overall growth being about at the 5 percent level.

MS. YUCEL: Okay. If you look at our RCE inventory, and see this graph shows you over several quarters, and those lines, even though

they're hard to read, they show you various different seminal points in which we made various changes to the way we process them. And, so, the last third of that graph is, basically, where we are now in our current study state, and our RCE applications as of April 26, is around 37,000 RCE applications.

So, if you look at our first action pendency and total pendency, again, these are numbers taken off of the tachometer that you all saw on the Patents Dashboard. You got a total pendency of 26.1 months, and first action pendency of 16.5 months. So, again, going to, in terms of do we have enough hands on deck to handle the amount of work that we have coming in the door and what we have on hand, one key metric that we look at amongst others is the overall examiner attrition rate; and we've broken this out into two parts. The red part shows our attrition rate only for, not including the people that have been promoted and have been retired, and retired, right. So, the overall rate is 5.37 percent. But if you just take away the promotions and the retirements, it's really a 3.89 percent, which

shows that we are doing a fairly good job of identifying appropriate candidates, onboarding them effectively, and training them effectively, and having them interested in staying beyond their first or second year. If we can get them to stay around the 2-1/2 to 3-year mark, they usually stay to make a fairly long and productive career at USPTO.

So, overall, these attrition numbers, given the fact that there's also, you know, economic activity outside, I think we're holding our own in terms of recruiting and retaining talent.

If you look at our actual monthly serialized filings, the new cases, and the RCE filings, you can kind of see the filing profile looks something like this. The -- getting old is terrible. I don't have my readers with me -- but, here we talked about -- and Andy and a number of folks have weighed in on this -- I mean, our total growth rate is about 7 percent of that. The RCEs, right now, are at, contributed about 18.6 percent, and the serialized is about 3.8 percent. And it's fairly a uniform across all TCs; but for

3600, the business method area where they're experiencing, you know, a spike in RCE filings. But all the rest of the core does not appear to have any major fluctuations in the RCEs coming in the door.

I'm going to kind of skip over some of these design data sets because we kind of went over them in the context of the Dashboard. You can see our creeping up design applications coming in the door. The hash marks on the very last bar shows our projected filings for the end of the year. Our unexamined application inventory, those that have already been filed you can see. And, again, this is reflected in the hiring profile. We have on-boarded new patented design examiners to start combating the increases in filings that we're observing designs.

Okay, so, Track One filings, you can see it's kind of a multi-year look back. The current fiscal year is the very last line on the table; and, right now, we have almost 5800 total Track One filings. Some profiles of those filings, the average time from filing to petition grant is 1.4 months, a little below a month-and-a-half,

average time from petition grant to first action, 2.1 months. So you can see that it's really very little time after grant before they get to the first action. The average time from petition grant to a final disposition is 6-1/2 months, which is really, you know, pretty good performance there; and average time from petition grant to allowance is 5.2 months.

Further, this is kind of where they fall out the different buckets. We've had some abandonments; a number of allowances; some are in final rejection status; and some have gone to appeal -- very few, relatively. Yeah. So, another --

MR. THURLOW: Remy --

MS. YUCEL: Yes.

MR. THURLOW: -- just for a quick on the, first offer, it's a very popular program. We really like it. The only comment I'd make is that you pay the fee, jump to the front of the line, it's very quick. But, if you do, and many situations do get a first offer action, then you still do have to wait the four months. If there is a way to shorten that because, you know, it's

nice that you get to the front of the line initially, but then once you get that offer action, you still, my understanding is, that the examiner still has four months to respond. And under a Track One, at least for that, maybe consideration for a tweak would be to allow that time to be sped up a little bit.

MS. YUCEL: We're looking at SSR. Thanks for the input. I will take it back to the team.

Another popular program, maybe not as popular as Track One, but certainly has its devoted following; it's the first action interview polite program. And this is kind of a quick demographic on the number of applications and what's happening with those applications. I want to, you can kind of see, how many we've had, the interviews that we've had. If you look at the total allowances versus the total number of applications, you can see that's a pretty healthy number. If you look at the first action allowances, also a very healthy number; and if you look and compare the first action allowance rate of the applications that go through this program

versus the general population, it's pretty stark, right? You know, it's almost a 30 percent allowance rate versus the general population of applications. So, if, you know, the parameters of this particular program fit with some of your applications, you may want to consider this as an alternative.

MR. GOODSON: I have a question.

MS. YUCEL: Sure.

MR. GOODSON: Is there any difference in the examiner pool as to who is assigned these priority applications?

MS. YUCEL: No. It's the same folks that handle it all. We don't have dedicated units devoted to these different programs.

Okay, so this is a quick look at our patent prosecution, highway PPH cases. What this slide shows is there is an ever-increasing popularity of use of the program with the various different participating countries. This is a snapshot of the cumulative filings from 2010 to the present calendar year, and it's growing in popularity and acceptance of use. So, right now, we're at about 37,000 or so applications with

petition requests. If we look at our last rolling 12 months, we have a shade over 9,000 applications that have a PPH request in them. So, again, you can see the step-wise increase in progression, and it's really grown in popularity; and for certain applications, it's actually a very viable way to go. The examiners like this program. It gets before them a, you know, defined set of claims that have been cleaned up a little bit elsewhere; and not only that, but it's a great illustration of how we can leverage work-sharing amongst all the offices to get through prosecution more quickly and get a quality patent out the door. And that's, I think, the end of the data set, and I'll take your questions.

MS. KEPPLINGER. Yes, it's really just a comment. I believe you have a backlog of these petitions; and as you note, it is a very popular program, and it's a valuable one which we encourage our applicants to use. So, any efforts that you can make in reducing that time to get the petition granted, or any efforts that you can make to streamline it and make it an E-petition would

be great.

MR. BAHR: That's my department. We are, first of all, we don't have a 35,000 petition backlog. That's a cumulative number, but it is higher than it should be, and we are concentrating on working the backlog up. As you know, when you have a backlog of petitions and you're working them all, your average time pendency there, kind of, it looks like a bad number, the forward-looking pendency is not all that -- it's much better there. But in addition to your comment about making these E-petitions, we are looking at -- I'm going to say high-volume petitions that we get in the office of petitions -- and looking at which ones would be best to E- petition, and we are seriously studying this one. But, you know, somewhere it requires some, you know, human review. It makes it very difficult to E-petition it, but we are looking at ways to do that.

MR. THURLOW: Just a question on that. For E- petitions, can you still petition, send in the petition, or you file without using E-petition?

MR. BAHR: Oh, you can file by EFS.

MR. THURLOW: Yeah.

MR. BAHR: Oh, yes.

MR. THURLOW: My point is, I'm not sure if everyone in the art (inaudible) community is fully aware of the benefits of the E-petition.

MR. BAHR: Right. There are some -- you can file any type of petition through the E-filing system -- but it's within the office it's processed as normal. But there are a number of petition types that there's actually, it's like electronic grant process where there're certain ones, if you meet certain conditions, they're fairly objective, it checks it off and then you get an E-grant immediately.

MR. THURLOW: And the example I remember from several years ago, if I'm correct, is that petitions who revive a patent that was when abandoned for unintentional missed payment of the maintenance fee, and then we did at the E-petition and we got it back right away, saying granted.

MR. BAHR: Right, for some maintenance fee petitions where the only thing that's late is

the maintenance fee --

MR. THURLOW: Right.

MR. BAHR: -- where it's just the payment of the fees and making a statement that you can do E-wise. That's done electronically, fully electronically, you get the grant; and also, if it goes abandoned for failure to pay the issue is another one. Where we only need to look to see that you paid the fees and make the appropriate statements.

MS. KEPPLINGER: And just to clarify as I understand the process, the E-petition is a fillable form online, and in order to file the E-petition, you have to use that form as opposed to just electronic filing, which is the electronic filing will go through the other process?

MR. BAHR: Right, that's right. It's somewhat -- s it exactly fillable?

MR. BAHR: Yeah. John, down there, actually did this, so he knows it better than I, but it's, yeah, it is a fillable form and because of the way it's done, it sort of ensures that you've done what you need to do to get the petition

granted, which makes it, I'm going to say, makes it nice for all involved because you can't file the petition if it would be a petition that we can't grant. So, you know, people should (inaudible).

MS. KEPPLINGER: I just think there's not a complete understanding of E-petition versus --

SPEAKER: E-filing, right.

MS. KEPPLINGER: -- E-filing. And that's a big distinction.

MR. SOBON: I think it's true from prior discussions that similar to the first action interview program, there's very interesting positive data of outcomes from the PPH program in terms of time to resolution, and also allowance rates, et cetera. I believe if we could get more of that data, I think the general public and the user public could really benefit from that beyond just the absolute numbers of what's been happening, what are the real outcomes from the program would be very useful.

MR. POWELL: Yeah, that part is in my shop, right? So, we are currently attempting to

spruce up our dashboard with that information -- the OIPC Dashboards. I'll find out where we are on that actually.

MS. YUCEL: If there are no further questions, I'm going to pass the mic over to John Cottingham who will be giving you some information about the Central Reexam Unit, CRU.

MR. COTTINGHAM: Thank you, Remy. I'm just going to give you a quick overview of the CRU, what we're doing today; and kind of walk you through where it began, where we are, where we kind of going. So, first off, the current makeup of the CRU is one group director. We have 10 supervisory patent examiners, 84 GS-15 examiners with 15 to 20 years' experience average between all of them. We have one manager for the tech support staff, 8 paralegals, 3 LIEs, one office manager, and one secretary. And with these 10 supervisors and the 84 examiners we're broken up into 3 art units: one chemical; one electrical; one mechanical. Currently, we do not handle the design reissues and reexams. They are still done in 2900; but we work very closely with those examiners to get those done.

A little history of the CRU: It was started in 2005 with some senior primary examiners, some senior SPEs; and the idea was to work to handle all of the ex parte reexams and inner party's reexams so we could get them out on time and meet our statutory deadlines. Along came the America Events Act and made some big changes that impacted the CRU greatly. So, and over time, so basically, it got rid of inner party's reexam and created the inner party's review. So, we lost some of that work. But, in anticipation of this, a lot of applicants filed a lot of inner party's reexams, so we hired a bunch of examiners to help with that bubble in the transition. And, also, out of the AIA created the supplemental examination, which requires us to conduct and conclude the supplemental exam within three months of the date of the compliance supplemental exam request. To date, over the last three years or so, we've had 111 compliance supplemental exam requests; and, right now, we average about one month to complete the supplemental exam.

We also handle the ex parte

proceedings; and currently, we have 435 pending ex parte reexams. We are very good at getting them started pretty quickly. The order to grant or deny an ex parte reexam we can usually get it done within 1.3 months. Due to the low volume of these, we can get them done pretty quickly. We can do the whole entire reexam if patent owner doesn't file a Notice of Appeal in 11.4 months on average; and with a Notice of Appeal, we're averaging about months, on average. And with the decline in inner party's reexams, reissues were brought into the CRU so we could handle those and provide really good quality on our reissues. In 2014, we started taking all the brand new reissues filed; and in 2015, we started taking in reissues that were in the core. So, at any point and time if an examiner doesn't want to give up their reissue, they can transfer into the CRU and we'll continue prosecution. And, right now, we're trying to focus on eliminating our really oldest reissues. So kind of like eliminating the tail, kind of like what Patents is doing. So, to get those down so we can press it down to just handling the new ones coming in on all the new filings.

Currently, we have about 2,000 reissue applications assigned to the CRU. And, so far, this fiscal year, we've received about 300 new reissue applications, and we are, like I said earlier, we are concentrating on trying to get the oldest ones done, the ones that were in prosecution, and trying to get those out of here. Also, we work with the PTAB. We follow the PTAB in what they're doing in their inner party's reviews or post-grant CBMs. We see what they're doing, how they roll; so, when we go through and we do our reissues and reexams, we know what they're doing, so, we kind of stay along the same lines.

Operationally, when you file your reexam or your reissue, your reexams will actually come to the CRU and we'll process everything coming in the door. Where your reissues are still going through like a normal application where they go through OPAP and then they go into the TCs support system, and then they get referred onto the CRU for us to work on them.

MR. THURLOW: Hey, John, could we go back for one quick second to --

MR. COTTINGHAM: Sure. Which one?

MR. THURLOW: That one right there.

MR. COTTINGHAM: Okay.

MR. THURLOW: So, a quick background, John's been terrific. At the last PPAC meeting, we discussed him doing a presentation and we had many, several conversations on the phone and spoke with folks in the reexam unit. It's been great. One of the things -- I looked through the presentation last night -- it's terrific -- one of the things maybe for the next meeting that's really of interest, and I should have looked at the agenda more closely to have you and Nate follow or be closer to each other -- is the interest is for petitions filed after the one-year service of the complaint. There's a concern, at least from patent owners have expressed, that once that timeframe expires, that petitioners are using the reexam route as another means to attack the patent. Whether fair or unfair, looking at it from that perspective. So, there is an interest in seeing the overlap between the PTAB and CRU; and in those cases, as you know, the AIA gave the PTAB the right to stay the cases,

how those cases are being handled. So, that's a large request, but you have three months, so. So, maybe that's something we can ask for if it's okay with Drew, and so on.

MR. SOBON: Maybe in a similar fashion, one thing I think, similar to the contested cases area, is to have more current data on actual outcomes here as well. Number of cases filed, what are the number of claims finally reissued, or denied, in a similar sort of fashion from classic core reexamination, would be interesting.

MR. COTTINGHAM: We are working to update the dashboard with more current data along those lines because -- so, we're going through revamping the whole process, so, hopefully, we can get more data up there for next time and we can go through it with you.

So, a little bit on how we actually handle the prosecution of the reexams and reissues. Each reexam and reissue is given to one of our examiners, who are generalist; and they handle the whole prosecution, and every office action is paneled. So, we'll have the examiner,

a second examiner, and the supervisor go through every office action to make sure it's complete. We have hit everything, so we give you a good quality office action as it's going out the door. So, that's why we have such high manpower to handle all those.

In just over 10 years, the CRU, we expanded greatly from just a couple examiners up to 84 examiner, currently. We adapt pretty quickly. As you can see, we went from just ex parte and inner party's reexams to handling supplemental exams, and creating those out of just the laws, and then taking into the reissues and getting up to speed and getting those handled pretty quickly, as well. Any other questions? If not, I can turn it over to Mark.

