

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, March 2, 2017

PARTICIPANTS:

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MARK E. GOODSON, PE

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BOB BAHR, Deputy Commissioner for Patent
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DANA COLARULLI, Director, Office of
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PARTICIPANTS (CONT'D):

MARK POWELL, Deputy Commissioner for
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RICK SEIDEL, Deputy Commissioner for
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CATHERINE FAINT

PAMELA R. SCHWARTZ

VERNON AKO TOWLER

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P R O C E E D I N G S

(9:07 a.m.)

MS. KEPPLINGER: Good morning.

Sorry, we're starting a little late. Welcome, everyone, to the first PPAC meeting of 2017. I welcome you as the new incoming Chair of PPAC. I am delighted, honored, and pleased as punch that Michele recommended me and the Secretary of Commerce put through and made me Chair.

We're looking to do incredibly exciting things with the Office. We are going to (inaudible) a new and improved PPAC. We are going to focus on new opportunities to reach out to a diverse community for input. We are looking for new ways to partner with USPTO and work on extensive collaboration, try to deep dive on topics, and just everyone in the Committee is very excited and looking forward to a great year.

So, with that I would like to just introduce Michele.

And I think you're going to be saying a few comments to us, so.

MS. LEE: Hello, can you -- I got a go. All right, thank you, Marylee. Good morning,

everyone. It's a pleasure to be here

today. Welcome to today's quarterly PPAC meeting. I would like to begin by of course acknowledging a few changes on PPAC since the last quarterly meeting.

First, congratulations, Marylee. I am delighted that you are "pleased as punch."

(Laughter) And I'm delighted at all your plans for PPAC. I think this will work very well, and congratulations to your new position as Chair of PPAC.

And also to Mike Walker, sitting to your left there, as Vice Chair of PPAC, thank you for agreeing to take on that leadership role.

And a special welcome as well to two new PPAC members. I see one, Jeffrey Sears.

Thank you for your participation on PPAC. And the second person is Bernard Knight. Is he

here? He's not here with us today.

MS. JENKINS: He's at a conference.

MS. LEE: Okay. So, welcome, and thank you for agreeing to serve on PPAC.

Also to PPAC for all the hard work in

terms of preparing and writing the Patent Public Advisory Committee's "Annual Report for Physical Year 2016." Now, as a former PPAC member, I know the countless hours and the hard work that goes into preparing a document such as that, so I really appreciate your contributions and the thoughtfulness that you put into preparing that document.

And for anyone in the public wishing to read a copy of the annual report, it is currently available on our website at www.uspto.gov. The USPTO is currently reviewing all the recommendations presented in the annual report, and Rick Seidel will address a few of these topics later on this morning.

As you can see, the agenda for today is a full program, and the PTO team will bring you up to date on a variety of activities at the agency. In addition to Rick Siedel's discussion of the annual report and its recommendations, you will also hear from each of the other patent deputy commissioners regarding updates to programs and initiatives in each of their respective areas.

Valencia Martin Wallace, sitting here on my right, and members of her team will provide a patent quality update.

And while we're on the subject of patent quality, I would like to congratulate and thank Valencia and her team for a very successful patent quality conference that was held last December on December 13th in partnership with the Duke Law Center for Innovation Policy and the Santa Clara High Tech Law Institute. The conference was a huge success, with almost 6,000 attendees either here in Alexandria or participating via Webinar. And if you compare that to our prior engagements, that's much larger by orders of magnitude.

So, thank you, Valencia, to you and your team for doing that.

And, importantly, at that conference on December 13th the agency shared with the public some of the concrete results achieved so far on enhancing patent quality and areas for focus going forward.

Also on the agenda today, Andy Faile and his team will update on patent operations; Bob Bahr from Patents and Mary Critharis from the

Office of Policy and International Affairs will provide a patent eligibility update; and Mark Powell, sitting here to my right, along with Shira Perlmutter, will provide an international update.

In addition to the updates from the deputy commissioners and their teams, you will also hear from Patent Trial and Appeal Board judges David Ruschke and Scott Boalick regarding PTAB; from John Owens and Debbie Stephens regarding IT updates; from Frank Murphy with an update from the CFO's office; and last but not least Dana Colarulli with a legislative update.

We hope today's entire session is helpful and look forward to a productive conversation.

So, now, I'll turn it back to you, Marylee, and I will excuse myself. Thank you.

MS. JENKINS: (Laughter) Thank you, Michelle. It's great seeing you. Thank you.

MS. LEE: Great, thank you.

MS. JENKINS: So, now I'd like to turn to our tradition of introducing each of the members on the Committee, and I would like to

start -- and who's sitting at the table as well.

I think we have a new face joining us.

MR. TOWLER: Hello, I'm Vernon Towler.
I'm with NTEU 243.

MS. JENKINS: Welcome MR. TOWLER.
Thank you.

MS. SCHWARTZ: I'm Pam Schwartz, and
I'm with the Patent Office Professional
Association, and I'm a PPAC member.

MR. SEARS: I am Jeff Sears, new to
PPAC. Very happy to be here.

MS. CAMACHO: Jennifer Comacho, PPAC.

MR. GOODSON: Mark Goodson, PPAC. MS.
MAR-SPINOLE, PPAC.

MR. THURLOW: Pete Thurlow, PPAC.

MR. WALKER: Mike Walker, PPAC.

MR. HIRSHFELD: Drew Hirshfeld, PTO.

MR. FAILE: Andy Faile, PTO.

MR. LANG: Dean Lang, PPAC.

MR. SEIDEL: Rick Seidel, PTO.

MR. BAHR: Bob Bahr, PTO.

MR. POWELL: Mark Powell, PTO.

MS. WALLACE: Valencia Martin Wallace,
PTO.

MS. JENKINS: Okay, great. As I touched briefly --

MS. FAINT: Marylee -- and also Catherine Faint, PPAC.

MS. JENKINS: (Laughter) Okay, I'm looking at the ceiling right now, Catherine. I hear you. Thank you. Thank you.

As we touched briefly before, I would also just go back and emphasize that the focus of PPAC is going to be different for the coming year. We're trying to change the way we do things. We're hoping to be more efficient and more mindful of everyone's time.

We're seeking more collaboration. I was thinking about it last night. When I first started many moons ago, before practicing before the Office, it was not a very open and welcoming Office to practitioners, at least in my opinion. Things have changed so much, and I truly appreciate all the efforts that have gone on over the many years as well, obviously, for the present folks in the room, of how there is really a dialog between practitioners, stakeholders, users of the system and the Office. And I commend the

Office, and I look forward to having even broader discussions and deeper discussions on many topics that are facing the user community in this day and age and look forward to the partnership that we have in expanding with the office.

So -- and I reach out to everyone who's in the audience and on the Web, WebEx: Please think about sending input to the Committee. The Committee is looking for input. We're looking for diverse voices. We recognize the Office has so many people that it provides service to. There are individual inventors, large companies; and we are very, very - - I need everyone to hear that -- we are very mindful of that on the Committee. We represent many voices. The expertise on the Committee and the members are outstanding. And I hope you can take some time to look at their bios and really do a deep dive, because there are really committed, caring people to make this system the best it can be.

So, with that, can we start with the agenda? And who is going to lead us off?

MR. SEIDEL: Rick.

MS. JENKINS: Rick Seidel. Does Rick

want to lead us off? (Laughter)

You ready, Rick?

MR. SEIDEL: Yes, I am.

MS. JENKINS: It's all yours.

MR. SEIDEL: Yeah, she's right. I was clicking the mouse, or trying to click the mouse, and suddenly this slide came up, so I don't think I had anything to do with that. (Laughter) But -- so, I was looking around.

So, good morning, everyone. As Marylee and Michelle started with their opening remarks, what I wanted to talk about on behalf of Drew and the deputies for PTO -- we reviewed the 2016 PPAC Report, and it's very clear and along the theme of what you started with, Marylee: extensive collaboration, reach out to stakeholders, doing a deeper dive. And through that, we accomplished a lot of things.

Just to name a few -- there are numerous recommendations in the report. Several of the things that we've done, looking back: the post-prosecution pilot, the P3; post-grant outcomes pilot; 101 guidelines memos and additional examples of guidance; and one of the

things we have in our dashboard, our visualization center -- tracking of total pendency including RCEs. Now, these vary from big lifts to smaller lifts, but the point here is, looking back, we've done a lot of things.

So, moving forward we look to continue our collaborative efforts. Some of the priorities we have amongst many -- these are just representative of a few that are on our plate this year that we look forward to working on with PPAC in engaging our stakeholders.

The first one is really search enhancement. It really goes to two prongs here. A first one is we're looking at how can we provide earlier notice of prior art, not just for claims but also in the disclosed invention as well. Greg Vidovich will be discussing that later in the program. More details, but again we heard you, you know, having prior art not just on the claimed invention but looking at the disclosed invention as well.

Another prong Mark Powell will be talking about is access to prior art. So, in addition to expanding the scope, how do we take

all the various collections and bring it together. So, Mark and his team are putting together a program to share. Again, I believe that's slated for this afternoon.

The next one we wanted to talk about is really wide-ranging: identifying and resolving quality issues. So, again, looking at some of the things we've done in the past, again, the guidance that we've provided, supervisory guidance sometimes goes without mention, but it's very important that supervisors are really aware that we've heard this cliché, "rubber meets the road," right? That's the first spot.

But we also have a new form that I'm sure you're aware of -- the Master Review Form -- where we can leverage the data, identify hot spots, and go from there.