MS. KEPPLINGER: Thank you, John and Remy; and I think Shira was supposed to be on the agenda today, Shira Perlmutter; but we have Karin Ferriter replacing her. So, we have Karin Ferriter and Mark Powell.

MS. FERRITER: Thank you, and good morning. What I'd like to do today in the short time that I have is to give you a readout of some

patent-related developments in the world intellectual property organization; then tell you some of our work in China; and I'll finally conclude with an update on the work we've been doing on trade negotiations.

First turning to WIPO. In late January, the PCT, Patent Cooperation Treaties Meeting of International Authorities, the PCT/MIA met in Santiago, Chili to discuss a number of matters mostly pertaining to quality management systems of the international searching authorities, or ISAs; and to the requirements for appointing new ISAs. ISAs provide PCT services including preparing the international search report and written opinion regarding the patentability of inventions contained in the PCT international application. And, as you know, work-sharing can enhance the quality of international applications. So, the meeting included discussions about the new PCT collaborative search and examination pilot program. Under the pilot, a lead ISA shares a preliminary PCT international search report and written opinion with other peer ISAs. Examiners

and participating peer ISAs review the preliminary materials and provide further searching or feedback, if appropriate. The collaborative work product is then compiled by the lead ISA, which then becomes the official PCT international search report and written opinion.

Previously, PCT collaborative pilots involved only the USPTO, the European Patent Office, and the Korean Patent Intellectual Property Office. The new pilot expands participation to all offices. More generally, the Meeting of the International Authorities is also having ongoing discussions as to how improve the PCT minimum documentation. The PCT minimum documentation is an agreed list of referenced resources, patent documentation, and non-patent literatures that all of the international searching authorities agreed to search. There has been some interest on the part of India to have their traditional knowledge digital library added to the minimum documentation. This is sensitive because to be part of the PCT minimum documentation, one would expect it to be generally available, but the traditional

knowledge digital library need to sign a certain agreement to obtain. So, we have some concern about setting this kind of trend that there would be PCT minimum documentation of documents that aren't publicly accessible. But we're discussing that in this context; and we will continue that discussion in the PCT working group next month.

The PCT members are also discussing ideas for enhancing the functioning and the efficiency of the PCT system. Among the ideas discussed were promoting streamlined processing between the international phase and the national phase, improving access to search and/or classification results by ISAs, and enhancing the IT-based services provided to the users.

Outside of the MIA, other efforts of the PCT membership include discussions on the effect of currency fluctuations on a PCT-fee income, work to improve the coordination of examiner training on how to use PCT international search reports and written opinions, and how to evaluate offices wishing to become an ISA, as in Turkey.

These topics and others will be

discussed in a few weeks in the upcoming PCT working group meeting. In June, we have the WIPO IGC where that committee will continue to discuss genetic resources, and we will continue to hear interest among many countries, not including the United States, to revise the patent requirements to have a disclosure requirement for the source or origin of genetic resources. Many of you might be very familiar with that issue. It hasn't changed in 15 years, but we are, unfortunately, seeing something that looks discomfortingly like a treaty.

In June, the Standing Committee on Patents will also meet. We continue to struggle as to discuss even positive topics like quality. Instead, there is a big push for discussing a model law.

Turning now to China, let me give you a quick background on PTOs involvement on China-related matters. I should mention that we have a dedicated China team. That it has 12 U.S. lawyers, one of whom is with me today; and 5 China-trained lawyers and IP attachés in Beijing, Shanghai, and Guangzhou, and that we've

established a trainer resource center. The center allows us to gather an analyze a wide- range of data that's critical to developing an informed data- driven IP policy. In general, we've been very active on China-related IP matters for at least 12 years. We co-chair, along with USTR, the IPR working group, and the U.S. China Joint Commission on Commerce and Trade, and we serve an advisor on the JCCT through the Secretary of Commerce. We also provide extensive input on any IP-related matter discussed in other forms, including the strategic and economic dialogue led by the Departments of Treasury and State, and the innovation dialogue led by the White House Office of Science and Technology Policy. We've developed bilateral relationships with our counterpart IP offices in China, including China's patent office, the State Intellectual Property Office or CIPO. As you know, CIPO is an integral part of the IP5 and the newly-established ID5.

Turning to some of our more specific trainer work, we continue to actively track patent filing trends at CIPO and analyze how that

affects U.S. companies. CIPO is now the largest patent office in the world in terms of patent filings. When compared with the USPTO, CIPO receives three times more patent filings, receiving 2.3 million applications in 2014. These filings have been fueled by a range of provincial and municipal-level incentives and subsidies, which have resulted in numerous so-called junk patents, utility model, and design patents of questionable patent quality, which have caused concern for U.S. and foreign companies.

At the same time, we're looking at an exponential increase of Chinese-origin patent applications here at the USPTO, which, if present trends can increase, would cause eventual workload concerns. We've been providing extensive comments on pending patent-related legislation in China, including amendments to patent law, to the service invention remuneration guide regulations, and to anti-unfair competition law. We also continue to monitor developments regarding China's policies on accepting post-filing supplementation of data, a

matter which is particularly important for U.S. and foreign pharmaceutical companies.

China has undertaken efforts to improve its civil judicial system. U.S. rights holders have been using that system more and more to litigate patent infringement cases in China; and we have been heavily involved in commenting; otherwise, engaging with China on that undertaking. Finally, we're working directly with CIPO on harmonizing their grace period; and, specifically, about revising China's patent law and regulations to provide for a grace period of broader scope and duration of 12 months. We also look forward to your input on how we can help improve China's IP environment for the benefit of your companies. Help us reach that goal, and we especially appreciate hearing from you about what patent- related problems you and your clients may confront in China.

And finally, a few brief words on trade negotiations. We're working with our colleagues at the Office of the U.S. Trade Representative on the implementation of the intellectual property chapter of the Trans-Pacific Partnership, or TPP

Agreement, doing deep dives, looking at the country's flaws, and determining what is missing, and beginning the communications over the discussions with the countries themselves. We're also working with the USTR on the ongoing Transatlantic Trade and Investment Partnership negotiations. We just had another round last week in New York, and we expect the rest of the year to have considerable further effort in that regard. TTIP is an ambitious, comprehensive, and high-standard trade and investment agreement being negotiated between the U.S. and the European Union; and we're looking forward to achieve, consistent with U.S. priorities and objectives, appropriate commitments that reflect the shared U.S./EU objective of high-level IPR protection and enforcement, and to sustain and enhance joint leadership on IPR issues. We hope that this new agreement can really set a new standard for intellectual property and other elements of a trade agreement. We're also pursuing new opportunities to advance and defend the interest of U.S. creators, innovators, businesses, farmers, and workers with respect to

strong protection and active enforcement of intellectual property rights, including their ability to compete in foreign markets.

Thank you.

MS. KEPPLINGER: Comments, questions? Thank you, Karin.

MR. THURLOW: The thing that we always find interesting about China, and you're well aware of it, is the utility model applications that they have in their system. I think they kind of skew the numbers; so even though the number, 2.3 million is very high, do you know the breakdowns of percentage of those are the utility model? Because, you know, they're basically not examiners, like more like a registration system, and I know represents a lot of concerns for global companies.

MS. FERRITER: I'd hope Elaine might have those numbers.

MS. WU: You know I don't have it quite in my head. I can say that out of -- my guess is in 2014, I can get back to you on this -- my guess is in 2014, I think out of that 2.3 million applications, I'd say 6- or 700,000 may be

invention patents, which is equivalent to our utility patents. So, the rest is going to be utility model patents and designs. And, I think, there's probably a bit more utility model patents than designs, so, you kind of figure the math. But I can get back to you with numbers. So, yes, and the issue, of course, is that they are considered junk patents by many people, and U.S. companies and Chinese companies, as well, who actually have more problems with utility-model patents and designs than we do because we don't file as many; and we're actively working with CIPO to see if we can find some practical solutions as to how it is that we can improve that situation.

MR. POWELL: Okay, well, as usual, I am the man standing between all of you and the lunch, and that seems to happen every year. And, also, we're almost --

MS. KEPPLINGER: We can make up the time.

MR. POWELL: Okay. (Laughter) We're also a little bit behind, so as usual, I will skip my slides and just talk through a couple of the things. So, as many of you know, I've been saying

for a long time, you know, if there is a situation where the USPTO has access to prior art cited by foreign offices, why do the stakeholders have to file again in an IDS? And, I've been saying that, asking myself that; we hear it from the stakeholders; we hear it from the gentleman in the audience behind me early this morning. So, what I would like to do is announce to you a project that addresses just that, but much more, actually, right? That we have just gotten underway on. So, we're taking an examination of really, you know, prior art relevant to an application, discovered by some entity other than the USPTO examiner. The entity could be the applicant himself in forms of, you know, straight IDS information in that area he knows, obviously, other IP offices. It could be a futuristic machine search that really, you know, is valuable and could add information. It could be prior cited in AIA trials where there are trial cases still pending or any other third-party type of thing. So, it isn't just an international issue. It's much, much more than that, right? So, the question is what do we do with this, and how do

we use it to enhance the system, basically, right? You know, how would we use this to help the examiners, right?

In a way, my colleague Bob used this analogy, we'd like for our examiners to start at the 50 yard line when they came to search, rather than start at the 20 yard line when it comes to search. But we want to do this in a way that it's not so burdensome, that it's not adding value to their process. Clearly, you know, we're trying to benefit the applicants in terms of eliminating unneeded administrative steps, which, in particular, with reference to the ideas, are incredibly costly. And then, finally, you know, the quality component of this, you know, is fairly obvious. You know, if we can get all of this information into the record and considered by the office, you know, the quality and defensibility and, thus, the valuation of granted patents is going to be a lot higher, right? And the interesting thing about this, while it might have started with me because it has the international component, it really covers all of the areas under Drew. It covers Andy's examining operations;

clearly, Deputy Commissioner Martin Wallace, who isn't here, as the Quality Deputy. That's an issue. I've got an international component. Bob has patent examination policy component, and Rick, IT solutions, which may come to bear. So, this is really a very, very cross-cutting project.

And one of the key things is we really have to do this right. We can't just cobble something together and, you know, implement something without a full examination of everything from our labor issues which may obtain -- obviously, IT issues, and so forth -- but also not without, you know, a thorough discussion with the stakeholders as to, you know, is this going to, you know, satisfy the duty vis-a- vis your inequitable conduct fears, and so on? And then, of course, you know, we're not in the solution phase yet, how would it work? Would it be some sort of digest of art that an examiner would look at when he took it up for action, and then look at again before he disposed or allow the case? All of those really would need to be vetted out. But, the main thing is I wanted

to announce that this project is actually now underway, right. There is one slide and I can put it up. We have a timeline here, today and thru August, we have a 3-track information-gathering process. First of all, is to, you know, identify, you know, what these sources are -- as I've mentioned a few, there almost certainly are others -- and then, you know, at the same time determine do we have that information available in a data sense, right? We're also updating studies on applications related to, you know, the overall ADS programs. There was an extensive study done several years ago, which actually tallied up, you know, average amounts of references, and what-not, which would be relevant to, you know, clear the examiner's end of it. And also, there will be, and you will be seeing announcements for public input in our usual legal announcements coming forth. So, please look forward to that, and please participate.

In September, we want to cull through all of this information and try to find a general way forward, right? And then, the remainder of the year, we'll probably be dedicated to, you

know, examining the actual solutions, okay -- mainly in terms of IT, and then, after that, development of the IT and implementation of it. I always hate to put a timeframe on that because, you know, IT is very IT-issue here sometimes. However, we do have in place some vague placeholders sort of related to this R&D or IT roadmap, at least from the development standpoint, which is good. So, that's the big announcement when it comes to access to prior art. This process has many tentacles. Bob and I, who are actually co- sponsoring this together, we call it the thing because there's so many different things. There's not really one name that would help.

Okay, moving on. I also wanted to give you some global dossier update. So, I learned only yesterday, as a matter of fact, that in the month preceding, we had 1/2 million hits on the site, on the public site, 1/2 million, right. This is a brand new tool, and we've only begun to get the word out as many places as we can; and I think that's just phenomenal. Why is it so popular? Because, I remind everyone, it was

designed by the stakeholders. It was not designed by us. It was designed by our external stakeholders when we asked them what do you need, very, very, popular. I understand, as a matter of fact, that our EPO examiner colleagues are actually using our site, rather than the EPO version of it because it's so much more robust and has so many more features.

We continue to enhance the global dossier. Their enhancement is coming out soon. In fact, we met with our stakeholders in IPO and AIPLA yesterday at their headquarters to have further discussions of those. So, the future enhancements are coming along; and the one other thing that I wanted to add, we named it global dossier for a reason, not IP5 dossier. Later in the year, or very, very early next year, we should be adding as a node to our system WIPOs case system which is centralized access to search and examination, which will give us access to the search and exam results of Canada, Australia, Great Britain, Israel, and a number of smaller Asian offices, right, to further things along.

So, with that I will stop and take any

questions. Wayne.

MR. SOBON: I think the efforts that you're focusing on about access to prior art globally, connected with the global dossier and the other IT roadmap, is extraordinarily important, obviously, for the office; and I think it's also important for the user community. And I want to understand what your thoughts are from a policy standpoint, and maybe you can't even answer this question, but, you know, under McKessen, the question was asked yesterday by an examiner during the interchange we had about quality, about why they get an IDS listing hundreds of references. Well, that is because the federal circuit has said if you don't do that, and you don't list all the references that were cited in any other possible thing you could actually be seen as having committed inequitable conduct on the office by not actually disclosing. And so, the ideal thing, and I don't know where it stands, but as a policy matter, once the IT system is able to actually provide the examiners with all relevant art that has been sided in all related family members that their duty has been

satisfied and they can actually focus on the real art they actually care about and not have to back trucks up to the mill stop and dump those onto the office. I think, although it would be very helpful, but I would like to see it from a policy standpoint; I mean, I think at some point the office has to just sort of make a policy statement to say we have now reached the system where we can do this and you no longer, as a duty of care under Rule 56, have to do this; and that'll be the ideal day that we all praying for.

MR. POWELL: There's a very good reason that I'm a partner with my friend Bob here from the Examination Policy Department, so I'll turn it over to him for comment.

MR. BAHR: Thanks, Mark, but feel free to take this question. (Laughter) Now, as you know, we really can't say what the doctrine of inequitable conduct is. That's really a court doctrine, and we can't really always anticipate what's going to happen in the next case. The most we can do is ease the burden of disclosure for these things, for these types of documents. And one of the reasons we want to publish a Federal

Register Notice inviting comment from the public is because it doesn't do us any good to create this thing and not have it work for our applicants, to still have applicants have to bring the truck to us. So, we want to make sure that we are getting all the things that you can envision that a court will want you to have to submit to us, like copies of office actions from other offices. So, I mean, our vision is to get these types of things into this database without the need for applicants to bring the truck to us, and to put it in a way that's easy for examiners to look through it; because we don't want to bring a truck that we've created and dump in front of the examiner to look through because that's unhelpful, as well.

MR. SOBON: I hear your point, but it is your Rule 56. So, the office can actually say that under Rule 56 you have satisfied your duty of parallel actions in both our internal office, including IPRs and PGRs, and other parallels. If you tell us what you believe the relevant family of cases are that are connected, you have now done your duty because we can actually provide our own

examiners with all that relevant art. Now, of course, we still have the duty of searching for other things we might have of our own knowledge, but the real problem people bear with under McKessen is just this basic, seemingly now in an IT-age, rather stupid thing that we have to keep copying to you cases of things that are in your office or, in now, all the parallel offices you have global dossier access to.

MR. POWELL: I agree and we are sort of, I'm going to say, at the front of the project and not at the end; but, perhaps, it could be envisioned that currently Rule 56 says the duty is satisfied if it's submitted in an IDS. I could envision the rule in the future saying the duty is satisfied if this document is in this database; so that, and it would, hopefully, get there without the need for the applicant to do anything.

SPEAKER: (off mic)

MR. SOBON: Like I said, that's not to, you know, we haven't even started the drafting of Rules yet. We're in the information gathering stage.

MS. KEPPLINGER: And in the interim, if

you could identify the way in which you would like to see the citation of some of those things. Because, for example, came up yesterday from an examiner comment in the session we did with examiners about submitting, you know, referencing co-pending applications and the office actions from related applications. And I know in our own situation in my firm, we're showed with where to put that information. We put it on an IDS and it gets lined through by some examiners. So, you know, how you would like us to submit it: is it on the IDS; is it in a paper that we mention these things? That would be helpful.

MR. POWELL: I would say that's solution phase, for sure, right. And, you know, part of this is the applicant would have to know what's being considered, and has been considered, versus what is not, so.

MR. BAHR: I guess he's asking about what we're going to do in the interim.

MS. KEPPLINGER: He gets the solution. Exactly.

MR. POWELL: Anyway, I'll just close by

saying, you know, indicated over this comment, is that it could be historically positive if we do this right. Yes, it's going to be a fun project, so. (Laughter)

MS. KEPPLINGER: Thank you. Thank you very much, Mark and Karin, and Bob. We will go and get our lunch, as we have a luncheon speaker. So, what I would suggest is let's try to come back here in 15 or 20 minutes. We can eat while we have the presentation, I think, and we'll pick up some time there.

Thank you.

(Recess)

MS. KEPPLINGER: I think we're ready to start with the luncheon presentation. Today, we have Jeff Sears and -- do we also have Orin?

MR. SEARS: No, Orin is not going to make it today.

MS. KEPPLINGER: Okay. So, we have Jeff Sears, Chief IP Counsel from Columbia University. Thank you, Jeff.

MR. THURLOW: Let me just add to the intro, I mentioned to everyone that, you know, I would see him up in New York, and since January,

I've probably attended five different events at Columbia; and everything Columbia is doing is great; but, it's really, really, become a center for innovation for startups to go to the University to work with them. Last Friday, I was at Columbia for a startup Columbia Festival, and about 250 people there and actually had 4 different panels where they gave out almost $50,000 in seed money to startups. So, they're doing so much, and I thought it be great always to get the University perspective, and Jeff was kind enough to come here, so. Jeff you can take it from here, but again, thank you for -- we know you're all are busy, and to come down, we appreciate it.

MR. SEARS: Thank you very much for the introduction, very happy to be here. Certainly Columbia values its relationship with the Patent Office, and we look forward to continuing that relationship. So, as you know, my name is Jeff Sears. I'm Chief Patent Counsel at Columbia. I'll give you a very little bit of my background. I've been at Columbia almost 11 years. Before being at Columbia, I was in private practice for

about five years doing patent prosecution and patent litigation support. I practice across the entire patent spectrum at Columbia.

I'm very happy today to be talking to you about patenting and licensing from the University perspective. Let me first give you a brief overview as to how I have set up the presentation. I sort of divided it into three parts. First, I'll start with a brief primer on the University patenting and licensing practice just to make sure we have the same understanding of what it is we do at universities with patents and licenses. Then I'll move on to a view of universities in the innovation ecoystem; what roles the universities play in the ecosystem; what challenges do they face; and what has Columbia's experience been. Columbia is certainly not a typical university, but many of things we do are actually common across a wide range of universities; and then I'll wrap up with a few conclusions.

Moving on to the primer, the couple of topics I'd like to touch upon are really these. What's really the goal of an in-house licensing

practice, and what tools can we use to get to those goals; and what are the features of a university practice that really make it different from practices elsewhere. And when I think about elsewhere, I think about places outside of academia. I think about corporations, commercial entities. How is the university practice different, and how do our goals and the things that make us different from industry translate to our expectations from the Patent Office and the patent system?

The Goals. The goals can be very simply stated. There are really two. The first is to transfer university research; and the second is to support university research, education and teaching. Probably not surprising as an academic institution, it's our scholarly mission to disseminate research through the world. When I say transfer university research, what I mean is transfer it outside the university, and for the benefit of society. I do give a number of patent 101 presentations, and the way I like to describe it is this, professors at Columbia and elsewhere are working on potentially

great inventions that, if they simply made it to the outside and were worked on by commercial entities, they could be developed into products and services that could transform people's lives, that could improve the quality of their lives. So, that's really our primary goal, get the research out from the laboratories into the hands of the public to improve everyone's life.

How do we support university research by transferring university research? We do that by something that we like to call a virtuous cycle. The piece that's missing on this slide is this, we take the revenue we get from transferring university research and we reinvest that revenue into more research. The revenue the university earns from its retransfer activities doesn't simply go into a bank; it is reinvested. It is reinvested in the form of acquiring more equipment, hiring more postdocs, building more buildings. It is reinvested back into the process, so it truly is a virtuous cycle.

What tools do we use at an in-house patent and licensing practice to get to our goals of transferring the research out and continuing

to support research, and education, and teaching? Really two principle tools, the first is patenting, the second is licensing. We protect university inventions with patents. And I should pause here for a moment to make sure we're all in the same place on what I mean by a university invention. Under Columbia's patent policy, and Columbia's patent policy is pretty similar to those of most academic institutions, the University owns the inventions of its faculty. When those inventions were either conceived by the faculty while they're acting within the scope of their University responsibilities, or were conceived using University facilities. For example, University equipment to University laboratories. So, we file patents on University- owned inventions, and then we seek to license our patent rights to outside organizations. Outside organizations could be, you know, Fortune 100 or Fortune 50 commercial enterprises, but they could also be startups. And as I'll show you shortly, universities are champions of startups. Our goal in licensing the patent rights is to have the

rights worked to have the inventions truly commercialized and developed into products. It's the practical applications that are really important for us. We do not want to see the University research simply language and be put on a shelf. That's why we build into our licenses terms that encourage the working of the inventions.

When we do license our patent rights, we're licensing them typically at market-rate terms. We're not seeking exorbitant returns; we're seeking fair returns. And oftentimes, we're doing it at below-market rate; but, typically, market rate and, again, the goal of the licensing process would be to generate revenue, which revenue is reinvested back into the University's fundamental mission of supporting research, education, and teaching.

When I was preparing this presentation, I wanted to crystalize for myself, and for those of us today, what I think are the key features that really differentiate a university patenting and licensing practice from a similar practice at a corporation. There are a couple of features that

really make us very different, and that really change the way we approach the patent process. Here's the first, early stage research. What I mean by early stage research are really two things. First, we tend to file well before a product or a market for the technology exists. It is very common for us at the University to receive an invention disclosure on some earth- shaking discovery, and we end up scratching our heads as to what's the practical application. There is no known market; there is no none product. We are extremely far ahead of the product cycle. We are also filing extremely early in the inventive process. Our faculty are researchers. Their obligation is to publish, to disseminate their research to present. So, it is fairly common to file on a short-notice basis, an emergency basis, because a faculty member is publishing or presenting, or going to a conference. Typically, the faculty, when they're doing this, have just thought about the conception. They have the conception, they have an understanding of how the invention will likely work, but there's a lot of holes to be filled in.

So, we're filing very truly at the start of the inventive process. So, early- stage research -- products don't exist, we just got the invention conceived.

A second key feature is diversification. Columbia, like many other universities, has a very broad range of technologies on its campuses. We have a medical college from which we receive inventions in the field of medical devices, biologics, pharmaceuticals. We also have an engineering school which produces a range of your typical engineering inventions, computer science, double-e, mechanical engineering, chemical engineering. We also have an arts and sciences school which produces inventions in the fundamental sciences, your biologies, your clean tech, your green tech. So, our portfolio is very diversified. It cuts across a wide range of technologies. It is not focused on any one particular area of endeavor.

The third key feature that distinguishes us from a commercial practice is unpredictable research success. It is difficult

and truly impossible to predict which of the inventions we receive are actually going to become successful. Successful from a research perspective, meaning they're actually going to be technically validated to work and to generate a useful result, and successful from a commercial perspective; successful from the perspective of a licensee who wants to practice it and convert it into a product. As a result, we maintain a large patent portfolio for a very long time because it is unpredictable which of these inventions will actually mature to a fully-realized product.

MR. THURLOW: Jeff, just a quick question, do you use the provisional filings, provisional applications in the early stage?

MR. SEARS: Did you say provisional?

MR. THURLOW: Yeah, provisional.

MR. SEARS: Yes. We routinely file provisional applications. I have a slide a little later that will give an overview of our approach to the patent system, but we are frequent filers of provisional patent applications.

MR. BAHR: When you file before

(inaudible), is it because you want to file abroad, or is it because of the AIA fee?

MR. SEARS: It's actually both. We are routinely seeking protection for worldwide rights, and with the change in the AIA it also behooves us to file before publication. It's pretty routine part of our practice.

MR. WALKER: Jeff, can I ask another question of you?

MR. SEARS: Sure.

MR. WALKER: First of all, thanks for coming in very much, because I do think that there is sometimes a lack of understanding on both sides from the university research technical transfer office side and from private industry. So, I've seen that over time, and it's great to have these discussions. So, when you said earlier about your licensing model looks at market rates. If you just go back to that previous slide. So, when you had, I'm sorry, this one, yeah, early stage research; when you talk about market rates, how do you go about determining what a market rate is for early stage research for something that has unpredictable research, and presumably,

unpredictable commercial success? So, what would, how would you go about setting a market rate for that? Or, maybe you're going to talk about that later.

MR. SEARS: It's a great question. One of the tools we look at are comps. So, we're one of a number of universities who participate in various organizations. AUTM, the Association of University Technology Managers, is one; and there are a variety of databases we could look at to see, hmm, this technology, what field is it in; have other universities done deals in this space; what are the comps in that space. It's just one of the factors. But something that really underlines, that underscores our licensing practice, is we are looking to have our licensee be successful; because when the licensee is successful, we're successful. So, I say market rate terms, there are so many different varieties available. They could range from virtually no upfront and all backended, to some upfront with more generous royalty terms; there are diligence milestones built in. It's a lot of negotiation, but it often starts with comps. What have we done

in the past; what have our peers done in the past?

So, our expectations from the patent system, you know, we understand at this point that our goal is to transfer the research out so that we can reinvest the revenue we receive from that activity in continuing research. We know we have early stage research; we're filing early in the process, we have a diversified portfolio; we have a lot of bets on the table. It's a large portfolio maintained for years, so what are we looking for from the patent system? The first thing we're looking for is quality examination. Our early filings and our unpredictable research success requires us to seek extremely broad claim protection; because as a patent prosecutor, I don't know where this invention is going to end up 10 years down the road, or 15 years down the road, when its actually been validated both from a research perspective and a commercial perspective. So, I'm looking for very broad claims.

When we have quality examination, that ensures that these broad claims will withstand challenges downstream, and those challenges

don't have to happen in a formal process. It can happen in the informal negotiation process where a licensee is doing diligence on a portfolio and simply decides that the claims are too broad and just cannot be defended in any downstream event. And I'm very happy to say that we really appreciate the efforts of the Patent Office in recent times to improve the quality of examination. We've definitely seen an improvement. So, I would say from the Columbia perspective, the quality examination prong is definitely being met by the USPTO.

The second expectation we have from the patent process is compact prosecution. We have a very technologically diverse portfolio and that coupled with research success makes us file extensively. We are filing over, and over, and over across a broad range of technologies. You can think of it as having many small bets on the table.

MR. GOODSON: Do you prosecute your own patents, or do you farm it out, or a combination of both; and if in-house, how many attorneys you got?

MR. SEARS: Yep, happy to answer all of those. The high-level answer is we don't prosecute anything in-house. We retain outside counsel to prosecute everything. We do, however, have a number of patent attorneys in-house, and we have many roles. One of which is to oversee the prosecution, another of which is to, you know, assist with the licensing practice, and engage in litigation when it arises, and also other matters.

MR. GOODSON: And is that model typical through much of academia?