We also have our Quality Index Report that we're leveraging in terms of consistency of decision-making, looking at reopening, and also the rework aspect. These are things that we believe will shine the light on trying to get more consistent in our determinations.

We also have the case studies. We have

a patent ombudsman program to address concerns on a localized basis -- at least raise awareness.

And then the last thing we have is -- I think I mentioned this already but, again, where the supervisors and the TQIR, the Quality Index Report, meet -- some action plans being developed. So, at a localized level, what are some of the challenges? What are some of the opportunities for improvement as it relates to consistency? So, again, between Andy Faile's operational and Valencia's quality teams, I think there's a lot of room for further input and definition.

The last two I wanted to touch on are really higher level. I mean, the first is information technology. And I don't want to steal John Owens' thunder or OPM's, but I think one of the biggest challenges that everyone's heard is getting off the legacy systems. You know, how are we doing? What are you seeing from an external perspective?

Obviously, we're aware of what's happening internally, and we have plans to move forward. I think internally, one of the

things -- one of our biggest checkboxes I believe in recent months -- I don't know if we had a PPAC meeting prior to this happening, but we retired one of our legacy systems, the tool in which we view applications, our EDAN tool; and now we are exclusive on our docket and application viewer tool. So, that's the first piece of patents (inaudible).

So, again, more of the stakeholder input, what's working, what are you seeing, what you hearing? So, we would rely on your input in that space as well.

And then the last piece is time and attendance, and this has really been a challenge. On the one hand, we want to balance the flexibilities that we enjoy here at the PTO with work schedule, being a leader in telework programs, but as everyone's aware we've had some reports from the Office of Inspector General. We've enlisted the aid of NAPA to help address some of those. So, one of our biggest challenges, moving forward, is how do we balance that dynamic, that very tenuous dynamic of flexibilities with what we like to call the

present-and-accounted-for standard, if you will, you know. How do we make sure that we're complying with Title V, right?, you know, being accountable and present for the 80 hours in a bi-week but also enjoying the flexibilities we have. And that's a very delicate balance that we continue to address.

So, in full disclosure, I did have many, many slides that I was going to put up and share, but in the interest of a new PPAC moving forward, I limited it to this single slide. So, with that I will take a breath and open the floor for comments.

MS. JENKINS: So, one of the new things that we're trying to do for the Committee -- and you all have questions, I hope, in a second -- is really trying to do more of a discussion and less PowerPoint presentations. So, thank you. You've -- we've checked the first box. So -- but we need to be mindful, because other people have recognized this point, which is that people do love data. I might call Peter out. I know Peter loves to see the data. So, we're going to try to -- you know, there's nothing set in stone, but

we are going to try to mix it up a little bit and so try to get as much value as we can out and the information out, because I personally find these meetings to be incredibly valuable, and more people should know about them.

I also appreciate the fact that the report that we did this year, which I think is a good thing, was the longest ever submitted PPAC report. It has a lot of, I think, really good, dense information. We are looking at that and saying: Well, is everyone going to read it? We're appreciative that the Office did read it, so that's a good sign. Others are reading it as well, but we are, you know, going back and saying: Is this the right format, is this what we need to be doing, and how can we provide the most value back?

So, with that, are there any burning questions?

MR. THURLOW: So, it's true, I did a lot of data. About the report, real quick, I'll mention there is

an executive summary, so you don't have to read all 95 pages or a hundred pages, so we do

a lot of work on the executive summary to highlight the important issues.

Then, just perspective, Rick, and for Drew and others, the IT system applicants -- the public doesn't know much about it. We interact with PAIR, private/public. We do all eFiling. When the system's down we complain. But for anybody that wants to learn more, here are some scary words. The word that you mentioned was "legacy," and I can tell you from being part of PPAC, that's some stuff that John Owen can talk about later. But I'm all excited about new programs for the examiners to do a better job and so on, but these legacy systems allow basic searches and the core work to be done. That's something that I think really needs to be more of a focus, because I don't understand most of it -- 99 percent of it -- but that word "legacy" is a troubling word when it comes to the IT system that needs a major focus, in my opinion.

MS. JENKINS: Anyone else like to comment? Mike?

MR. WALKER: I'll just thank Rick and the team. I mean, these recommendations are

really the result of a lot of work during the year in the subcommittees that we have. We have nine subcommittees, and there's a lot of collaboration, a lot of input during the year, and so these recommendations are things that have been discussed and really a lot of thought has gone into. So, I appreciate the Office taking the

(inaudible) approach that Michele and Rick said with respect to these recommendations.

And then I would just emphasize for the public -- I see the number of people online -- that we just said earlier, Marylee, that as we work through these issues on our subcommittees to get more input from the public, we have an email address for PPAC that people can send information in. It doesn't have to be during the meeting. It can be any time. Or contact -- our information is there on the website. So, any issues that people want to raise to be discussed, because these are very rich discussions we have with the Office in these subcommittee meetings -- the results and these recommendations in the annual

report.

MS. JENKINS: So, that's a good segue. We've already had for this year several submissions to the Committee, and we are considering all of them and trying to determine how best we can address them or not address them in a sense. We've had submissions from ABA IPL section; we've had submissions from one of my partners at Arent Fox; we've had submissions from Hal Wagner; and we recently received a submission from the United Inventors Association -- I believe is the correct title. So, we're looking at all that. We're looking to also post those submissions.

We're going to also try to do a new and improved PPAC page. Not sure you'll know how to find it, but it's going to be new and approved, and we're going to be adding more detail to it. So, please send us good comments and bad -- we'll accept both as best we can.

And we're going to be putting a calendar for PPAC activities on the PPAC page. We'll be listing the subcommittees that we have within the Committee and who is chair of each of those. So,

we're really looking to enrich the content and trying to get the message out of, yes, there are two advisory committees to the office, we are one of them, and this is something the public should know about. So.

Dan, do you have a question?

MR. LANG: No, I'd like to make a comment. Yeah, thank you, Rick for the summary of the PPAC

report action items. You were going to go into a detailed agenda today of

specific items, but I think now is a good time to pause and reflect on the fact that all of these items are in fact integrated, that, you know, to support the quality initiatives requires IT. You know, figuring out examination time is a financial issue, and doing everything right in an integrated fashion is what's going to lead to success. So, I think that a focus for the PPAC in the coming year is going to be not only looking at the individual items as silos but also seeing how the pieces fit together.

MS. JENKINS: To touch on that, we are looking to have certain topics that we focus on

for each subcommittee and trying to move those forward to hopefully get more information and more information out, as well as help us with the annual report. So, Dan's alluding a little bit to that.

We're also trying to focus the entire Committee on better communication within the Committee and better communication with us to the Office and better communication with the user groups, so it may appear somewhat of a daunting task but I think we're all up for it and ready, and I can say the enthusiasm I've already received from the Committee members was just so positive and so encouraging. So, look forward to creating some new stuff for PPAC.

And Drew?

COMMISSIONER HIRSHFELD: Yeah, if I can just chime in.

MS. JENKINS: Please.

COMMISSIONER HIRSHFELD: And thanks for the comments, Marylee.

I just wanted to reiterate that as Marylee is talking about the PPAC members being very enthusiastic about a new and improved way of

going forward, I would also like to say we are the same at PTO and looking forward to it, and I will give my perspective. In the years that I've been involved with the PPAC meetings, to me it's been a continued improvement in the relationship and in the benefit that PTO gets out of it right in our user community, and I think we have made great strides, and kudos go to all the people before us that have put us in this position, and I think we are ready altogether to take a next step with the public. And so we're all motivated and anxious to see how we can improve.

MS. MAR-SPINOLA: Marylee, if I can just add, especially since this is a new session for us, that my experience in this past year, last year, on PPAC has been complete cooperation from our counterparts at the Patent Office. And whenever we ask for information, we get more than we ask for, which is great, and have not noticed any pushback. So, I think that was the gap that I wanted to fill between your comment and Drew's that not only is the PPAC looking for new and improved in the way that we interact with the Patent Office, the Patent Office has certainly

interacted with us quite well.

MS. JENKINS: Great, and as you can see, I really appreciate the collaboration and the communication, and people who know me will hear me say sometimes "Kumbaya." (Laughter) So, I think we're having a good moment, so.

Yes, Mark.

MR. GOODSON: Well, this isn't a Kumbaya comment.

(Laughter) In the report where did we have it wrong? Where is PPAC -- were we out to lunch?

MR. SEIDEL: I'll have to get back to you on that.

(Laughter) I mean I think by and large -- I mean, as Mike said, many of these things were jointly discussed at the subcommittee level. A lot of hard work and effort went into it. Obviously, there are some things that PPAC recommended that are a very light lift; some, suffice it to say, are a little bit heavier. So, you

know, at a high level, speaking for myself, I don't know that you got it wrong. I think some of it is what can we do, you know, now, mid-term, and long term. I think that's going to be our challenge moving forward.

MR. GOODSON: Oh, I would comment. I agree totally with that. I mean, we know that the legacy systems have to be changed. It's just how soon can that happen? I mean, tomorrow is not soon enough. And I'm not picking on you; that's just a reality.

MR. SEIDEL: Hi. Again I agree. I'm not sure what I can say here. You know, the legacy system is a challenge. You know, we continue to push towards next generation. But the challenge is we've got to go with what we have until there's something better in place, and again it's that tenuous balance between what we have and what we need and how soon can we get there.