MR. SEARS: It is the predominant model. It's the predominant model for a couple of reasons. They all boil down to this. When you have your outside counsel drafting your patent applications, from the in-house perspective, you get a sense of comfort that the people who are on the ground, who are in the trenches, who are dealing with, say, the one-on-one issues from the examination side, day-in-day-out, you're really getting the benefit of their experience as to how to draft a proper application; and you also get the benefit

of a range of experience levels. We, particularly, are interested in getting definitely partner-level review of all the work- product that's filed, someone whose seen prosecution, whose seen litigation, whose seen licensing, who can make all of these risk judgments. And that's why it tends to be the predominant model because it is a very conservative model. But, certainly, at institutions that have smaller budgets, there are other practices. There are institutions that retain their own in-house counsel or in-house patent agents to file fairly thin provisional applications. Licensing happens in the 12-month provisional period. If something hits, then the application can be transferred to an outside counsel to make for a really high-quality work-product; and if it doesn't hit, it can just be dropped.

Compact prosecution for us is really helpful. And when I say compact prosecution what I thinking of is this, a timely first action and a timely final disposition. Hopefully, an allowance, but I am realistic. I understand

finals do come, and they come a lot, but I'm happy to take those. I'm happy to take a timely first and a timely final because it allows me to make a considered judgment on the legal side as to what is the likely commercial scope for this asset. Is the claims scope going to be significant? Are we really going to get something that is going to provide meaningful protection down the road, or is the art too close? It allows me to advise my business clients as to the merits of proceeding forward. I'm also happy to say that, generally speaking, we've really seen great improvements by the Patent Office towards the end of compact prosecution. In fact, it is a rare case where we get consecutive non-final actions. It is fairly routine to get a first followed by a timely final, again, hopefully, an allowance. It really allows us to focus the investment.

MR. SOBON: I have a quick question. I may have missed this, but how are you structured in terms of, do you have a classic, something analogous to a patent review committee of key technologist or business people to help you make the decision about filings, or something on your

shoulders about that?

MR. SEARS: Yep. So, we have a two-pronged process. Let me give you a brief overview of how the University is structured with the respect to patenting and licensing. There are two internal departments that play a role. The first role is an office of which I'm a part, it's the Office of the General Counsel, the University's legal counsel; and then there is also an office called Columbia Technology Ventures. It's just another office. This is an office that has approximately a dozen or so technology licensing officers; and the job of that office is to license the technologies. It's our job to advise our business counterparts on the whole host of patent issues that arise in that transaction. When a decision is made to file, how that decision is made usually follows this process. An invention disclosure is received. My office will review it for your typical patentability issues, claim scope. We also take a look at, you know, potential for design arounds, potential for detectability, where you actually observe whether someone is using it in industry.

In the business side, we'll evaluate it for your typical business factors: Is there a market? Who's in the market? What are the challenges to getting to market? What would we need to be able to show a perspective licensee in order to make this an attractive invention? Is it just a concept on a piece of paper, or do we have more?

When the decision is made to file, it's a collaboration between the two offices where the legal side is providing the legal advice, and the business's side is considering that along with the business factors in determining is this worth an investment of the University's resources. So, it is fairly typical, but I would like to emphasize that, ultimately, it is the business side's call as to whether to file or not. It's our role to give the advice, and if the advice is to file, then we prosecute to the best we can; and if the advice is not, then we don't.

MR. LANG: Excuse me. Can you comment about sort of your balance and work between the life sciences and let's say in IT, I mean, how active are you in the computer technology software, et cetera?

MR. SEARS: Sure, I'd be happy to comment on that. In a typical year, we receive about 400 invention disclosures. The split roughly is 60/40, with the 60 being on the life science side of the house, life science, including your biologics, your pharmaceuticals, your medical devices, and the

being your traditional sciences and engineering. It's a very vigorous practice, but one of the features of the practice is a hit. A commercial hit on the life science side of the house can produce revenue that's orders of magnitude greater than a hit on the traditional engineering side of the house. And I can actually show you a slide about that shortly.

The Innovation Ecosystem. I'd like to spend the next part of the presentation describing for you the roles that universities play in this Ecosystem, some of the challenges that we face in playing those roles; and then I'd like to spend some time on Columbia's experience. What have we done in the recent past; what have been some of our successes; things like that. The first role of universities: Universities

are initiators of innovation. This is a plot that is based on data from AUTM licensing surveys for the past about 25 years, 1991 to 2014. And it really is going to show you what happens to research funding. How does that funding get translated to patents? And on the next couple of slides we'll see how does that get translated to licenses, and from licenses to revenue.

So, we start with about $800 billion dollars in research funding. This is, again, the last 25 years or so to all U.S. universities. That translates to about 320,000 invention disclosures at a rough cost of 2-1/2 million per disclosure, if you wanted to do that type of math. And those invention disclosures, about 55 percent of them mature into 175,000 patent applications; and about 40 percent of those patent applications mature into awarded patents. A couple of things you'll see right away that won't be surprising is there's not 100 percent conversion rate. Not every invention gets a patent filing, and not every patent filing results in an awarded patent. There's always a combination of legal and business factors. I can tell you from experience

that if an invention has relatively low patentable merit, even if the claim scope is going to be narrow, if that invention also has significant commercial potential, we are likely to pursue it. On the other hand, if something has exceptional patent merit but there is no market, that will be a much more challenging patent to pursue because it's an asset that will need to be maintained for potentially a very long time; and we are accruing costs along the process to prosecute, and you have potentially a license that is distant in time, if ever.

MR. LANG: The 809 billon, it's, that's for all university R&D, and it's a number, I mean, I assume the predominant source of it is government?

MR. SEARS: That is correct, yep. The predominant source would be NIH, NSF, federal agency funding. So, these patents result in, just some rough statistics to put everything in perspective, a bit shy of 40,000 licenses and options, about 10,000 startups, 130 new drugs and devices, and 300,000 new jobs. This is one of the very positive side effects of the university

research ecosystem. We're producing innovation, but that innovation is also being translated to products that produce actual jobs. People have to make and sell the products that are based on university innovation.

Here's something that I think will really put this funnel in perspective, and it's something that our inventors often miss; and I can't fault them for that because they're inventors, they're not businessmen, or business people. This funnel is actually just the start of a very different funnel. The University's funnel is on the left. The end of our process is an invention disclosure or a patent application, or an issued patent. But, that's really just the input to the next funnel, which is much more dire. It is the industry VC funnel. Only about 1 in 6 University inventions ever gets licensed. The other 5 just never make it outside. So, we're only looking at 1 in 6 that make it to the start of the next funnel; and then life gets really hard. Roughly, 1 in 100 Pharma Compounds ever gets approved, and roughly 1 in 10 VC investments is a significant hit. So, to get from early stage

research to a hit, you have to run a very significant gauntlet; and there are many ways to die along that path. It's actually a well-known term called the valley of death. I'm going to illustrate that shortly. It's one of the things that makes a university practice so challenging.

Universities are also champions of startups. Startups are a fabulous vehicle for commercialization. This is a chart that gives you some sense of licensing and startup activity. We start with the year 2005, and we say the activity in U.S. universities for licensing was at 1, and the activity for startups was at 1. So, we start at unity; and over time, what you will see is that licensing activity, the blue arrow, the blue bar, has increased compared to 2005, so there's more and more licensing activity happening among U.S. universities; and the red bar is startups, there's also more and more startup activity; but what you will see is startups are continuing to be increasingly more prominent than licenses. They're becoming a more and more favored vehicle for transfer of university research.

Universities face many challenges in their roles of being initiators of innovation, suppliers of innovation, and champions of startups. This is a plot that I think puts it into stark relief. And, again, it is based on AUTM survey data. On the Y-axis, we have what we call gross tech transfer of revenue. You can read that to mean revenue from patent licensing, patent litigation settlements, what have you, revenue that's tied to patents. And on the X-axis, we have just a list of institutions, no particular order; it's just order based on revenue. And what you will see is that for at least two-thirds of these institution's tech transfer, patenting, and licensing is a loss. This is just a revenue chart. This revenue chart has not been adjusted for your patent expenses; how much you have to pay your outside counsel to file; and how much you're paying the patent offices to actually review them; and it's not adjusted for operational expenses, how much do you have to pay your in-house counsel, how much do you have to pay your technology licensing officers? Though taking a look at this, roughly

two-thirds of universities are losing money on tech transfer. It's a net loss. Here are the next quarter or so, are doing okay, they're probably generating some small amount of revenue; and then there are always a handful who are doing extremely well, who are extremely well rewarded for their activities. I'm happy to say that Columbia is at or near the top, and has been at or near the top for years. But rather than focus upon Columbia's success, I really want to focus on why is it so hard? Why is it so hard to generate revenue from transferring early-stage research out to industry? Why is it that most of the U.S. universities who do it don't break even? They actually lose money when you adjust for their operational expenses and their patent expenses. It's so hard, primarily, because of unpredictable research success. It's impossible to predict which invention is going to survive from the research perspective. It's impossible to predict which invention is actually going to be validated, purely from an academic perspective; which one is going to be proven to actually work; and it is essentially impossible to predict the

commercial future. It's very had to have a crystal ball when you're at the inception of the market, and to pick the winners and the losers.

So, the valley of death. It's a well-understood term in academia, and here's one way to think about it, and I haven't shown you the value yet, I'm just going to set it up. There is a Y-axis here shows the commercial value for the invention, and the X-axis is basically a chronological time for the invention. You start with basic research at the initial stage, you move on to feasibility studies, validation and prototyping, market testing to finally, at the end, product development, marketing and sales. Well, here's one side of the valley. There is tremendous amount of support available for basic research. There are grants from federal agencies, NSF, NIH. There are grants from private foundations for basic research; and this is where most of the university research receives its support. Foundation grants, so, no problem there. The problem arises after that stage. It's very common for faculty to have very little interest in validation or prototyping. A

prototype is not going to get you an article in a peer-review journal. It's not going to help you get tenure. The faculty are interested in those things. They're interested in groundbreaking research; not so interested in making sure every little nook and cranny of the invention is thought about and tied up. And I certainly cannot fault them for that. It's their role to be scholars and to disseminate research.

Though in the extreme other side of the valley, you have industry and VC funding. Once an invention has matured to a product that has been proven to work, there is tremendous funding available. But, in between the funding for basic research and the funding for proven results, you have an incredible valley, and this is called the valley of death. One of the things we do at Columbia, and one of the things many other universities try to do, is provide gap funding, funding that helps university investigators try to bridge the gap. We have a number of programs that help investigators actually get to the technical validation and prototyping stage.

Often times a licensee is going to want

to see just -- patent applications not enough. You're going to want to see something that works. Can you show it to me? And more than show it to me in a lab, can you show me something more refined than that? And this is what we try to do with GAP Funding.

Onward to the commercial side. Predicting the commercial future is very hard. And this is a plot that illustrates that. When you look on the Y Access you are looking at the cumulative percentage of our license disclosures, so essentially overtime. What percentage of all of our disclosures have been licensed based on years from disclosure submission? And here is what you will see: for us, Columbia, only about 55 percent of our deals are done by year three. So think of a class of inventions that comes in today. About three years from today only about half of the deals we're ever going to do in that class of inventions have already been done. By year six only 85 percent of the deals we're ever going to do with that class of inventions have been done.

So what this means is, 15 percent of

those deals aren't going to happen until more than six years later. As a result we end up maintaining a very large portfolio for a very long period of time because you don't know which inventions are going to be successful from a research perspective or a commercial perspective and just because something hasn't been licensed by year five doesn't mean it's never going to be licensed because you know the statistics. And the statistics are further compounded by something called Blockbusters. Blockbusters at universities drive most of the revenue but they are very rare. I am going to show you a couple of slides to put them into perspective.

So if we take a look at all of the active licenses and you do statistics based on, again, AUTM licensing surveys you will see that only about 40 percent of any license actually generates revenue. Now that revenue generating licenses, that's a university euphemism. You might think, hey it generates revenue, that's pretty good. And to me at the university it means it earned a dollar, a dollar or more. Revenue generating license includes that fully paid up

non- acts for a $1,000 dollars. That goes in to the 40 percent bucket. So only 40 percent of licenses actually make a dollar or more. And less than one percent actually generate a million or more annually. That's the licenses picture.

But let's put it in the perspective of inventions because remember the university funnel. Only one in six ever gets out of the funnel. So if you look at inventions, and now I'm at the top of the active licenses bar, you'll see only one in six is ever licensed which means only one in 16 invetions ever makes a dollar which means only one in a thousand ever makes more than a million dollars a year. It is very hard to predict and Blockbusters typically don't happen over night. They take many years to develop and they're not obvious at the time.

These are four plots of revenue. The Y Access is revenue the X Access is time, time from invention disclosure. For Columbia's four biggest revenue producers three of these, it will not surprise you to know are from the Life Sciences area, one of them was from the Double E, Computer Science area. And what you will see is

roughly 10 years to significant revenue. That means the invention was received, reviewed, filed upon, and held for 10 years until revenue actually arose.

And there is a very interesting story about one of these blocks and it goes like this: It's not just that universities are poor prognosticators, it's not that we don't really understand the business or that we're unsophisticated. This is really hard for the people on the outside as well because for one of these big four producers, it's only of the Life Sciences side actually, Columbia licensed it twice. First it licensed it to Company A, who held exclusive right for a number of years and was unable to make a commercial product and returned the rights to Columbia. Columbia then licensed it to Company B who was able this invention a fabulously successful product. This is really hard. It's a really hard business.

Columbia's experience, just a couple of slides on an annual basis. We get about 400 new inventions per year. Formally they're received by my business counterparts at the Columbia

Technology Ventures. On a typical year we're generating 100 plus licenses and options, 15 or so are start up companies and an excess of 100 million dollars a year in licensing revenue.

What happens to those 400 new invention disclosures? Just some very rough statistics. We are filing a provisional application on roughly three quarters of those, it's very routine. The range of provisional is very broad, often times they can be what I would call a very thin provisional on the Double E Computer Science side of the house. That's a provisional that's certainly meeting 112 but it's not going far beyond that. And then there are provisional on the Life Science or the farmer's side of the house which tend to be much more developed because the art is much less predictable so we need much more disclosure to satisfy 112.

So 400 inventions in, now approximately three quarters receive a provisional, of those provisional roughly two-thirds survive. Typically they survive into a PCT, the proposition being that the cost differential between filing a PCT and a U.S. Direct is only

official fees, the work products is the same, and the PCT remains worldwide rights for another couple of years.

Of the PCT's that are filed virtually all live, some are dropped, a small percentage, probably less than 10 percent but virtually all live on. Typically in the U.S. national stage finally. There are certainly some XUS filings but typically those are rare and becoming more so because the cost of prosecution XUS is so much greater than the U.S. European jurisdictions, Japan, other foreign jurisdictions are extremely expensive and so typically we are looking for a licensee to pick of those costs and if one has not arisen by the time of 30 months we typically would not enter foreign jurisdictions.

Products using Columbia technology, this is a slide we use routinely at Columbia and the way we often describe it is if you happen to be familiar with any of the products roughly on the left side of this slide, we're sorry that you are familiar with those products but hope they really work for you. And if you're familiar with the products on the right hand side we hope you

really enjoy them.

Start-ups. What is Columbia doing with start-ups? We have had an explosion of start-ups. This is a plot that tracks the number of start-ups we've founded over time from 2008- 2015. Let me tell you what I mean when I say, have founded a start-up. It's not the University that is founding a start-up. This is how a start-up is typically formed: A faculty researcher designs that he or her innovation would really be best commercialized by a start-up. That researcher forms the start-up itself, the actual business entity and then the start up in-licenses the faculty researches inventions. In-licenses the Universities patent rights in those inventions. Typically, that in the form of an exclusive license. Typically it will include also as a separate document a grant of equity back to the University and recognition of the risk of granting a licenses to a start-up.

MR. LANG: Do you include return on the equity in your licensing revenue?

MR. SEARS: If we have cashed out the

equity yes, it is included but most of the time the equity is just simply held as shares until there's a conversion of that in which case is does not go on the revenue.

To give you a perspective of what Columbia is doing in the start-up space, we spun out more than 150 start-ups in the past 20 years, more than 100 are still active, 10 are public and 23 are actually acquired. One of the ones I want to focus on, two of the things I'll focus on, you can see the start-ups are very diversified in terms of technology, health analytics, farm and devices, communications, cyber security and also clean tech. I won't go into the slides on this particular start up but I do have slides in the packet on the start-up called Radiator Labs. Here is something that we all can identify with: I remember this from my days in college, you're in your dorm room or wherever you live and you have a radiator, one of those old style radiators and you just can not control the heat so in the dead of winter you have the windows open just to make the temperature somehow livable. What Radiator Labs has done is they've developed a patent

pending technology that essentially is a cover that is essentially put over the radiator that allows the heat to be conserved and directed to where it's actually needed in the building and not wasted.

Conclusions. Conclusions about the University practice. Well, as we've seen universities are initiators in innovation eco-system. We are really the start of the innovation process and as initiators what we do is we follow what I like to call and what others in the university area like to call a virtuous cycle. We are transferring early stage research out to start-ups and commercial enterprises and we are leveraging the returns from those activities to support continued research, education, and teaching for the benefit of the public.

As we've also seen, participating in the university in the innovation eco-system can be particularly hard for universities because it is hard to predict research success. There are so many hurdles that can stop a worthwhile invention from actually being commercialized.

Having nothing to do with the merits of the invention and having to do with the business, vice versa or a combination of the two.

(inaudible), this office is quality examination and quality prosecution is extremely helpful for us because it allows us to focus our investment. It allows us to determine which assets have the most paten-able significance, which assets might actually benefit from an investment of resources.

So I can conclude by saying that the USPTO provides critical support for the virtuous cycle that underlies that start of the innovation eco-system. Thank you very much.

MR. THURLOW: Thanks Jeff, just a quick question. So as part of the PPAC, Patent Public Advisory Committee, we're really struggling with how to get the information about all the good things about the patent office is doing out to the public. So for someone that's not familiar with this and so on, do you have any recommendations

on -- I mean, for example we spent several hours on this morning discussing patent quality, things that we're working on, Master Review Forms, Clarity of the Record, and so on. And thought on how the office can get out the information whether it's just being a part of a mailing list or just other suggestions.

MR. SEARS: Yeah, I do have one that comes to mind readily, at Columbia we have a very lively community that includes members of the university but also it's open to outside individuals. We do have a mailing list for presentations and members of the public are invited to attend. So it's actually quite common to be delivering say a Patents 101 presentation and part of the room will be people you may have seen or at least are familiar with and another part will just be members of the public. So I would certainly say reach out to universities and see if there's a way to include the PTO's materials in presentations that are open to the public certainly would be very accessible.

MR. GOODSON: Just a quick, R&D, what is your R&D funding, millions per year?

MR. SEARS: Roughly speaking Columbia received about 600, 700 million dollars in research funding from federal agencies per year.

MR. GOODSON: Thank you sir, wonderful.

MS. KEEPLINGER: Thank you, that was very informative and I think that was very well received. You can see by the questions. So thank you for presenting.

MR. SEARS: I appreciate the opportunity to be here and I'm happy to hear what's happening with the PPAC and the Patent Office. (applause)

MS. KEEPLINGER: We can take a short break if you want, 10 minutes and then we'll come back and start. So we'll start back at 1:45.

(Recess)

MS. KEEPLINGER: Okay, great. Thanks for coming back. And we have now on our next -- next on our agenda is Nate Kelley, acting Chief Judge of the PTAB and he'll give us an update on operations there. Thank you Nate.

MR. KELLEY: Oh you're welcome. Good afternoon. It's a pleasure to be here. I'm also

here with Deputy Chief Judge Scott Boalick, our Board Executive Adam Ramsey and Lead Judges Tierney, Giannetti and Mitchell.

So I thought what I'd do today, as I always do, is go through out statistics. And there is good news to report as there has been the last several quarters that we've been here. Actually, even better news than is on this chart, which shows our PTAB inventory for ex parte appeals. Year-to-year as you can see there was a high -- the high was actually higher than it is depicted on that chart, close to 27 thousand and actually we're down below 19 thousand as of yesterday we are 18,754 ex parte appeals in our inventory. This shows you sort of over the last several months how it's been dropping week by week and I think what I've mentioned when I've been here before is that to me the key number is not necessarily the size of the inventory but the amount of time that people are waiting in line. And those numbers are dropping as well. Before I came downstairs I went and I looked at the actual numbers and at the end of fiscal year 2015 for the decisions that we were deciding on average those

cases had been pending at the board for a little under 30 months, 29.7 months. Right now our average is down to 27 months, so we've come down about a three months on average in just the past half of the fiscal year. And the story is actually better if you dig in a little bit to some of the tech centers. In the electrical arts at the end of fiscal year 15 the average pendency was over 30 months and right now it's under 26 months according to the numbers I saw.

And one thing I want to say about those numbers is that they're not necessarily the time that you would wait in line if you get in line today. And hopefully they're not. They're the age of the appeals that we are deciding and because we are working through our inventory, the age of the appeals is actually longer than we expect people to wait in line if they appeal today. Our objective in the near future is to have people wait for a decision no more than a year. The same is true on our AIA Trial side and I think that that's going to demand an inventory of right around 12 thousand and as you can see, according to the numbers, we're moving toward

thatnumber really as quickly as we can. So that's the AIA -- I'm sorry, the Appeals Statistics.

Moving on to the Trial Statistics, we have some new statistics to report this quarter. Before I get to them I'll just sort of get to where we are today. Close to 5 thousand petitions have been filed, again, as I say every time, that's still about three times the number that we expected. You can see that the number of PGR petitions, which is the green number, is now up to 22. Again I think we are being a little liberal in our rounding to get that to one percent.They're coming up but not at the speed I think people expected. I've speculated before that it's because of the estoppel provisions for PGR and I assume that's why it is, but practitioners would know the answer as to why they're not filing PGR's better than we do, obviously.

So here is our number of petitions year by year. As I'll show you in a second, when we get to our petition filing by week, it's not exactly a trend that they're down but I expect the

fiscal year 16 totals to be under the fiscal year 15's totals. Not significantly and they will be over 2014 but I think right now we can at least be comfortable in assuming that we're not going to continue to see an increase from year to year to year.

So this is the chart we show every time, I know it's very difficult to see, but it's petition filing by month. In the upper left is the IPR petitions followed on the upper right by the CBM petitions. The bottom left in red is the PGR petitions and then the total is on the bottom right in blue. And as you can see, they keep going up and down every month but over the last several months we have not seen the highs that we saw in the spring and summer of 2015. So it's been a very long time since we've been over 150 in a month and we've only reached 150 in a month one time.

I don't think that this is showing a trend over time that is going down and down and down but I am comfortable in assuming, at least for right now, that our numbers are going to stay in this ball park moving forward and that we are

atthe board well-equiped to handle that. I don't have a slide on the size of the board but what I'll tell you is that we're now at 267 judges. We stopped hiring as of last August; we stopped announcing for positions. We're still kind of working through the tail end of the hiring process so there is still a handfull of judges yet to come on board. When all of those people do come on board over the next several months we'll be at approximately 275 judges. With our appeal inventory coming down at the rate it is and with our AIA petition filings where they are I'm comfortable the board is sort of right-sized now. Obviously we continue to look at that all the time. We continue to model projections moving forward, how many people we need. But the expansion that we've seen for the last three years is hopefully behind us. Hopefully we're at a size now where we can sort of adjust to the number of people we have, get our administrative staff build out and sort of work on where we are today.

MR. THURLOW: Hey Nate, just a quick point.

MR. KELLEY: Yes.

MR. THURLOW: Something that we focus on a lot is numbers that we've heard in the past is that 80 percent of petitions involve patents and corresponding litigation. The first questions is, is that number still somewhat accurate or is it more like 70 percent? And then I'd be curious with the PGR, the same question, what percentage of those patents are in corresponding litigation? I know that's getting into the weeds but that's such a big driver of the filings as you're well aware that that's something that we focus on a lot in the public.

MR. KELLEY: Right. And it's something outside sort of data capturing organizations focus on. That's where I see those numbers as well and the number I saw most recently was at 80 percent. I've never seen a number about PGR so I can't speak to that. And we also don't produce our own numbers on that.

MR. THURLOW: Okay.

MR. KELLEY: So I think the numbers you have are as accurate as any I can do. Yeah, Wayne.

MR: SABON: Maybe sort of a follow up

to that question that I wrote down that you were noting is, do you look at for benchmarking, I don't know off hand, the European experience of oppositions to patents and, you know what percent of newly issued patents get opposed there as the analog to PGR and in terms of modeling or where we are in terms of that.

MR. KELLEY: Yeah that's --

MR. BOALICK: It's got to be really low because of the 22 that we have.

MR. KELLEY: Right. It's not something that we've looked at and our PGR numbers are so low right now that whether or not -- yeah, there's not a lot of data behind --

MR. WALKER: (inaudible) what their rate is as well.

MR. KELLEY: Yeah, maybe that is something we should look into.

MR. WALKER: Just a comment, I seem the -- remember that number because when the AIA was under discussion there was a question about that. I think it was about 3 1/2 percent to 4 percent of PPO applications were at oppositions.

MR. KELLEY: Well, I don't know off

hand the number of patents that we issue but my guess is that the 22 PGR's in extremely low percentage. (laughter)

MR. POWELL: I can get that information for you from my colleagues in Japan and Europe and Korea.

MR. KELLEY: Yes, it's less than one percent. Thanks Rick.

Okay, so the slides that I'm going to get to in a second are new slides and they have a break down by technology sector -- excuse me technology center -- in areas we haven't done before. This is the slide that people are familiar with that shows technology break down by tech center for petitions filed and I think the one thing you can glean from this is that the petitions are now sort of coming in less and less all for electrical cases and now sort of filling out the tech centers in a way that we might have expected initially. And so you can see in the upper right -- I'm sorry in the lower right -- fiscal year 14 we were at about 65 percent, I think, and now we're at about 54 percent. So we have a fewer percentage of cases from those area.

But what we did is -- you know we heard some talk about the success rate of petitions that are directed to specific technology center patents, particularly the discussion I heard was the success rate of patents in the biotech space, that they did not fare as well during AIA trials as patents in other spaces.

Frankly, it's not easy for us to figure that out because of how our systems work, but one thing we can easily do is track those numbers by technology center, which is what we've done. So now our statistics that we put up every month include this slide, which is the percent of petitions instituted by technology. And again we use the technology centers as a proxy for this and that -- those mimic the filings you saw on the previous page.

So these are the percentage of petitions instituted and one thing I wasn't to make clear is that when people talk about our numbers they frequently talk about them in the ways that are helping their particular point that they are making. And so one thing that I want to point out here -- I'm sorry.

(inaudible question)

Okay, fair enough. So, this is percentage of institutions when we decide to institute. So for example if you take -- I guess the one that best lines up is the biotechnology pharma at the bottom. So that looks from where I'm sitting at about 60 percent. That does not mean that there is a 60 percent likelihood of a petition filed against one of those patents will be granted. What that means is that when we get to the point where we actually make a decision on a petition that that petition is likely 60 percent to be in favor of grant and 40 percent not to be. And the reason I highlight that is because many, many petitions never reach that point. So these are only the petitions that we actually make decisions on.

And so we have this chart and this shows the trial outcomes instituted by claims for technology by technology. The first thing people ask when they see this is why don't those numbers add up to 100 percent in every case. And that's because what we're doing on this slide is we're counting the claims that were instituted.

So for example the easiest one is the design space we instituted on a total of five claims and the outcome is that all five claims have been found unpatentable. If you go down again to the bottom, on the Biotechnology/pharma line, we instituted I guess it says on 1,252 claims we only actually made a decision on about 75 percent of those claims because cases may have settled or they may have been dismissed along the way. So the total number if you were to reach 100 percent are all the claims we instituted on and these show you the outcomes when we actually made decisions.

So again, on the bottom line, the yellow are claims found unpatentable, so on claims that we instituted trial in that space it looks like about 30 some odd percent were found unpatentable. The green and white checked regionas are claims confirmed to be patenable and I'm not even going to try to figure out what that is from here but it's about 30 percent and the purple are claims that were cancelled or disclaimed during the proceeding but still were in a decision that came out at the end.

So this hopefully gives people at least

an eye into what's happening at least using technology center as a proxy to the technology and the patents.

So we present this every time. This is our stepping stone chart. It includes only those cases that have of left the board either through settlement, through final written decision, you know, terminated in some other way. They don't include pending positions, nor do they include pending trials. So it gives you sort of the life cycle of what happened to those cases where a petition came in the door and then finally it left one way or another.