I'll only add -- and certainly John Owens is a better person to talk about this than

we are, but the switch off of the older legacy systems onto the newer systems is something that's going to happen in phases over the course of time, and we've recently -- and, Rick, please correct me if I get this one wrong -- we've recently retired the first legacy system and are in that process. So, we're making steps in that direction.

We are on schedule, as you'll hear from John, to have a couple of new tools to examiners being rolled out as early as April. And, again, we'll get into that after, but these are all steps in the right direction. And for those of you -- and for most people I'm probably repeating what people know, but over the years when there's been budgetary cutbacks and scalebacks and most of our budget is going to, you know, personnel compensation -- and you don't cut that out of course, and what do you reach for? You reach for the projects and the discretionary spending, and unfortunately the IT systems have fallen into that category, and so we're trying to catch up from that now. And of recent years when we've had access to all of our fees and we've been able to

put that money towards the IT systems, I think we're starting to see the benefits of that, and we will continue to see the benefits of that, but it will be a long-term process.

MS. JENKINS: So, you should hear -- Mark, thank you. We ask hard and difficult questions on both sides, so everyone should hear that, too. So, it's not always Kumbaya.

But one thing that -- and I don't know who is the right touch point for this, but obviously the Trump administration has issued many executive orders, and I think one of the questions the Committee does have in general, and the user community, is how the Office is responding to many of those executive orders.

So, I don't know if, Drew, you want to answer that or you want to pass it or wait for John Owens to answer it?

COMMISSIONER HIRSHFELD: No, I'm not sure that's the right one for John. (Laughter) Would love to have him answer it then. No. (Laughter)

So, hard question to address, because

they're different executive actions, and they're at different stages. We are still, like most people, working through what some of the details are for those. For example, we know that there's a hiring freeze, and the hiring freeze was a 90-day freeze while a plan is being worked on to reduce the size of government through attritions. That certainly has applied to us like it has applied to everybody else. We are still waiting to see what the next steps are after the 90-day period comes to its conclusion.

As for the action that was taken about notices and regulations, we are still determining exactly what that means for us. So, I hope you don't take that as being evasive. That is all -- you know, we are still figuring out the contours of that.

MS. JENKINS: Okay, Valencia Martin Wallace?

MS. WALLACE: Okay, so, thank you very much and good morning, everyone. I know we're running just a little bit late, so I'll keep my intro very short.

I wanted to mention, as Michele Lee had

already mentioned, our event in December, which was very successful. As Michele said, 6,000 people attended either virtually or on campus, and what was unique I think about this particular quality conference than others is while we were focusing the earlier conferences on getting a lot of feedback on our EBQI and where we wanted to go in focusing our quality initiatives, we really broadened this last one, because quality is the responsibility and role of every area of IP. So, we really broadened this conference to address that.

We had a distinguished panel of CSC judges, both current and retired, to come in and speak on a panel about quality and its impact in the courts. We had a panel of international that was led by Mark Powell. We had a panel that Andy Faile and I were on in our next steps in our quality initiatives, and we had a panel of external stakeholders about the role and responsibility of the IP community as a whole.

So, it was a magnificent day. We did do results of some of our initiatives, but, you know, if we were to talk about all of them it would

have been more than the eight hours we were allotted on that day. So, one of the things that we did is -- and all of the PPAC members have a copy with them of a booklet that gave not only where we came from, how we got to the enhancing of quality initiatives, but each initiative that we've taken under the EPQI and the description as well as our current results as well as where we see ourselves going in the future with it and our lessons learned. So (inaudible 00:34:38, tape cut out).

We also have a copy of this booklet online. If you go to www.uspto.gov to our enhanced patent quality to the Patent Quality Conference, the entire booklet is there, and I'd encourage everyone to take a look at it. It's a great reference for what we're doing quality-wise and how far we've gotten so far and where we plan on going in the near future.

So, that's all I'm going to say. As I usually do, I've asked several of our experts to come in and talk about some of our quality updates. I could talk to you about it, but you would have a much better discussion and

conversation with the people who are living it and breathing it every minute as the leads.

So, I'm going to start with giving a quality update on our quality metrics, and that will be Marty Rater, who is the acting director of the Office of Patent Quality Assurance.

MR. RATER: Thanks, Valencia. Good morning, everybody. So, where we left off in I think kind of at the

Patent Quality Conference that we had in December is where we kicked off a lot of our new metrics that we're going to do and actually define our compliance rate and what we're using the Master Review Form that Rick mentioned -- what we're using that for and how we're assembling that data. Since then, we have posted again on the website that Valencia just mentioned a little bit more details about the various quality metrics we're at. And so I'll give you a few updates here, and I know Peter wants to go through a bunch of data, and I'm more than willing to do that, and Marylee yesterday, right? So, we'll save that for another day, though.

So, this is where we're at so far this

year, and I want to point out a couple of things. So, the Office of Patent Quality Assurance does a random review of examiner work product, and as of last week when we were first putting these slides together we were at 6,600 of these random reviews, and at the end of this week we'll be at over 7,000 of these random reviews. And this is significant, because those are historic levels that we've done in an entire year in the past, and so as we kind of elevated the need for more information in a bigger, stronger quality assurance program, we are now projected to do about 18,000 reviews this year.

So, what's that enabled us to do actually is start looking at these action plans that Rick has mentioned. Operations has been thirsty for this data as well. So, whereas historically we kind of just rolled out data at the end of the fiscal year and kind of looked back and said did this confirm or deny what we thought was happening? Now it's a little bit more proactive and here is real time quality review information that the operations can use to develop these action plans. And that's really

kind of where we're at right now.

Primarily the first quarter. Again, with good things come some challenges. And with the 6,600 reviews and the Master Review Form, as those of you that recall is a pretty lengthy document, and a lot of data collection points -- about 275 review items in there -- we've spent a good amount of time just trying to synthesize, get our arms around what does this data mean. And that includes everything from identifying datapoints that are useful for operations to use as well as ensuring consistency amongst the OPQA reviewers so that it is, you know, reasonable and a product that's reflective of actually the examiner work product. So, that's where we've been.

Just a quick reminder on what our quality metrics really are focusing on this year. So, I've mentioned the Master Review Form. That's where we're getting our correctness in what we're calling compliance, and I think that's where we've done the most work. We've actually set some targets for where we want to be this year. We'll show the targets on the next slide.

Clarity. That was a big initiative last year, trying to implement a clarity measurement along with the correctness standards that we'd always looked at. We always looked at clarity a little bit here, a little bit there. Now every review we pick up we're actually looking at both from a clarity and a correctness standard aspect.

So, the clarity. Again, I think we're going to have to start sharing some of that data. We're really going to be looking to you all to help us to -- what is a meaningful metric of clarity? Is it a composite of everything? And this is where we're kind of struggling right now. You know, we know the old quality composite didn't work where we tried to synthesize it down into one datapoint. But you also probably didn't want 275 datapoints for letting you all try to figure out it is. So, that's where we are on clarity right now.

As Rick mentioned, the quality index reporting. We're still monitoring this, as we have since probably for about the last eight or nine years now, looking for outliers, looking for

inconsistencies, looking for rework. And what we're doing on that front is tying this a lot more to our quality reviews, because identifying an outlier to our quality index reporting in and of itself doesn't mean something is wrong. It simply means there's an outlier. And we're using the Master Review Form data and some of the other ad hoc reviews we're doing to identify the root causes of those -- is there a reason why this is an outlier? -- before we go and correct and outlier that could be a very logical and reasonable situation.

And then finally we're continuing to monitor external perceptions. That is our broad customer survey that we go out and ask about the experience you've had, some of the rejections you've seen, how well we're applying reasonableness. Where we're looking at that is more of a validation of: Are we identifying issues prior to you all telling us about those? You know, we've had some disjoints in the past that our Master Review Forms weren't picking up issues that our survey was indicating, so the survey right now -- we usually do it twice a year.

It's actually being enumerated right now. So, end of March we should see those perceptions -- and hopefully we don't have any surprises there, because we've picked that up in our quality review program.

Just quickly, where we're at on our correctness. These were the targets. We took what data we collected in 2016. Throughout the year we mentioned it was going to be a baseline year. We were going to get our feet beneath us, evaluate how this Master Review Form is working: Do we all understand what it is? What standards are we using for the review? It was a big initiative. I think as the end of FY16 rolled around we felt pretty comfortable with the data. We made some modifications to the Master Review Form to pick up gaps that we weren't seeing in catching root cause. And we used that information we had, and because we weren't 100 percent knowing how the new changes were going to come into play with the standards and how our review program was going to be, we set target ranges, if you will, for what we think is a decent level of compliance based on our data. So, this

year we're looking at these compliance rate targets. I will mention that, again, we could go out to the website -- a little bit more definition on those compliance rates -- but basically we're looking at two things for correctness: Did we omit something? Did we omit a rejection that we should have made? And then on the opposite side of that, when we made a rejection, was it proper to have made that or was it properly handled as well?

So, we're looking at both sides of the coins. All cases go into this. One of the nuances of some of our new compliance rate metrics -- that we discussed back in December and it seemed to go over pretty well -- was in certain technologies and in certain areas if there was no need to make a 101 rejection -- and that's not something that will happen - - and there was no omitted 101 rejection in that case, we will call that case compliant.

Now, that's kind of an overall corps level, and one of the things is: What are our next steps? Obviously, we know we need to give you some information. We need to start sharing

some of this data, and where we're at right now is we need to give you enough datapoints so that you can really understand these compliance rate targets, because just like I mentioned, I can go out there today and tell you that we have a 96 or 97 percent compliance rate in a particular area.