I have received feedback about the clarity of the slide. As we go through these iterations people say why don't you put this data on it and why don't you put that data on it and we've tried to do it every single time. The result has been a slide that, unless you're holding it front of you, is very difficult to read. So that's one thing we're going to go back and look at yet again is to make it more legible.

The colors? I kind of like the colors but we've even had commentary on that. The blue

goes to light blue for a petition, medium blue for instituted, dark blue for final written decision, every grey is something that popped out somewhere along the way, and I'll let people make their own interpretation of the red, green, and yellow.

We have another one for CBM, obviously a smaller number and I don't even bother to include a slide yet for the PGR's.

The Trial Rule. As everyone knows our final rule package published on April 1st. The rules became effective on Monday of this week. I saw Director Lee's presentation this morning where she gave kind of a brief run down of each rule so I'm not going to do that. I guess the one thing I will point out because I just asked about this upstairs is, has any patent owner in the last four days already filed a patent owner preliminary response with new testimonial evidence, and the answer is yes. It's already happened. So we'll see what happens in that space.

MR. THURLOW: A quick comment on that one point since that's a major part of the rule change I think. The feedback I received is,

because of the time limitations the -- and many factors with getting an expert on board and so on, and then the feeling that if you file an expert declaration with a patent owner preliminary response and it gets instituted then you shot all your bullets I guess. But, even though patent owners may not use it, and I know you've heard this, they feel like the system in at least on it's face a little bit more fair and they have the opportunity to and from that perspective they appreciate the change I would say.

MR. KELLEY: I've heard that as well, but one thing I would point out is that as far as fairness, we view the patent owner response which is filed in a trial once we've instituted as the counterpoint to the petition. The patent owner response has always permitted the same sort of evidentiary submissions that a petition could put in. When people talk about sort of an uneven playing field comparing a petition to preliminary response I think a lot of times the people who make that observation are sort of -- they're not really looking at the purpose of a preliminary response in the right light. The preliminary

response -- a good preliminary response -- is something that responds to the petition. The petition's job is to lay out the whole case of the petitioner but it's also to lay out the rational as to why we should institute.

A good preliminary response is one that goes after the second point, one that explains why that petition did not demonstrate enough to institute. It is not necessarily the time -- and patent owners are free to do whatever they want -- but it's not necessarily the time for the patent owner to make their case in chief, to show us secondary considerations of non-obviousness for example. Things that come up naturally during a trial but maybe are not that helpful when all we're making is a threshold determination of whether a threshold hold -- of whether it's being met or not.

So, to me it's always been a fair system because we've always let the evidence come in and it wasn't really necessary at the preliminary phase but I take the point that now patent owners can put in whatever they want at that phase and we'll see how frequently it gets used.

So I won't -- in the interest of time -- I won't go through all the other rules unless there are particular questions about them.

MS. KEEPLINGER: We can catch up our time so if you want to go through them you're welcome to do that, so.

MR. KELLEY: Okay, so the first rule was the claim construction for expiring patents. That's something where we put in a rule, what frankly we've already been doing and what -- it occurs in re-examination which is that if a patent is going to expire at a time in which it's impossible to make an amendment as a virtue of timing then the claim construction approach that's used mimics that to be used in a district court. So by rule we set up the procedure and the mechanism for how that would work. A party wanting us to use a different claim construction approach can file a paper and assert, you know, tell us no this patent is going to expire, it's going to expire for example 10 months from now and because of that there is no way this proceeding can ever end up in an amended claim so please use a claim construction approach that would be used

in a district court.

The preliminary response we just talked about. The oral hearing rule requires that any demonstratives that would be presented at an oral hearing would be exchanged at least seven working days before that hearing and filed with the Board at least as of the date of the hearing.

The word count change hopefully will eliminate some creative attempts that we've seen to get around page limits and it mimics what happens for example at the Federal Circuit, where the major filings are measured in terms of words instead of in terms of pages. Everybody is familiar with how to use their word processing program to count the words and certify that at the end.

We did have one slight change to this rule from when we initially published this rule. We excluded this rule from the word count various administrative items. We inadvertently included in that list the ground for standing requirements and, as people know who file these petitions, particularly in the CBM space the grounds for standing can be quite substantive and

quite lengthy. It's not just an administrative item and it's not something that's logically taken out of the word count. So we've printed a correction last week. The final rules published on Monday indicate that and that the grounds for standing is something that counts toward word count. So if you have the version of the rules that were published on April 1st, it's not exactly what the final rules were.

The Rule 11 type certification; we promulgated that rule as well. When we first published that rule for comment, and even when I came to this meeting -- I think it was maybe three meetings ago, there were questions about it: why do you need a Rule 11 certification? Why are you kind of layering on to these proceeding something that was never there before?

I hope in our final rule what we've made clear is actually, there is a background rule at the agency, 37 CFR 11.18 applies to all filings at the agency and one of the things our Rule 11 rule did is it clarifies how 11.18 applies during proceedings before the board. And I think without that clarification, given the comments,

I think people were maybe in the wrong place when they thought there was no requirement at all for this. So the rule as promulgated is rewritten significantly and mainly crossreferences 11.18 which all practitioners should be familiar with already.

MR. THURLOW: Michelle asks this morning, I think we briefly mentioned it, about the P-tab (inaudible) amendment analysis that you're doing. I guess my general comment is as we discussed yesterday, it is a major issue at the P-tab proceedings and whether it's a week or two I think that will be a helpful report and hopefully be able to address a lot of the concerns or at least rumors or whatever you want to say about the amendment practice and response to. A lot of points have been raised on blogs and so on.

The other issue is I recently received a fair amount of feedback on is the discovery divisions in the new rules package were pretty significant when in fact there's no real changes and there was a feeling that it was put in there because there were so many questions about Discovery but it was just to emphasize that in

fact just as a reminder there's -- unless it's very targeted there'll be limited Discovery in these proceedings. Nothing new but it came across from some presentations I've done and so on as more of a renewed emphasis on the fact, don't expect too much Discovery on these cases which is really nothing new.

MR. KELLEY: Well, so when we decide whether or not a space is a good one to make a rule or continue to decide things on a case by case basis, Discovery is an area where we think a case by case analysis is what makes more sense because as soon as we write a rule a couple things happen. We find cases that come up on the wrong side of the rule and so what should be done in the interest of justice really can't be done because of that rule unless we waive the rule. And the other thing that happens is that people can begin to, you know, arrange their affairs by the rule and work around the rule and so for things like Discovery we really think we're in a better place to make those decisions on a case by case basis.

I did saw the Director's commentary this morning on our motion to amend study. I hope

that that comes out in the next week or so. You know, I hear the same commentary everybody else does. I hear it at meetings, I've heard it at arguments at the Federal Circuit about the motion to amend practice and why so few are getting granted and I think the number she gave this morning that was -- she gave the 13 percent number which is the number of cases that we've made decisions on that include the motion to amend, and she also gave the 80 percent number, which is the approximate percentage of denials of motions to amend that are on the merits, meaning it really mimics what happens during routine prosecution. Where an amendment comes in, an argument is made and an examiner writes a rejection and says that claim is not patentable for the following reasons. Maybe it's anticipated, maybe it's obvious, whatever it is. That is what happens in the majority of all the denials of motions to amend. They're not summarily denied, they're denied for reasons related to Title 35, and like I said, I hope that data will be out next week or there about and people will get to see it then.

MR. THURLOW: Great.

MR. KELLEY: So we have still two initiatives that are on going. If I said I was disappointed in the participation I would be saying not even how surprised we are at what happened here. You have until June 20th, we still have over 19 hundred spots available in our appeal pilot which would -- someone with two pending appeals to take one out of line and put the other one forward as has happened so far just a handul of times. They all get decided very quickly. But obviously this is not something that people are terribly interested in.

The second one is even more surprising, this is the small entity pilot program. This on runs a little bit longer, it runs until September 16th, 2016, of course the five year anniversary of the AIA. This allows a small entity with no 112 rejections, with one issue in their case, to simply go to the front of the line for free.

I assume there are a fair number of people in this boat and there has only been 18 petitions filed. By the way, the ones that haven't been granted are just not granted because they don't qualify and not because we're making

a substantive assessment of anything beyond their qualification for it.

So again, if there are small entities out there, if you have clients who are small entities, this is something that's still available. But given the rate at which the appeal inventory is coming down all ready we're not looking at either of these pilots to be a game changer at this point.

I guess the last thing I'll say is in our final rules published in April we also circled back to our proposed single judge pilot program. This was something we suggested as a mechanism to make out institution decisions in the AIA space with fewer judges, to use one judge to decide whether to institute and if there was a trial to more on to three judges. The commentary was largely against this proposal and internally we took another look at it and it's not even clear how much of an efficiency it would be because giving the other two judges the initial six months to also come up to speed on the case is very helpful as the case moves forward and so in the final rules published on April 1st we announced

at this time this is not a pilot we're going to move forward with.

MR. THURLOW: One last point, John Cottingham as you know spoke earlier today. One of the things we requested John, and we asked Drew for the okay and hopefully you can work with John, I know you guys work close together with the CRU. There is an interest in the public with how the re- examination proceedings are being used with conjunction with the P-tab proceedings. So for example as you're well aware if it's after the one year date, petitioner maybe doesn't join the request, gets denied, they're only option is to do, you know, ex parte request for exam. So from petition aside that's just an option that's available and they use it.

From patent on the side what we've heard is that's just another form of harassment, when it's going to end as far as these on going proceedings. The extend is any analysis that's only a few years in the overlap with the preceding and a big part of the new rules and the questions that you asked was how those two cases would be dealt as far as if there is a pending ex parte

re-examination, whether it's stand, whether it's decide on the merits based on different stance and so on. Anything like that that we can discuss at the next meeting if possible without too much work, I know it sounds like a lot of work but that comes up a lot in practice and especially from a patent standpoint, so.

MR. KELLEY: I'll tell you it comes up quite a bit for us as well because we look at each one of those cases. As you can imagine in taking a reexamination, with all that's going on in the reexamination, which looks a lot different from an AIA trial, and somehow linking them together is itself a very difficult thing to do When it comes to whether one should move forward or not, those decisions are also difficult based on the particular timing and where each case is. Hopefully as we move forward we'll have more data points to kind of figure out what this is starting to look like on average and maybe that's something we can talk about at our next meeting. You're welcome.

So, I don't think I have anything else. Okay. Well, if there are any more

questions -- Okay, thank you.

MS. KEEPLINGER: Next we have the OCIO, John Owens and Debbie Stevens and I think John Landrith is not able to be with us today. Yes.

MR. POWELL: Somebody had asked the question this morning what percentage of our applications are prosayed. I had somebody check it out, three percent is the answer.

MR. OWENS: Thank you. Good afternoon. Yes, David Landrith is not able to be with us today due to a death in the family so you're stuck with me.

So, we'll give a brief overview of what's been going on Patent-End-to-End. So the Docket and Application viewer did get released in May, our latest update, our final update at the end of this month, beginning of June that was scheduled brings us up to the recent feature parody list for some things, particular for something that I think we're missing out of Eden that were not in Patent-End-to-End so that's good news. The official correspondence did it's release in February. We are on track to release, I believe in the end of this -- no the end of June,

right? For the interim. And the examiners searched the replacement for east and west had it's pilot release in April and we also have one scheduled in June. And then Cooperative Patent Classification we released an enhancement back in October and we're continuing to evolve that product as we move along which we'll get into some detail in a bit.

The overall usage of Patent-End-to-End DAV versus eDAN, three or more days a week we crossed the lines as it were. Sixty-three percent are now using basically Patents- End-to-End as they're primary interface into their Docket and doing their work in that environment. That's a good deal. That's a good thing.

Particularly because when we release office correspondence and examina -- examiners search the final release to the court in December, which is the end of first quarter of next fiscal year 17, they will be integrated right in to the product. It will look like one seamless product, that the examiner will no longer have multiple applications to comb through.

So, a little bit about Patent-End-to-End key releases. Again, April we got the pilot release, 508 compliance. It was delayed from March but that's not a huge deal. We only -- remember our sprints are three weeks long so it was one sprint we missed and we are on track to deliver next month. Of course our big search release, we're going to have one in July to a larger audience, one in October and then the December release.

Official correspondence, just to go down a little detail. We made our April release, again we have a July release which was delayed from June, I misspoke, my apologies, for the tax paying reporting and workflow. That workflow is a big piece. Again, the October release following and then a December release which we are on track for.

Our Content Management System. We did have an issue with our Content Management System. We didn't stop Patent- End-to-End development. The two systems are what we call lightly coupled. We had a problem with intake and storing as much data as Patents has to store. So we took a step

back. We're working with our vendor to refactor the peta-bytes worth of storage, multiple peta-bytes worth of storage we have for patents and we are going to pick this up. This will set us back a couple of month but I'd rather have all the data moved over and replicated not only here but at our off-site as well as replicated locally so we can keep multiple copies here, multiple copies up at our off site data center and that all needs to be seamless and if we text something wrong, rather than risk data corruption it has to be perfect.

So we are actively working on that but this project is a little behind but not so scary that I'm worried about it. Our data for Patent-End-to-End the continuous scan, we're up to a 203 million pages now converted to (inaudible) or ST96. And everything continues on as it was. We're making small iterative improvements over -- each time we do this we learn a little bit and of course this is on the claims, specification, abstract remarks, information disclosure statement petitions, and briefings. That's on going.

Global Dosia. Work is ongoing to implement secure prepublication document sharing among IP partners. We do have a July delivery. Currently with this project there is a security concern around the exchange of information between the various offices. That security concern is shared by the offices and we have to work through that since these are our international partners. But should those decisions be made and accepted then we should still hit our date. If not this may slip if those security issues become a real concern. That would impact schedule.

The CPT database as I mentioned before, we did our April release. We have presented a crosswalk for USPC to CPC to examiners. In July we will deliver an enhancement to the reclassification tools and then in October we will deploy the CPC, NTL database in the cloud. Again also related to the previous global dasie there's some small security concern there but it should be surmountable.

Also linked is the IP office collaboration tools. These are used by the

offices to share -- we are going from each office having a separate database to one shared data base in all of this. In May we did enhance the revision support tools, generated the notice of change. In August we have an enhancement to those tools and in November we have a proposed deliverable for the editor Definition and Images.

And I hope that made up a bunch of time for you. So, since I sped right through those and I have to

say that I'm glad when David's out there was no big controversy. Things are going on at a nice, steady measured pace and providing deliverable right now. Knock on wood, I don't want to jinx myself but I'm open to take questions. Yes.

SPEAKER: For those in the audience who are not aware this man's a baseball catcher and this year has been thrown a bunch of wild pitches and yet the best I can tell the agency is pretty much unscathed and -- very good job.

MR. OWENS: Well, I wouldn't know about completely unscathed but I'm more of a football man than I am a baseball but, yeah we weathered

this storm in December quite well and I'm -- knock on wood, we're back on track and our stores and parts are replenished and our systems are up and operational. And now something bad is going to happen, but that's all right. (laughter) Other questions? Wow, I'm getting off light today. You must have had a good lunch. Well, thank you very much. Debbie, would you like to say anything? We're all set? Good afternoon.

MS. KEEPLINGER: Thank you John and Debbie. Okay. Our next up is Tony Scardino. Nope.

MR. MURPHY: Tony got called over to the Department so he's asked that I fill in. For those of you who haven't met me I'm Frank Murphy the Deputy CFO.

MR. COLARULLI: And I'm moral support.

MR. MURPHY: And we have moral support. There it is. Thank you. So -- if I could have the clicker. Thank you sir.

So in previous PPAC's we've mentioned that we often, at a given point in time, will be working on three separate budgets and we're fortunate to be in that position today. We are

working on three separate budgets, and I'll go through that today, as well as talk about the fee review, the rule making.

When we look at FY16 we're actually going to be talking about the execution of the approved budget, the year that we're in. For FY17, I'll be talking about the actions that the Hill, that the Congress is taking on the President's budget request. And then we're starting the process already for the fiscal year 2018 budget. So we'll talk about what we're doing with the OMB submission.

Starting with the fiscal year 2016 status, a little snapshot of our fees and spending at mid-year and you'll see that the patent fee collections are coming in slightly above the plan. Filings are about 5 percent above the plan, and that's largely made up of RCEs. Our maintenance fees are also slightly above plan, so that's good news in terms of where we're seated at the moment; but we are also evaluating that above plan growth to determine if that is a sea-shift or if it’s a one-time anomaly, and what will be the right level going forward.

So when we look at projecting out to the end of the year on our fees and spending projections you can see that our fee collections are still higher and our spending is slightly lower, so we'll have a net increase in the operating reserve. We'll be slightly higher than we had planned in the budget, which again bodes well for us. You can see the patent side of the operating reserve is about 338 million dollars as a projection for the end of the year.

Looking forward to the 17 budget, we submitted the budget, the President's Budget, and had our fee collection estimate of 3.3 billion dollars. And that includes the full complement of the proposed fee adjustments, which we'll talk about in a bit. And we kept the priority on the onboard staffing, the production side, made sure that we met our operating requirements and the initiatives that have a need for continuous long-term sustainable funding. Things like patent Quality and Pendency, international work sharing, PTAB, and the IT improvements that John was just talking about.

The Department of Commerce Secretary

had briefings to the House and the Senate on the Department's budget and, as a reminder, PTO is part of the Department's budget. There were no specific questions raised on the PTO portion of the Department's budget. However, you'll note that the Senate, when they finished their hearings, they marked the PTO budget at $3.23 billion as opposed to $3.32 billion that we had submitted. So we don't have the House mark yet, but assuming that the House comes in similar to the Senate, and both the House and the Senate rely on the Congressional Budget Office, the CBO, as their means for determining what that appropriate level would be, then there is a potential impact for us to be using the Patent and Trademark Fee Reserve Fund again. You'll recall at the end of fiscal year 2014 we collected fees in excess of the appropriated level, which were placed into the Patent and Trademark Fee Reserve Fund for the sole exclusive use of the Patent and Trademark Office. And at the beginning of the next fiscal year we requested those fees via a reprograming and we got that money back. The potential exists if we collect fees next year above the mark that

we get from the House and Senate that we would again invoke putting funds into the Patent and Trademark Fee Reserve Fund.

And for the fiscal year 2018 budget we issued our internal guidance last month so we're obviously in the very early stages of building that budget. Our intent is that the Department and the PACs--both PPAC and TPAC--will receive a budget for review in the August timeframe, with the final document to be completed in early September and submitted to OMB -- the Office and Management and Budget.

And the last slide is just to give a high level snapshot of where we are with the fee review and the fee rulemaking. At this point we are taking into account the feedback we received from the PPAC looking at the various fee proposals that we had, and the notice of proposed rulemaking, which will be issued in the fall of 2016, will incorporate those comments into the revised proposal with the current proposed effective date still remaining in the summer of 2017.

And I believe those were the prepared remarks. But I do open it up to the floor to some

questions and I see already that I have some.

MR. SABON: Thanks for that. I guess I'm -- a couple questions. I'm a little confused from the last slide to FY2017 you -- in there you say that the estimate of 3.32 billion includes the full complement of proposed fee adjustments [even though those??] won't be slated to take into effect until after FY2017, so I'm a little bit -- right, they don't take effect until summer 2017, they're -- a whole year goes by without them actually taking effect so I'm a little bit confused by that. Maybe I'm just reading it wrong.

MR. MURPHY: No, the fees would be in place not for the full year and the key on this: when I say the full complement of fees, that was based upon the fee proposals that we had put in place and we said at that point in time, with the full complement of fee changes, what would be that impact on revenue. We know that that number is going to change based upon the input that we're receiving and that will be reflected in the upcoming budget because you're going to have a different number reflected there.

MR. SABON: Right. And so -- and related to that so I'm reading now that the current year status being that the office is taking in roughly $100 million less than projected spending and that's coming out of the operating reserve, am I reading that right? Or --

MR. MURPHY: For FY16 and also fiscal year 2017 it was planned that we would be dipping in to the Operating Reserve so there's a couple of variables here. One portion is that our spending is actually coming in less and our revenue is actually coming in more than we had anticipated, but nonetheless a portion of that was still planned to dip into the Operating Reserves to cover those long term requirements.

MR. SABON: Is that like the IT system and stuff is being counted as things that are not near term spending but longer term project investment? Is that sort of a -- that part of the thinking?

MR. MURPHY: Yes, when -- there was a number of things, one of the things that we had done and we briefed out I think the last PPAC

meeting, or perhaps the one before, is we established a Financial Advisory Board internal to the USPTO, to look at the entire requirement suite and to scrub those requirements and prioritize those requirements that required long-term funding. IT is the prime example of that, that you know that you have to make an investment and a continuing investment for us to receive the benefits of that. So they receive the higher priority, focused on what are we getting in terms of patent quality, patent pendency, and working down the operating inventory.

MR. SABON: Okay, that's helpful, thanks.

MR. LANG: It seems that you've had a lot of successes here and -- revenue coming in not expected. But also I think it's good to focus on your efforts to trim spending where appropriate and we discussed this at the subcommittee the other day, that there's a real opportunity there to market that and to let people know that you've made a real successful effort to run efficiently and help build the case for the fee increases that

you're seeking.

MR. MURPHY: Yes, and we agree. This was a discussion at the subcommittee. We probably should take some more credit or some PR in terms of the review that we did in-house to make sure that we were putting the critical requirements first and determining what things could be taken off the table completely or what things could at least slip to the right while still maintaining our long term goal of getting the operating reserve to its optimal level. All of that did take place over many months and you're right, it's one that we did talk at subcommittee that we probably could do a good job of touting that so that the public at large understands how detailed of a review we undertook and how seriously we took the prioritization of our requirements.

MR. SABON: A couple more questions. We talked about this at the last quarterly meeting and I think it's the way we should monitor -- we're obviously -- I'm -- would like to monitor at least as we meeting quarterly, and I know you guys are looking at this and I heard something yesterday

a bit about that last time there seemed to be concern that there may have been a -- maybe it's a secular short term dip in serialize filings of cases and I heard that maybe that has changed again in the last quarter. I'd like to understand that and also especially the rate of paying third stage maintenance fees and where that stands as well as a bell weather to the overall sentiment of the perceived value of patenting given that there is a lot of chatter externally about the dual effects of 101 (inaudible) as well as IPR patent destruction if you will for a lack of a better phrase, whether that might be effecting the overall perceived value and those payments. Given how much the back feature structure was created to provide the overall payment for the office.

MR. MURPHY: And you're correct, we did talk about that at the last PPAC and the one prior to that. Were we in fact going to seea drop in our third stage maintenance fees and in our maintenance fees across the board. We have been looking at that. We have not seen any empirical data that would support that but we too are

hearing the chatter that indicates that we're going to see a drop off in maintenance fees. Our current snapshot, we're actually slightly above our maintenance fees, about a little over one percent of where we had planned to be. And while we continue to look at hard data to see, are we in fact seeing a dip? We have not yet seen that, but it is one that is on our radar because we're hearing that chatter too. Understood. Thank you.

MS. GROSSMAN: I have three questions for you about shared services and one about the budget. Sure. Is it on?

SPEAKER: Hold on one second.

MS. GROSSMAN: How about this?

SPEAKER: There we go.

MS. GOODMAN: For fiscal year 2016 are any monies going to the Department of Commerce's Shared Service Initiative, for this fiscal year?

MR. MURPHY: The short answer is no--in this fiscal year we have not provided the Department with any funds for Shared Services.

MS. GOODMAN: My follow up question is do you anticipate for fiscal year 2017 that any

PTO monies will go toward the Department of Commerce's Shared Service Initiative?

MR. MURPHY: That's a bit tougher to answer and let me give you a bit broader background so we're all on the same page. The Department does have -- obviously it's a federated Department, many different agencies, some of which are having service level challenges. They're looking at shared services as a means of increasing the level of service that's provided across the Department. Where it becomes challenging for the PTO and where we're working with the Department is building the business case that says shared services will either improve the level of services that we are currently providing at a reduced cost -- or at the same cost, or maintain the level of service at a reduced cost. And no firm answer on that has been made.

If the case -- if the business case were made that it's better for our stakeholders -- for the fee paying public -- that we could provide a better level of service for the same fees or the same level of service with reduced fees, we would

be all-in with shared services.

At the moment we don't have that business case. We've gone back with our preliminary analysis with the department and it doesn't support that, though the Department has asked us to take a look using some other variables that were not included in the original business case. So at this point there is not a plan to put fiscal year 2017 money into shared services because that business case hasn't supported it. But that's an on-going discussion we're having with the Department.

MS. GROSSMAN: Excellent. And you anticipated my third question was originally had the Department of Commerce shared with you their final business model which would show the return on investment specifically to the PTO. I'm hearing you say, and please correct me if I'm wrong, they have not finalized that business model yet hence the PTO is able to hold off on making any commitment or requirement from its fiscal year 2017 budget, did I get that right?

MR. MURPHY: I'd say yes. I'm saying it slightly different because I'm keeping a PTO

focus on that -- that our business case that we're providing to the Department has been such that there is no firm decision on the analysis that we have provided, and the current analysis says that we need additional information from the Department in terms of service levels that are not currently called out in our analysis so we can make a final decision or further decision or engage in further conversations with them. But at the moment it is a part of that ongoing dialogue with the department.

MS. GROSSMAN: Thank you. I have one other question having to do with budget if I may. If I could just get more clarity, and forgive me if you explained this. I'm still trying to absorb it. For fiscal year 2017 it seems like the President's budget was a 3.32 number that seemed to flip with Senate CJS a 3.23. Did they explain their reasoning for the decrease in the number?

MR. MURPHY: The Senate, and the House as well when the House has their hearings, they rely on the Congressional Budget Office to look at all federal agencies and their investments, and the budget term is called Scoring. The CBO

in their analysis scored the PTO at the lower number, at the 3.23 billion. The Senate relies on the CBO so the Senate is not going to explain beyond the fact that this is the score that came out of the analysis done by the Congressional Budget Office. They would have nothing further to offer and likewise the House will more than likely use the CBO score as well.

So it becomes part of the smoke and mirrors, what happens in the back rooms of the Congressional Budget Office -- and I don't mean that disrespectfully, I just mean it's a very complicated process that they go through in the scoring. The key for us is that the Congress a few years ago also allowed us, with the Patent and Trademark Fee Reserve Fund, that any funds that we would collect above the appropriated level do not go anywhere else but for the use of the Patent and Trademark Office. That was a huge coup. We successfully implemented that in fiscal year 2014, we put money into the Patent and Trademark Fee Reserve Fund and we reprogramed that money back into USPTO operations in the beginning of fiscal year 2015. If we collect fees above this

appropriated level or what will ultimately be the appropriated level, we would do that same thing. We would put the money into the Patent and Trademark Reserve Fund.

MS. GROSSMAN: Thank you.

MR. WALKER: Frank, I'm Mike Walker here with a question. Sorry I had to step out for a second. I was looking at this Performance and Accountability Report that Tony had sent out earlier this year and so my question is around maintenance fees because maintenance fees according to this for fiscal year for 2015 are about 43 percent of the total PTO funds but my question is for fiscal year 2015 compared to 2014 there was a drop in every category, all three category of maintenance fees and a pretty significant drop in some of the categories. So is that just a one-time blimp or is this anything of concern or what's your view on maintenance fees?

MR. MURPHY: Not having that data in front of me I'm really not prepared to dive in. I'm somewhat surprised though because I wasn't picturing all three categories of maintenance

fees dropping in 2015. I don't doubt the numbers that were there I just was not prepared to anticipate that question. I do know that when we've been looking at the maintenance fees because we've been concerned that from the last time we had raised fees that we could see a potential dip in our maintenance fees. We haven't seen that and current maintenance fees are actually slightly above our plan for fiscal year 2016, in this first half. So it's a contra-indicator to the information that you have in the PAR.

MR. WALKER: Okay. Well I wasn't anticipating asking the question either. You weren't anticipating answering it. But I was looking at it last night and so maybe there is something to follow up. And there was this blip in 2011, 2012 with the maintenance fee increase where a lot of people prepaid into 2011, fiscal year 2011. Maybe that's something we can follow up with later on.