To fully understand that, you need to be able to drill that down to a technology center. You need to drill that down to a farther level where you actually know, okay: How many 101 rejections were made? Or how many 102 rejections were made? And not only what is the overall compliance of all of our work product going out the door, but what was the quality of those particular rejections and what was the clarity? And I think with that 7,000 reviews, if we get too close to that 9,000, 10,000 reviews I think we're very comfortable at that point, allowing breakdowns of data where we can share that out.

So, I already jumped to bullet 2. That's really kind of where we're at on that. We'll update any targets. I mentioned prior to bullet No. 1 we're trying to establish some clarity metrics, and once we identify how those

are, obviously we'll set some targets for those.

I think the key thing is getting these external dashboards in access to the data. We shared a little bit yesterday at subcommittee.

Peter, you left us too early on this subcommittee. We could have shared a lot of data with you in the past.

You know, we're now playing with some of these dashboards of what people want to see. We don't want information overload. We don't want too little data. We also need to be careful of giving you accurate enough data so that when you see a number it is reflective of what is going on. And I can't just give you, you know, 20 reviews out of, you know, 70,000 rejections. That's not going to be very helpful for you all.

And then really what we're doing -- we've done a pretty good step so far of linking all of our quality data to more outcomes and how it's working, not only with the time analysis, right? There's going to be a quality component. So, one of the things Greg and I have been looking at is, you know, these are the current time bands our examiners are having. Do

we see any differences in quality based on those time bands that they have been given?

Clarity of record pilot. Pretty much any pilot or program that we have implemented over the last two years. We try to include a quality component even if it is not a quality initiative just so that we can make sure that we're not adversely impacting quality with some other program.

We've been having case studies. We're going to hear from both Brian Hanlon and Sandie Spyrou on a couple of those case studies we've done. We'll continue to do those, linking it to the Office of Patent Training which, now that training and quality are both under Valencia's shop, has been a very nice merge at that.

And then we're continuing to play in the big data world and taking all of our Master Review Form data, if you will, and save those 18,000 reviews, throw that in a big data environment, look for patterns of what's happening out of the 1.5 million office actions we're going to send out this year, and see do we have patterns that are happening out there that maybe we did not pick up

in our reviews but we see similar patterns living somewhere else out in the operations world that we can target.

That's all I have. I know a few more slides than Rick's, but --

MS. MAR-SPINOLA: Marty, may I ask a question? If you go back to the correctness target slide there -- thank you -- can you help us understand how those target ranges were established. Specifically, I have a couple of questions behind that. One is: Why are the lower-level ranges different for each section? And then also why not a hundred percent on the high end? This is not meant to be argumentative; it's just informative.

MR. RATER: No, you're helping my argument. And you know -- okay, so, on the low end. On the low end, we really looked at the variance of the data, and we know that we don't handle every rejection in the same manner. I mean, our customer surveys have shown that there's a little bit of variance. So, we looked at that.

Keep in mind, too, these are

corps-level. We had to kind of take into account the nuances that are happening within various technology centers. So, we kind of kept a bottom there. We didn't want to set the bottom so low that everybody sat there and said: Okay, I can easily make this and I'm not going to focus on improvement. At the same time, you didn't want to set it so high that it was out of reach and people would say: I'm already sunk; I cannot improve this anymore anyway.

So, there's a little bit we wanted to just balance: What have we seen? What were some of the improvements we saw in FY16 when we started to put something into place?

A lot of the variance, as well, was: What were our reviewers? What were they able to detect? We didn't want our reviewers -- we've got 65 reviewers, numerous technologies, all of these factors into play. We knew we were contributing to some of that variance. And it did vary by statute, so that's why we did that.

As far as the hundred percent, absolutely, and that is one of the reasons we got away from targets for the external perceptions,

right? It didn't make much sense that we wanted to go out there and say we're happy if we made percent of the people happy. No, the target should always be 100 percent happy, right?

With this, though, part of it, at least operationally and historical, what I've seen -- you always don't -- yes, that should be a goal. It might not be that interim target though. And what we see is sometimes all four of these are important, and we've got 275 items in the Master Review Form, and if each and every one of those was not important, we wouldn't be collecting it either. You know, improper finality, art of record, not of record.

So, sometimes we've never set everything at a hundred, because you get to the law of diminishing returns. So, if a particular area decided that they wanted to go out there and say I'm going to do all of my 103s, and I'm going to hit that 100 percent and get my pat on the back, what did they break to get there? So, that was a little bit of -- kind of this was a balance of all of the things. And we feel if we can fit these targets, then we've elevated quality as a whole

as opposed to letting somebody say: Well, I hit a hundred percent on this; meanwhile, the floor dropped out on something else. But, a hundred percent is our goal; it might be our target for this particular fiscal year.

MS. WALLACE: If I can also add to that -- and forgive me, Marty, if you already mentioned this, but this is right after our transition year where we're trying to improve our Master Review Form, how we're developing the data, and how we're analyzing it. So, these targets as we move along will shrink. The range won't be as wide as it is, and we're going to get closer and closer to where we feel that it's the most accurate. And they will be moving.

I'll also add that we've relied a great deal on this committee and specifically the Quality Subcommittee to give us feedback on the direction we're going, and we're incorporating all of that, and you will see it as we grow deeper into our explanations of this. So, I want to thank everybody for that. You know, we love hearing that we're doing a great job, but we'd rather hear what we can do better, and you have

been very candid about that, so thank you.

MS. MAR-SPINOLA: Thanks, Marty and Valencia.

MR. THURLOW: So, let me go back -- I think the theme of the day may be a love of data. The issue -- I mean, this is my fifth year on PPAC. I miss working with the Patent Quality Subcommittee. This is my first year not on it. I made the recommendation that we should have the Section 101 Committee, so that may be the only issue that's more of a challenge than the Patent Quality.

So, I say that from a data standpoint -- let me give you an example. I do a lot of PTAB work. In January there were 239 IPR filings. That data is huge. Why that happened? A lot of issues. So, that's a number that surprised a lot of people. (Inaudible) numbers going to 150. CBM numbers are low for some decisions, and then to just give the example: PGR had been low, so if the numbers are low what can we change from a policy standpoint that's not working whether it's the estoppel issues and so on? People don't use that corresponding

litigation or from a patent quality question. These are all the crazy thoughts that go through my mind when you start with the data.

What I'd like -- this is my fifth year on PPAC -- what I'd like to see hopefully in the next year or two is from this data analysis how does the data affect the changes that you make at the Office. For example, one of the things that's very significant from an applicant patent prosecution person is: Is this data going to result in a second non-final office action? Is the other example -- is the data that you show from a clarity-of-the-record pilot going to result in a cross-the-board procedure that says all examiners must put in reasons for allowance? Are we going to change other things -- adding reference numerals to the Claims Act some of the examiners requested? From the data analysis, that's where it starts, and then what you're going to do with that.

So, I hope for the next two years we can see more of what's the result of the data analysis. That's of interest to me. Does that make sense?

MR. RATER: Absolutely, and that's exactly where we're kind of looking at, right? We're trying to control for a lot of these factors, because a lot of things are going on, but what gave us the biggest bang for the buck, right? You know, did doing this a couple of years ago -- now that we've been looking at it, did we improve the quality of the first actions? Is this translated in something into the quality of the final actions or final rejections? And then what's happening at the board? Have we seen any changes there based on the quality of our final rejections or the first, you know?

Compact prosecution. A lot of these case studies were diving into that stuff, and that's -- it takes data to get that. And I think the beauty of the Master Review Form is now when we want to study that we don't have to go out and spend six months collecting the data -- we have it there -- and linking it to big data.

But you're absolutely right. We need to know -- we switch this, what happened here, right? So, absolutely.

MR. FAILE: So, I just wanted to add on

to Pete's point -- which is a great point, Peter. I think one of the fundamentally good things about the Master Review Form and having four different areas that we're looking for: Number one is the specificity of information we get in comparison to what we were doing previously. Another real important thing to operations is the same instrument, the Master Review Form, that we're going to use to figure out areas of focus that we need to improve on is also the same instrument that we'll use to measure whether that improvement's made.

So, to us, having a more specific look at the data and being able to say not just that this action wasn't right but actually the 101 in this action wasn't right; the 102 was. And if we can develop trends in looking at that data, then we'll go back and use the same Master Review Form later, review to see if we have improved (inaudible). So, we're able to use the same instrument to focus on what we need to be looking at, improving on, and then to measure that improvement. So, I think fundamentally this, at least in my view for operations, has a huge

benefit to us.

MS. WALLACE: I just would like to add on to what Andy was saying. Part of the Master Review Form that you're not going to see because we really share the data more and the numbers is whenever a reviewer, regardless of OBQ operations, anyone using it -- when they say something was done wrong, they're also required to put comments about details that go back to the technology center and to the supervisors. So, it's not just this indicator of there is something wrong; it's specifics that the review is sharing with the supervisors to give them a better understanding of if it could have been done better or what exactly was wrong and needs to be corrected.

MR. WALKER: I have a question.
Maybe, Valencia, this is for you.

I went back and looked at the Performance of Accountability Report for Fiscal Year 2016 -- came out at the end of last year -- and under the goal of optimizing patent quality and timeliness, there are seven objectives and two key performance measures, and improving patent

quality is one of the objectives. Is the idea to have a quality index as one of the key performance measures in the future?