MR. MURPHY: In 2011 and 2012 what we were calling at the time the bubble in the trough -- where we had some amounts that were prepaid at

the lower rates and then of course we had a dip from what we had planned.

MR. WALKER: I just have the numbers in front of me from 2014 to 2015 first stage from 92 percent to 85, second stage 79 to 66, third stage from 51 to 47. So, those were the trends. So we can probably follow up with that next time.

MR. MURPHY: We can do that. Are there any further questions related to the budget? Hearing none I think I will be passing the clicker to my right.

MR. COLARULLI: I'm waiting since folk are giving notes.

MS. KEEPLINGER: No please, go -- go ahead.

MR. COLARULLI: Thank you.

MS. KEEPLINGER: Dana Colarulli.

MR. COLARULLI: Good afternoon. I'm relieved, I told Frank that I would be moral support, he handled every question with aplomb. You know I can't remember that TV show where you could call a friend. I am that friend often and I was not needed. I was happy about that.

So we have a series of slides from me

as well. I won't go through them all in detail but I did want to give an update about what's happening up on the Hill. This is -- I said this I think last time I was in front of this body, certainly an interesting year for many reasons. Presidential Campaigns sometimes limit what can happen in Washington D.C. More focus on what's happening outside of Washington D.C. I think members and certainly committees however are often very active still in looking at a number of issues. Where we don't see as much action on substantive legislation frequently we do still see a lot of conversation and we've been engaged in a lot of that.

I'm glad to say that's not necessarily the case this year. Last week was a very busy week for IP. In particular after about three Congresses of work that Trade Secrets Act, the Defend Trade Secrets Act was passed by the House, the Senate version of the bill passed, not amended and was transmitted to the President on Friday for his signature. So this is a piece of legislation that will become law. Something that was widely supported by a number of stakeholders and

companies adds additional tools to ensure that trade secrets can be enforced to combat trade secret theft.

So I think a success for the IP community, something the Administration significantly supported and many folks in this building helped a various points along the way, whether it's tactical advice, this is how you should write the statue. So there are some legal certainly around the terms that are used and certainly as -- when the Administration leaned in it's support messaging that support to the Hill. Quite excited that that moved forward. Hopeful that the President will sign it likely now with in the next week.

In terms of patent litigation reform, continuing discussions though I think it's fair to say the comprehensive reform that has been discussed at the end of last year is somewhere stalled. Stalled because of conflicts between the interests of some in PHARMA and BIO and some more traditional industries and certainly many in the high-tech world which are facing in some cases different problems but are looking for a solution

to those problems in legislation that effects the entire system.

So continues to be conversation about what could be done here. We've been monitoring discussions that have focused more on maybe a more narrow approach, venue reform, especially in light of the TC Heartland Case of a few weeks ago. I think that addressed the issue of venue. It's likely that that opinion might further fuel some suggestions that at least this is an area that might call out for legislative reform. The court recognized that as well in it's opinion. So I think there will continue to be discussions there.

On the substance it does seem to lend itself to potential legislative reform at some point. On the politics, it's unclear as to when that might move forward and with what other provisions. The Administrations continued to support any reform that would effectively address some of the abuse that we had seen or continue to be in that place and Michelle and others at the PTO continue to be advocates for that.

We also recognize that even since the

beginning of the discussion many things have happened both in the courts and here at the PTO. We get to take some credit for that. You've heard from Chief Judge Kelly earlier today of the impact of PTAB. You've heard from others about the patent quality issue, our efforts to try to Clarify the Record that's relied on by later litigation to reduce the inefficiency and resolve IP disputes quickly and efficiently. There are things that we can do as well and have been doing.

So the landscape is changing. We still think there's some room for legislative fixes to some of the problems. We'll continue to push that. As I said, unlikely to see -- whether that will move forward before the end of this Congress or continue into the next Congress we'll keep watching that.

I mentioned last week was a busy week for IP and I mentioned Trade Secrets. It was also World IP Day and for the purpose of making my slide presentation interesting I always like to add pictures. We had a great even up on Capital Hill on the House side. But uniquely we had both chairman of the Judiciary Committee, both from

the House and the Senate at the event. Great support by AIPLA, by the U.S. Chamber and INTA to celebrate World IP Day.

I think I can help take some credit for this. I think we were smart. We focused on digital creativity in the video game industry so lots of Congressional staff came over to help us celebrate. We had some great speakers there. So a very, very good event and good support from our stakeholders to celebrate WIPD, World IP Day and again, happy that these members of Congress joined us.

Lastly, last week within the PTO world we testified in front of the Senate Judiciary Committee on Counter-fitting. Conrad Wong, a former IP attaché in Guangzhou Providence in China for the PTO was our witness. He represented the office very, very well. He was on a panel along side the head of the IPR Center, Bruce Foucart who coordinates a lot of the U.S.G., the Governmental Resources, addressing the issue of enforcement. So Conrad was able to compliment that and talk about some of the issues outside of enforcement on the law development side which PTO

also has a roll in.

As former attaché he sat in an Embassy and helped to facilitate those conversations as the government of China looked to make amendments to their law that would serve not just U.S. businesses but others. So, he represented the office very, very well.

One of the issues that came up in that context, and I expect to see a request of the record is, is how can we improve the program. We continually get those questions from the Hill who recognize that these folks that are sitting on the ground play a very important role. They frequently ask us about rank of these individuals so I expect we'll get some questions on whether and how we might be able to increase their rank, otherwise improve their program and we're happy to get those questions.

Number of other activities, included in the slide is a House hearing on the ITC. They've held a similar hearing annually, looking at the ITC and it's impact on patent litigation. Again, a perennial hearing in front of the Senate small business committee. Looking at the needs of

small business and their ability to access the system in the same way as other players.

I'll end with -- certainly we continue to hear conversation about maybe some action on Copy Right policy issues. As you all know PTO with the department of Commerce did a -- had done an evaluation of this statue of updating the Copy Right laws to take in to account the changes in digital age.

Also, some conversations about modernizing the copy right office. In particular, ensuring the Copy Right Office has the resources it needs to do the business at hand. I haven't seen -- I've seen at least one legislative proposal. I expect that we'll see more and I expect that this conversation will continue into the next Congress. But we're continuing to monitor and contribute where we can.

Certainly one thing that we've agreed on and stakeholders have is that the copy right office certainly needs the ability to direct it's budget toward IT resources. It hasn't been able to do so in the past so it would be great to see

something in that realm.

Lastly, the underlining authority that helps to power our TEAPP program, our Telework Enhancement Act Pilot Program, expires at the end of 2017. We've started to talk to folks up on the Hill, make them aware of the success of the program. Annually we have reported on how this program has really helped us to realize national wide work force. We're continuing to message that up on the Hill and explore ways to extent that pilot program for a little more time so we can continue to test how often do we need to bring folks back to the office for employee engagement. Certainly to meet all the training needs on the patent side and the trademark side. Both sides of the House recently just with in the last month we've brought back those employees that are deployed to other parts of the country including PATH this week which some of you participated in.

I'll end on this note just to give you a snapshot, 187 days as of today until the election. Members of Congress certainly starting to focus more on getting back to Districts and hitting the Campaign Trail.

I thought I'd give this snapshot, it's the House calendar. August recess, all of my members leave town although it still seems to be busy for my team and for me. This year also July the two bodies are not in session as much and October again a very light schedule at least with in here in D.C. with members of Congress. I think this year, as I said, is a bit unique because the Presidential year but that should give you a sense as to when folks are in Congress, when they'll be calling us up to the Hill moving legislation. That's there work schedule. With that I'll stop to answer questions that any folks have. I know Mike has a question already.

MR. WALKER: Well, first of all I have a congratulations. And congratulations in getting your work in getting the (inaudible) Trade Secrets Act passed. I mean that's a huge step forward to have a (applause) federal cause of action for trade secret theft, having worked at a company that had a lot of secret theft. Congratulations. That's a real step forward for industry.

The thing I was going to mention is

around patent reform. One of the things that we talked about in our subcommittee yesterday is that the FTC is working on this study for patent assertion entities. They said it's going to come out some time this spring.

Is your sense that this is going to put wind in the sails of patent reform for next Congress or -- was it an FTC on patents that really started the whole -- what resulted in the AIA and I was just curious about what you thought about the FTC and their work on this report that we're expecting.

MR. COLARULLI: Thanks Mike. Yeah, you know, those who track the history of the American Invents Act, the FTC in 2003 had put together a report much of which became what we saw in the AIA. You know, I think it certainly depends on what the report is going to say. We can all certainly make some guesses.

You know I think when I alluded to before there is a recognition that there have been a number of changes in the system. I think probably more than others we are -- because we engage with stakeholders as much as we do, very

aware and careful in our advocacy. Every additional change to the statute does mean some uncertainty. So we're very aware of when we advocate for change, let's be careful. Let's take into account all of the things that are changing. I think the FTC will certainly ring some of that theme as well although, particularly in some areas the courts don't have the tools to address some of the abuse that we're seeing. I mentioned venue as one. There certainly could be others. You know I certainly think it will help to further inform the debate. Some in Congress given the announcement that it will come out next spring might say let's wait. Maybe it's premature, although we've had now a couple Congresses of discussion over some reasonable reforms. We give a lot of credit to Senators Leahy, Grassman, Coreman and Schumer on the Senate side who have driven this. Just very recently Chairman Goodlad reached out to us as well. I'm trying to think how we can creatively move forward on some of these things.

I know that the interest from our Congressional leaders are still there. We're

trying to work with them collectively. The FTC report will help to further provide some data to make sure that we're hitting the right balance with any reforms that do move forward.

MR. LANG: I think that the continued high volume, much higher than it was 10 years ago volume of appeal litigation is going to put wind behind the sails of reform efforts and that wind will blow in the directions where legislative change is feasible and perhaps that's going to be venue, perhaps it's going to be other things.

Also, the other comment I'll add is the people who look to the courts to provide, you know, meaningful change to address these problems but that process is turning out to be more of a zigzag in many respects. We saw the Supreme Court in our own Cisco v. Commil Case lower the standard for reduced infringement and I think very significantly there's a willfulness case, that's up the Halo Case which we're going to get a Supreme Court decision in June which could be regarded as a fundamental negative by the people who are advocating for patent reform.

MR. COLARULLI: I will add -- thanks

Dan. I will add in addition to working with the Hill on legislation we have also tried to up our advocacy and certainly engagement when the Administration is considering whether to weigh into some of these cases. There are things outside of legislation that we can do that can effect change. We know that we have a role there so we've been -- certainly Sara Harris and our Solicitor's Office has been trying to look for more ways that we can be an effective advocate with in the Administration to great good law.

MR. THURLOW: Real quick question on the Trade Secrets. When do you expect it to be signed? Is it with in days of (inaudible)

MR. COLARULLI: So, the answer is, the bill is transmitted to the White House on Friday. We've been watching it closely. There is a 10-day clock that technically starts running when it's transmitted so I expect some time in the next week the President will sign the bill. I think 10 days technically is some time mid to end of next week.

MR. THURLOW: And just -- I still have to study the bill and so on but is the whole

preemption issue is the States Trade Secret law is still going to be in effect and there is no preemption persay, it's just another alternative I guess?

MR. COLARULLI: That's correct, the bill does not intend and does not intend to preempt State laws most of which are a part of the Uniform Trade Secrets Act and are similar. What this does is create an additional federal right of action, so it's an additional tool that you could use.

The intend behind this bill from the get-go was to make sense of the fact that and modernize the law so you have something that crosses boarders to recognize that trade secrets are not simply a State issue in the modern age. And the types of trade secrets that are being stolen are no longer telephone lists, they are things that could be shuffled out on a hard drive, flash disk, today generally not even a flash disk but up in the clouds creating another federal right of action, not state-based action to help combat that here.

MS. KEEPLINGER: Okay, thank you Dana.

That's always an informative presentation. So, we're wrapping up. I'd like to hand it over to Drew Hirshfeld, Commissioner for Patents.

MR. HIRSHFELD: Thank you Esther. So I believe that on the agenda has 15 minutes for me to speak. I will not speak for 15 minutes. I think that's time built in in case we go over.

I do want to start with a thank you. Thank you to everybody at the table for what by all accounts was a fabulous meeting today. Thank to all those in the room we had more participation in the room than usual and that is also appreciated. I know we have people on the web listening in so thanks to all of you who are listening in as well.

I want to return just quickly to Michelle Lee's opening remarks where she said something that resonated with me where she was talking to the PPAC and said, you help us do what we do and I just want to say thank you for all of the work that PPAC has been doing with us over the years and of course all the time. You are a wonderful PPAC and we benefit greatly and as we go through the agenda, if I was going to spend 15

minutes I could go through all the topics and show how PPAC has their input reflected in what we have done. I certainly won't do that but you can go down whether its to Quality Initiative to some of the metrics to some of the budget information, etcetera, you can go down and a lot of what we have done has been very responsive and based on the feedback from the PPAC.

So that is very much appreciated and I'd also like to note that I believe that this particular time of visit for the PPAC member we took our relationship to new heights by having the first ever discussion with PPAC and examiners and that was mentioned a few times today and I was there, got to sit in the audience and watch and I can really tell that I believe everybody benefited from it not only the about one thousand examiners that were there but I think that PPAC got some good perspectives as well. And I think that the more we can do things like that the better we all are.

Thanks to PPAC, that was a wonderful meeting yesterday where we really had a nice free flow question and answer session and a lot of good

perspectives were shared between the PPAC members and the examiners. So that is all I have to say and I will pass it back to Esther.

MS. KEEPLINGER: Thank you Drew. And at least from my perspective thank you for thanking us. It's been my great privilege to serve on the PPAC and continue helping the PTO become an ever better organization. So we appreciate the opportunity to serve in this capacity.

I think everybody also for the participation and especially the USPTO who help us tremendously by getting us any information we request so that we can look into it and see if there are any suggestions that we might be able to provide.

So thank you and stay tuned for information about the next meeting. We may try something a little bit different for the August meeting and we'll let you know. Thank you and safe travels.

(Whereupon, the PROCEEDINGS were adjourned.)

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I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither 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. Carleton J. Anderson, III

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