MS. WALLACE: Absolutely. We've been using the Quality Index Report for many years now, and we're transitioning. It's now Transaction Quality Index Report. So, it's what -- (inaudible) some 80 different datapoints, which are indicators, right? And that information now -- while we're analyzing the QIR information, Andy has led within operations that that transaction of QIR data has transformed into quality action plans within every technology center. So, they're not only looking at these indicators, they're looking behind them to see the root causes and then putting into action plans for improvement.

MR. WALKER: Okay, but I was thinking about an external measure of performance, whether that would be something that will be part of this Performance and Accountability Report or --

MS. WALLACE: Not quite --

MR. RATER: I just don't understand what you mean by external --

MS. WALLACE: Yeah, I'm not quite
sure --

MR. RATER: Say it again please.

MR. WALKER: So, in the Performance and
Accountability Report, there are objectives and
key performance measures, right? So, for patent
quality and timeliness, there are two measures
around first action pendency and so on.

MS. WALLACE: Mm-hmm.

MR. WALKER: My question is -- and
there is an objective but no performance measure
for improving quality. So, that's just an
objective. And my question is: This quality
index, is this under consideration in the future
to be one of the performance measures that the
Office gets evaluated on?

MS. WALLACE: Yes, it is. And Marty
can talk to you a little bit more.

MR. RATER: Yeah, historically I think
FY16 is a little bit off just because we didn't
have a quality metric, right?

MR. WALKER: Yes, that's why I asked.

MR. RATER: There was always a
limitation of how many metrics they wanted in that

Performance and Accountability Report, because you've got to consider Trademarks has got their hands full and everybody else. So, that's when we had that quality composite. We'll need to decide whether we can get all four of these in here, whether we've got a clarity metric. That is actually going to be one of our challenges -- is just to find what we put in there. But there's historically been a correctness number in there with a target of how we get to its answer. You know, it's almost a five-year target plan usually, so yes, this will be the primary source of one of those metrics to say we've improved quality.

COMMISSIONER HIRSHFELD: Yeah, I'd like to jump in also. Thanks for the clarification. I do get the question now.

As Marty just said, historically we've always had a goal, a measure of what we were trying to achieve with regard to our quality, and it's been, you know, a goal that's been external. When we had the quality composite metric where we rolled everything up into one -- I'm just returning to the big picture first in historical

context -- that, you know, was what we used to drive us, and there are arguments on both sides. Whether that was effective or not, I certainly think it was effective internally. Where I think that was a challenge is I don't think that it conveyed to the public the right information and enough information and was really an understandable metric when you're mixing things together. We're probably looking at the year -- we are looking at the year where we didn't have a measurable because we were in the transition to this process that Marty's talking about now. Where we are now -- and I have 100 percent confidence in this -- is we have more measures; we have more granular measures; and it's just a matter of learning our new system to appropriately set the goals that we have, and of course we will absolutely 100 percent have measurable goals, that everybody is aware of what our achievement is. You know, what you have on the screen is our initial cut after the new way that we're measuring and getting more information. And as Valencia said, we'll start to refine that and work that into the public

goals.

MS. JENKINS: All right, one more. Go ahead.

MS. CAMACHO: I think that one of the things that we're getting at here is that there is a lot of data, and we've spent a lot of time in the Quality Subcommittee talking about the different aspects to the data: Have you looked at it this way? Have you looked at it that way? Can you cut and paste it this way? There are a lot of data to work with, and one of the huge challenges here really is finding -- and it's not going to be a one number. The four or five numbers that are meaningful to the public on a macro level -- it really is, you know, for example the 101. We have a 96.3 percent compliance. On a macro level, that's great, but it's not as meaningful in the biotech or the computer arts tech center. So, it's really -- that's the challenge here: How do we present it to the public as a whole in a general sense without very quickly going down into the very granular and detail-oriented and cutting and dicing levels?

MS. JENKINS: Great point, and not only

to the public but translating it so it's useful information -- Marty and I talked about this a little bit yesterday -- useful information that the public can use and understand so they can do a better job at what they do. And that's one thing. If I can accomplish anything as Chair -- I do have three years, assuming I don't get fired, but to try to get this analysis of data so it's data that you share with us that we can give back to the community and that it's useful and it makes sense and that we do a better patent system, so.

Okay, with that, we're going to have to really step it up, so next?

MS. WALLACE: Okay, so next we have Brian Hanlon, who is the director of the Office of Patent Legal Administration and led the Topic Submission Case Study for several of our case studies, and the one he'll present today is the effects on compact prosecution with 101 rejections.

MR. HANLON: Thanks, Valencia. So, I'm going to talk about one particular case study that we've been doing, and then Sandie is going to speak to another. I put a

slide in, but I think in the interest of time I'm going to move through it quickly.

Just to remind folks what the case study project is, we receive comments from the public in response to a Federal Register Notice that we wanted some ideas for things that they thought we should study that maybe we weren't looking at that could move the quality needle and help us out. And so we received a number of comments from the public. We chose six topics to study. We're in the midst of those studies now. They're in various points in their completion. And so the one I'm going to specifically talk about, as Valencia mentioned, is compact prosecution when it comes to 101 rejections in the office actions.

So, as things were happening in 101 -- in the law of subject matter eligibility 101 -- we started to hear from our stakeholders that they were getting office actions where we had a 101 rejection. In the first office action, there were no art rejections. And then in the subsequent second office action they were receiving office actions that now had prior art rejections in them that they really felt could

have been made in the first office action. So, what we did was we emphasized compact prosecution with respect to this point in all of our subject matter eligibility trainings and in all of the guidance that we issued at the Office.

When we started asking for topics for case studies, we heard this same concern raised by our stakeholders. So, we thought that our training had been effective and guidance had been effective in emphasizing this point, so we of course were concerned when we heard this raised again at that time.

The issue that they raised is what's here on the board, the fact that they were getting those 102, 103 prior art rejections later in prosecution that they felt they could have gotten earlier in prosecution. So, we decided to study that.

Now, compact prosecution, as we know, is basically the point that all examination issues should be dealt with as early as they can during the prosecution of the application. But because of the request that we had from the public, the issue that was raised by our

stakeholders with respect to this, we studied this one particular aspect of compact prosecution, what had been raised to us.

So, the focus of our study was really to determine how frequently we were issuing office actions that just had 101 subject matter eligibility rejections and then following it up with an office action that had a prior art rejection that could have been made in the earlier office action.

How we did it was we really used our Big Data reservoir, our Big Data team. It was one of the first real experiences that I had had with Big Data, and we used a lot of queries in Big Data to work through the numbers in all the applications, and I'll talk to you about that in a minute. I do have a chart that I'm going to show, so I think Peter's happy 101 (inaudible).

They were thrilled, so what we did was we looked at and 14 series applications that were publicly available, so

they had been published or patented, and we looked at office actions between February of 2011 and November of '16.

So, the data that we had, the pool that we could use from Big Data was mid-level 1.5 million office actions that we looked at. We ran queries through these office actions, and we came up with little over a million applications with non-final rejections in them. They were prior art related. And we also had over 153,000 that had non-final office actions and they were subject matter eligibility rejections. So, we then looked at those cases and found out which ones had overlap, so that was really our group that had both subject matter eligibility during the prosecution and prior art rejections during the prosecution in some kind of a non-final action.

So, that was our -- basically that was what we were going to wind up getting into and where we were going to start looking. But while we had these numbers, we decided to look at how many of these also had just applications that only had a non-final prior art rejection. How many applications did we prosecute that only had a subject matter eligibility rejection in them. So, these are the numbers at the bottom of the

chart that you can see.

Now, the number of applications that we had that had both non-final rejections with prior art and non-final rejections with subject matter eligibility rejections in them, we had 137,508. Once we got that set of data, that set of applications, what we did was we wanted to look at it from the timing of these rejections. So, the first line which -- I apologize, I don't know why it's skewed to the far right. The 125,000 number, that was basically -- those are the cases where we had a non-final that had both the subject matter eligibility rejection and the prior art rejections and so compact prosecution with respect to those.

We then also identified a little over 11,000 applications that had the non-final office action. The first non-final had a prior art rejection in them, but then subsequently there was a non-final office action that had a subject matter eligibility rejection in them.

Now, that as you can see is really because of the change in the law and required examiners after being trained to recognize the

change in law and then of course issue a new office action rejecting those claims and properly making it non-final.

We looked then at the numbers and we found that we had 721 applications where the subject matter eligibility rejection was in the first non-final. No prior art in that first non-final but then the subsequent non-final action that had prior art in it.

That 721 cases we then went through by hand and evaluated each one of those to determine whether or not it was proper to make that rejection in the subsequent office action or if it should have been made in the first office action. We found in 361 applications that the prior art rejection could have been made or should have been made in that first office action. So, when you look at the 137,000 cases and we had 361 of them where we felt that the Office didn't practice non-compact prosecution -- I'm sorry, did not practice compact prosecution with respect to this issue -- it comes up to about 0.26 percent of the applications.

MR. THURLOW: Brian, that was an

intense data analysis there. (Laughter) And I just want to express my appreciation for that. (Laughter)

MR. HANLON: Thank you.

MR. THURLOW: Because that was intense. I haven't had coffee yet, and that was intense.

MR. HANLON: That you up? Okay.

MR. THURLOW: That was -- wow, that was intense.

(Laughter)

MR. HANLON: Thanks (inaudible)

SPEAKER: (Inaudible 00:04:08, off mic)

MR. HANLON: Yes, 0.26 percent, yup. So, I could cut it deeper --

MR. THURLOW: No.

MR. HANLON: Okay. I'm done. Okay. So, basically, what we found was the -- it's really

not a corps-wide problem at the Office. We also looked at whether or not there were any ways to relate this back to the time of the fiscal year, particular (inaudible), particular TCs,

anything. There were no correlations between any of that. These were all just outlier cases here and there.

So, our recommendations are really -- corps-wide training is not necessary on the issue, but we recommend continuing to emphasize this in all of our training and for all aspects basically of compact prosecution.

So, thank you.

MS. MAR-SPINOLA: So, if I can say before you close, is that I think on the counter of this data-driven colleague of mine, I look at things a little bit more practically --

MR. HANLON: Yes.

MS. MAR-SPINOLA: -- and I get the .26. Fifty percent of the -- if I looked at that, there were at least about 50 percent that could have followed the compact and didn't, right?

MR. HANLON: Right.

MS. MAR-SPINOLA: Seven-something (inaudible).

MR. HANLON: Right.

MS. MAR-SPINOLA: So, one of the things is that, at the risk of sounding may crass, you

know, for companies, for individuals, the patent holders, time is money. And so it does make practical sense at all times to look at 101 and prior art at the same time so that the office actions can be responded to quickly.

MR. HANLON: Mm-hmm.

MS. MAR-SPINOLA: And the patent rights are resolved quickly. So, I would just -- I respect the data, but I think it's important to keep in mind that patent owners are looking at a time issue.

MR. HANLON: Right. Understood completely, and that's why I said also I think what we're going to do is we continue to emphasize this in all of our trainings, because I couldn't agree more that -- and we recognize that we don't want to be wasting time and whatever can do to get everything as compact as we can and move forward with it so that there aren't needless office actions and there aren't needless responses from applicants. Yes, I agree completely.

MR. THURLOW: A very quick comment and somewhat serious is that this is a concern. It's a comment we hear quite often. So, to the extent

I know you're doing the case studies, I wasn't aware of this specific one. I do think it's very helpful that you did that. The way that we can get that information out to say we understand your concerns -- we heard that during these patent quality meetings and so on. We reviewed it. We don't think -- maybe we don't use the.25, but, you know, we don't think it's an issue but we continue to emphasize it in training. That's what I take the shorter version from an applicant's standpoint. It's very valuable to know at the Office. It's emphasizing to do all the analysis up front.

MR. HANLON: And we will be publishing the study report for this also, and it has all of that in it and goes into a little bit more as well.

Thank you.

MS. WALLACE: Okay, so we'll go quickly through the next two, the next being Sandie Spyrou, who is a supervisory quality assurance specialist who led the case study on 103 rejections and rationale statements.

MS. SPYROU: Okay, so just like Brian, one of the case studies that we were asked to -- or

topics that we were asked to look into was rationale statements, the correctness as well as the clarity of rationale statements that you're receiving in the office actions.

So, what we did is we came up with our objective to study whether examiners are making clear as well as correct rationale statements for any modification that's being set forth in the office action.

Now, we were able to use the MRF -- the Master Review Form -- to do all of the data analysis for this study, and this really is the first time that we've put the MRF kind of through this kind of rigor. And so as well as coming out of this case study at the other end with a lot of useful information with regard to rationale statements, we also came out of the other end of this study understanding the strengths as well as the weaknesses of the MRF as far as using the data there in order to do practical analysis that we can use to drive training or other interventions in the examining corps.

So, at the end as we were going through this case study we were kind of looping back what

we were finding with regard to the definitions of or how the questions on the MRF were being interpreted by OPQA reviewers, as well as just the standards and the consistency of the standards, because that all came out in the analysis. So, when you heard Marty earlier talking about kind of our baseline year and about tightening up the MRF and about standardizing the consistency of how to answer the questions, some of that was reinforced from this case study and some of it came out of this case study. So, that was an added benefit that we found going through this.

We pulled 4,916 random reviews. These are the normal reviews that we do at OPQA. We pulled those between November 15 to April 16, so that was fiscal year 2016, kind of our baseline MRF year, and we stuck to version 1.0 to make sure that as the MRF was developing and becoming more robust we were kind of comparing apples to apples as far as the questions go.

We pulled basically three questions from the MRF. The first question was: Proper rationale to combine prior art references provided. So, what the reviewer does with that

question is they look at the office action. They look at what the examiner articulated in the office action with regard to the rationale statement, and they ask whether or not what was articulated by the examiner was a proper rationale statement, a proper reason for modification.

The second question that we looked at with regard to correctness of rationale statement was that the reviewer will also look at the evidence provided and look at the 103 overall. So, they're not limiting their analysis just to what was said by the examiner in the record, so the examiner may not have done such a great job with saying or calling out what the rationale was but to look at the references applied and they'll ask oneself: Was there a way to kind of put them together? Was a modification supported by the evidence that was there?

And we looked at those two datapoints, because we wanted to say, okay, find out if the examiner did not give a proper rational statement. Was there one that could have been made? And I think that impacts how you train,

because if the examiner is just putting references together where there was no rationale to be made and they didn't make one, that's a little different training point then: Hey, they didn't make it, maybe they didn't make it very well, but there was one that could have been made and that's kind of a nuance in how we would train and how we would effect change.

So, those were the two datapoints that we looked at. Now, you also have to remember that there are lots

of different modifications that could be offered during that office action. So, we have set forth our findings kind of in a Vin diagram. So, "yes" would be where every single rationale statement that was offered was found by the reviewer to be correct. And of course that's what we're looking for. That would be the ideal, and that would be kind of on the left side.

Then we looked at the ones where "in part" would be where some of the rationale statements provided by the examiner were correct and some of them were not correct, and that's where we're in the "in part." And that also lends

itself to telling you: Well, the examiner knows, understands rationale statements, they understand how to do it because they've done it at least in a few of these. So was it that they just lost steam and didn't add it for all the modifications or there wasn't one there for those other ones?

And then you've got kind of the right-hand side, the side that we certainly want to minimize, and that is "no," that none of the rationale statements provided were correct.

So, it's kind of a spectrum of what we saw as cases are.

Now, if you want to look at the glass as half full, we could say -- we could look at it as 95.3 percent of the reviews we looked had at least one rationale statement that was correct. Or, if you're somebody who likes to look at the glass half empty, you could look at it the other way and say in 14.3 percent there was at least one rationale statement being incorrect.

So, that's basically what we found overall in the corps. And of course that lends you to say: Well, why? What's going on? Why is

this happening? And that's where we cross this data of the rationale statement with what the reviewer thought of the overall 103, the overall combination that was offered.

And so this gets a little into the weeds. Some of you may like it, and some of you may not like it. But I would say is if you focus on the left-hand side -- that's the question "yes", "in part," or "no" that I just showed on the previous slide, question one, about the rationale statement. At the top, the columns going down are the overall correctness. And you focus kind of on the "no." When we said that far right on the Vin diagram, when we said that, none of the rationale statements that the examiner had offered were correct. How often did that have a significant impact on prosecution?

Now, prior to fiscal year '16, we used a standard which was called the IPED standard. It was the In-Process Examination Deficiency statement, and what that was, was we evaluated what the examiner did wrong against kind of this bar of whether we believed that it impacted prosecution. And over '16 and into '17 we

realized that what we really should be doing is just saying is it a compliant rejection or not and not having this kind of arbitrary standard of whether or not it impacts prosecution. But that's the data that I had at that time.

So, if we looked and we said: Out of these 218 where we said "No, none of the articulated statements were correct," how many of those impacted prosecution significantly in the mind of the reviewer?, 88 of those did.

And what that tells you is that in a majority of these, there was a rationale to be made. The examiner just didn't make it on the record. They didn't articulate it. And that really lends us to how to train and how to improve our rational statements. It's not that they're missing it; they're finding references that really can be combined. They're maybe not recognizing how to articulate it or where it is in the references or what's appropriate to say on the record. So, that really tells us there from that slide. And I think it gives us a lot of feedback as to yeah, we're missing the boat in some of it but in a lot of it, more than half, there

was a rationale that could be made. So, that kind of, when we get to recommendations, is going to play into our recommendations with regard to refresher training.

Now on the other side with clarity, we also pulled out a similar question from the MRF, and this is: Was the rationale to combine or the reasons for obviousness clearly explained? And at the time we were still using a "yes," "in part," and "no" standard which you'll notice evolved over '16 and '17 to be average, above average, and below average. That's how we're evaluating it now. But at the time, this was the standard that we were doing. And what we saw here is pretty similar with the correctness. Again, yes, it was clear -- 89 percent. All of the rationale statements that were offered were found to be clear. In the middle, 7.5 in part. That would be some of them were clearly articulated, some of them were not. And then over on the right-hand side is where none of the ones that were articulated were found to be clear.

And again you can look at this as a glass half full or empty. 96.6 percent had at least one

clearly articulated, which tells me that there is a fundamental -- they understood how to do it. And that's good. It's just getting them then to do it consistently with regard to every modification versus, you know, 10.9 where there was at least one that was unclear.

So, I think it's good that there's such a small amount here where, no, none of them were clearly articulated. And that also will direct how we will do refresher training, what we need to focus on with examiners.

So, again, crossing this with overall correctness, even though we didn't in that 168 pool, we didn't provide a clearly articulated rationale at all. You can see that there still was one to be made, because only 51 of those ended up in that significant deficiency bucket where the reviewers looked at it and said there wasn't even one to be made.

So, again I think that is kind of a shining light, that examiners are finding art that is combinable generally, and that we need to focus on making those rationale statements, not just for maybe the independent claims or the big

ticket parts but for all of the modifications that are being offered in the office action.

So, that kind of takes us to, you know, again, recapping kind of our top findings that I just went over. But I think the last bullet point there is even when the articulated rationale was found to be incorrect or unclear, in a majority of these prosecution wasn't found to be impacted because the reviewer saw that there was one that could have been made, and the evidence supported the modification.

So, what we're recommending, moving forward as a result of this case study, is to provide some refresher workshops, and these would be hands-on workshops versus PowerPoint presentation where we tell the theory, but we would want examiners to actually, in small groups -- maybe art unit level, similar to what we've been doing with 101 patent eligibility, which we've had a lot of success with -- work through real life examples, focus on identifying the rationales because they're there -- we know that they're there from the reviews -- so, helping them to identify them how do you identify them?

How do you handle a situation where there are multiple modifications to make sure that you have a rationale statement, articulate that it covers all the modifications, and then also work on effective articulation of the rationale statements. You don't have to write a thesis to have them articulated clearly and working on them to get into best practices for making the record clear. So, that's where we're at moving forward our recommendations.

MS. JENKINS: So, I guess what I struggle with a little bit is what that rationale is. I mean, did you do a deeper dive on that and say: They maybe don't understand the technology so they're not going to be able to give a rationale that makes sense and that's why it was omitted. It's like -- so that's what I'm struggling with a little bit.

MS. SPYROU: Again, we kept the data that we did for this analysis, data that we got from the MRF, and if we go back to the MRF, yes, we can look at the comments to see why the reviewer found -- why the reviewer thought, in that instance, that the rationale wasn't proper. And

then we would be using those kinds of comments in building the training to say, okay, this is in this area, this is what we should focus on, or that area, based on technologies.

I don't have a datapoint in the MRF for that. That is something that we may want to look at to make the MRF more robust just to get into the reasons why it was found to not be correct. Was it because of technology? Was it because of law? It's just inappropriate legal analysis, you know, that kind of thing digging down even deeper. But that is there in the MRF, and we certainly will be relying on it when we build the examples for the training. But right now I don't have -- yeah, I don't have a datapoint per se to that.

MS. JENKINS: And take this softly, but maybe this is good training for PTAB, too.

(Laughter)

MS. SPYROU: More than willing to have you attend any training, of course.

MS. MAR-SPINOLA: I know we're running out of time on this, but I wanted to ask about the timing. So, when do you do the review of the

rationale statements?

MS. SPYROU: These reviews were done at all stages of prosecution.

MS. MAR-SPINOLA: Okay.

MS. SPYROU: Now, of course, we're looking at rejections made, so it would not be an allowance, but it could be a non-final or a final. And, in fact, we did cut this data to see if there was a difference between whether it was more incorrect or more unclear in a final versus a non-final, and we really didn't find much difference whether it was a first action or a final, as far as the data goes, but they were at all stages of prosecution.

MS. MAR-SPINOLA: So, your statement that there was little negative impact, right? --

MS. SPYROU: Mm-hmm.

MS. MAR-SPINOLA: -- where there were deficiencies, that was because the reviewer was able to correct it before it went out (inaudible).

MS. SPYROU: No, and that's where the IPED standard becomes confusing, and that's why we're kind of moving to this just compliant or not compliant.

It's really an assessment by the reviewer at that time looking at whether they believe it would have a significant impact, whether they believe the applicant would know how to respond, whether the evidence supports the final conclusion. So, it's not looking at: Did it have it? It's actually looking at, in the reviewer's opinion: Would it have an impact? And again that's something we've struggled with and that different reviewers would assess it differently, and in reality did it, could be completely different.

And that's why we've really shifted to this compliance standard of: We're drawing a compliant rejection; is the claim right, is the statute right, and is the evidence right? And in a 103, the evidence would be: Did they set up a prima facie case appropriately? And so we're kind of going to take that varying level and that kind of, you know, looking into the future of would it out of the process of the analysis?

MS. MAR-SPINOLA: Okay, thanks. I think maybe an external feedback would help, too, from whoever was impacted to see maybe after the

prosecution if there is a way to find out did this have an impact or not?

MS. SPYROU: Yeah, I mean, we could do a validation and say: Here's a pool where we thought it would, and here's a pool where we thought it did not -- and go and validate and say: Did it now? Because now it's post and we could do that. Certainly that's something that we could do, but we've kind of shifted the paradigm now away from trying to guess whether it would or not and just saying: What we offered, was it a compliant rejection? Whether or not the applicant understood it or wouldn't understand it or whether it impacts or not, we have an obligation to set forth a compliant rejection. Did we do it and not get into this whole kind of guessing? And we've totally shifted in '16 and '17, and that's where these quality metrics are coming from, and that's why those numbers are so different from what you've seen us, in the past, report out as far as compliance rate.

You know, we were running at compliance rates '97 and '98 and now you look at 103 and you see '88. Well, because we're doing a different

standard and we're holding ourselves accountable to a much higher standard. We're obligated to give you that compliance, that rejection that is in compliance.

COMMISSIONER HIRSHFELD: Yeah, if I could -- and thanks, Sandie, you just said what I was about to say. It's tied up back to Marty's numbers and some of the challenges we were saying with reporting new data.

But I can't say enough about the importance of this change to statutory compliance, because I think the whole needs attention significant deficiency, which -- you know, we have definitions in the report out, and again we're not doing that anymore. But that whole paradigm was somewhat confusing, not clear. I think it was some of the issues why -- you know, we report a number out and the public says that can't possibly be true. Well, we were actually looking at different things, and I -- so I feel really good about what the teams have done to move us.

And by teams, I'm going to look at all my deputies who have been involved in this change

to move us to the statutory compliant. It a much more straightforward analysis that I think the public will understand better what we're trying to convey to them. We can have more intelligent conversations about what we are doing and we'll be able -- getting back to Peter's point, we'll be able to feedback -- or it might be from a (inaudible) point -- be able to feedback better to examiners what the information means.

So, from my perspective, while this is a very weedy, you know, Patent Office-specific issue, it's also one of the most important changes that we've made, and I think it will be very positively impactful.

MS. JENKINS: Let's see, we were going into break, but we're going to keep going, okay?

MS. WALLACE: Thank you, thank you.

MS. JENKINS: I will feed you guys, don't worry.

(Laughter) I know, I have a bad reputation.

MS. WALLACE: So, our last discussion is giving you a little bit of or one of the next steps we have in enhancement of quality. So,

we've done a lot of really great work on the clarity side and the correctness and training, and one of the comments that we've received a lot was: Great work but how are you getting the best prior art to us as soon as possible? And we have had many initiatives that have pushed us forward in that vein, but from my point of view the BQI and the quality is something I think we needed to venture more into. And actually it was Andy Faile and myself who really talked about next steps with the examiners and what does that look like in enhancing the search aspect of quality?

So, we have Don Hajec, Assistant Deputy Commissioner of Patent Operations, and Greg Vidovich, Associate Deputy Commissioner for Patent Quality, who are co-exec leads in venturing into search enhancement and the direction we need to go in. So, they'll lead the discussion.

MR. VIDOVICH: How are you guys doing this morning? Just a quick apology to Peter -- there's no data on

this one, so there's a lot of data on that. I'm going to go through this quickly.

Because we're basically in the infancy stage here. We started discussing with the union and Pam about certain options moving forward, and I think really this week was the biggest kickoff meeting on that.

So, we've done a lot of roadshows. We've gone out at our most recent conference. Valencia mentioned about enhancing a search and so forth. A lot of feedback. We get a lot of these roadshows. You know, we go to final rejection, then there's a new piece of art there. And people say: Why wasn't this cited earlier? And there are a lot of challenges there, obviously: Why wasn't this cited earlier? So, we want to identify the best prior art as early as possible in prosecution. And also, you know, and also give you guys early notice as much as possible.

But in the same breath, we also get feedback from the examiners. I talk to examiners a lot. I see them in the hallway and they say: Can we -- somehow -- that first substantive office action, can we narrow it down? Can we get down to a more substantial first office action? We

can weed out some of this stuff early on. So, what we're looking at is developing a pilot in the very near future, working with a lot of teams in the office.

Mark mentioned -- Mark Powell, members from his team from the International Committee, they're looking at a lot of the foreign stuff that's going on and other possibilities. We are in the process of looking at starting a pilot I believe as early as April on pre-search, automated pre-search, where we get the examiner on automated pre-search before they even open the application. And that's supposed to start as early as April as another possibility.

We're also looking at other means with IT and so forth but, you know, at the end of the day we're trying to get the examiner to look at the disclosed invention as well as the claim dimension and how we can cite art that's relevant not only to the claimed invention but look at what can be reasonably put in the claims by applicant from that.

So, we're looking at diagnostic interviews on the front end and also diagnostic

interview after a search is completed to get that feedback from applicant. You may be thinking AIA, at this point -- FAI (inaudible) but FAI. It's maybe very similar, but we're looking for more increased interaction with the applicant. In addition we're looking at the possibility of an amendment by right after that search report goes out to applicant. That would hopefully -- can focus prosecution before that substantive first office action between the applicant and the examiner, and that can be -- we can tighten that office action, make it a little bit more clear.

So, you know, we're very early in the process, like I mentioned. I'm working with teams. I travel to the EPO. As an example, I went to the EPO last month, talked to folks there. We were talking a variety of other areas to see what options we have to look at this. We're going cooperate with PPAC and the Quality Subcommittee. We've had an early discussion with them. We're going to keep following up on that. You know, I'm going to work with Pam and her group with POPA to see what we can leverage -- or, not leverage, but

we can forward with a pilot by the end of the fiscal year.

But one of our primary goals really, I mean, long story short, is to get the best prior art very early in prosecution, and that includes not only the claimed invention but disclosure, and there's going to be a lot of feedback and dialog between the examiner and probably more like the attorney of record to see, okay, what are we focusing on? Can we focus on other things? And then at that point, possibly an amendment by right, and then we can focus the examination to something in my opinion is more clear and focused. And I think we can expedite prosecution with that.

And, Don, do you have anything you want to add?

MR. HAJEC: Gregg summed up most of the steps we've taken so far. As he mentioned, we were at the EPO last month and saw some of their search tools and some of their approaches to searching. We've got some information from the Canadian patent office on approaches they've taken. One thing we're kicking the tires on: They have a peer review type search approach where

an examiner will have the same application searched by several other examiners, and then they compare search results and learn best practices, and if one person found better prior art than another, there's a discussion on, you know, what techniques or strategies they used to find that prior art.

So, we're looking at that as a possible pilot as well, also leveraging the efforts that you'll be hearing from Mark later on about presenting family documentation from related applications before the examiner. And, as Gregg mentioned, we also have the pre-exam search. We are looking at if there's a possibility to leverage in a pilot.

So, again, pretty early in a process --

MR. THURLOW: So, a very quick comment. I mean, the point is obviously search and examination -- I'm coming back to that. Some clients require that we do a search first, so we're very familiar with doing search terms, a lot of people -- former examiners and so on -- so, it's very critical.

When you talked, I think, Gregg, you

mentioned about working with the community as far as on search terms. Is there a thought of having a pilot where some -- if some applicants wanted to submit: These are the search terms we recommend as an initial consideration? The reason is, for example, for people that do a lot of work in the razor area, there's a big difference between wet and dry razors.

MR. HAJEC: Mm-hmm.

MR. THURLOW: And, you know, it just doesn't make sense to search one category. I'm sure there are plenty of examples in biotech and other areas. It doesn't make sense to do it. And to the extent there could be some, I'm not sure, you know, if this hasn't been invented, but since early on I have some suggestion of applicants submitting proposed search terms. Maybe that's a consideration. I'm not sure if it's right; I'm just thinking of this as you guys --

MR. VIDOVICH: We could consider that. You know, I'm thinking the glossary pilot, kind of similar, where the applicants defined everything in the glossary pilot

(inaudible), but we can look at that, how that works, and maybe look at possibilities as part of the requirement to get in or even maybe a suggestion limiting terms and so forth. We can definitely consider that.

MS. CAMACHO: Or you could have the examiners first propose the terms that they're considering. I think that as Peter mentioned in the life sciences arena, the terminology changes fairly quickly over time before it matures and sets. And so I might suggest alternate words from what I've used in the application simply because the prior art may bring that up. So, just having the conversation itself before the search I think would be helpful whether the applicant suggests the terms in advance or the examiner. But I do think that having the conversation is very important, particularly if you're looking at having the examiner searching the disclosed invention versus the claimed invention, because then they're in a position where they're having to predict how the applicant may or may not amend

the claims.

MR. HAJEC: Mm-hmm.

MS. CAMACHO: And I'm concerned that that may put at risk the thoroughness of the search as to the elements that are actually claimed and the consideration of those elements in particular versus opening up the whole slew of how might I amend those claims so that the whole invention is searched in advance when I have no intention, for example, of amending it one way or another but, rather, having the thorough search and considered analysis of the prior art that does relate to the claimed inventions.

MR. VIDOVICH: Yeah, I would agree with that, and that's one of the reasons I mentioned earlier. Maybe it hadn't gotten a diagnostic substantive interview beforehand, talk about it, (inaudible), and maybe I can help focus where the search is going to be and move it forward. At the end of the day we want to focus on not just the claimed invention, but the bigger picture -- look at what can be reasonably expected to be claimed downstream.

MR. HAJEC: Especially if it's

encompassed within the same search, it would make sense for them to be keeping an eye towards those features, which would help prosecution as well.

MS. JENKINS: I just want to touch, though -- Dan's brought up an earlier point. This is one I think -- we're going to have to try to have themes. We're working on themes for PPAC this year, and integration is so important. And this point in particular, and with respect to the Trump administration, with respect to fees and costs and cuts, in order to accomplish what you need to accomplish with international, you need to work very closely with the union and technology, because if all of that is not functioning together we're not going to get that.

And so there's -- and I know the Office -- I just want to make that of record. I mean, I know the Office is knowledgeable on that, but the user community sometimes is not. So there are a lot of moving parts here, and it's so important to make sure everyone's on the same page, because ultimately while this may add expense and time for the examiners, the end result should be a better patent for applicants. And I

think hopefully that's what everyone's goal is.
So.

MR. THURLOW: So, very quick. I'm not a hundred percent. I don't -- it's an issue to be discussed. I don't really support the whole idea of doing a search on the disclosed invention. I just think some applications 25, 50, a hundred pages -- if you do this, it's going to be too cumbersome. It's not going to be of value.

I understand what the Office is trying to do, because if we make amendments, then in that second action it's final and people say you shouldn't have gone final and try to anticipate the future. But it's just too much. I just think there's too much art out there. I mean, as Mark as mentioned and others, it's just too much, and I think it's difficult, but I'm willing to help find out and work with you.

MR. VIDOVICH: Just trying to find a balance. It's trying to find a balance possibly, and we'll work through that.

MS. JENKINS: We need to move on. Any other last points?

MR. THURLOW: That's it. Thanks.

MS. JENKINS: Great. We do have a question from the audience. Chen? I know it was earlier, but hopefully it all still ties in or try to tie it in.

MS. WANG: Okay, I'll try. Chen Wang with AIPOA. I actually had a question about the case study that was previously presented, especially in particular on the 101 case study especially after seeing the 103 case study where there was an assessment on the correctness or the clarity rationale. I wondering whether that kind of an assessment, qualitative assessment, was done in the 101 or whether it was really merely focused on whether a 102 versus 103 is later included as a rejection. So, that was a clarification question.

MR. HANLON: If I understand your question, are you asking when we reviewed the cases to determine whether it was compact prosecution, did we review the rejections also to see if they were appropriate?

MS. WANG: Yes.

MR. HANLON: Okay, no. For this case study we did not. We looked at the procedure of

what occurred, because we have two other case studies are basically dealing with that issue.

MS. WANG: Thank you.

MR. HANLON: Yup.

MS. JENKINS: Always things going on behind the scenes. So, we do need to take a break. So, if we could just take a five-minute break. (Laughter) Just run out, do what you need to do, and then come back. We'll start with Andy's group, okay? Thank you.

(Recess)

CHAIRWOMAN JENKINS: A call to order. End of break. Next on the agenda, Mr. Faile.

MR. FAILE: Good morning. So, we're back at it. So, today I hate to disappoint Peter, and this is going to be the running joke today, we don't have our usual Patent Ops update slides. There have been some requests for some happenings in Patent Ops on different things we're doing, so we've got two different presentations teed up for you guys today. One is on examination time analysis and one is on our relatively new pro se art unit.

Going to the examination time analysis,

to link back to a point that Dan made earlier about everything being connected, fundamental to a lot of the things that we do here at the Patent Office is the amount of time we give towards examination or allot for examination. There is obvious pendency links to that. There are obvious quality links to that. So, the balance of that is a huge topic for all of us. And we have a large project underway to look at examination time and kind of ask and answer some fundamental questions. Number one, are we at the correct examination time, and number two, if not, what should it be and how do we get there.

So, we've got a huge project underway doing that. Dave Wiley, Technology Center Director in TC2100 will walk through where we are in that process. And then the second one, Kathy Matecki, TC Director in TC3600 is going to walk us through the pro se art unit and a lot of our workings with and assistance to pro se inventors and what we think has been a largely successful program. We'll give you an update on where we are there.

Dave, let me kick it off and have you

start.

MR. WILEY: Thank you, Andy. I'm going to go through a few slides, and those of you who were paying attention at last PPAC, some of these slides are repeats. So, I wanted to reemphasize some of the reasons why we're doing examination time analysis and we have some new members as well. So, I'll get going.

So, why are we doing the examination time analysis? Well, according to our strategic plan we want to establish optimal pendency and quality levels for our patents and our trademarks and to operate efficiently and effectively in the steady state maintenance mode. So, according to our strategic plan it's one of our goals to optimize our efficiency and effectively examine.

We want to calibrate our times. It's critical, again, for optimal pendency and quality levels, but there's been substantial changes that have happened to the Office since the last time we did our goals. We've had lots of new technologies, the complexities of our cases, the exponential growth of our available prior art, our transition to CBC, our increase use of our

electronic tools, and changes to our policies in legal procedures have all happened since the last time we did the examination time analysis.

As I said before, 1970s. I was probably still in diapers the last time that we did an examination on the full examination time analysis, so a lot has changed since then, as I said before. So, that's a big reason why we're doing this. And also, we've had some recent reports from the GAO and the Inspector General, all kind of not calling us out but encouraging us to do a deep dive into our examination time.

This is kind of our pretty little bubble chart that kind of shows the big areas that we're going to be focusing on for examination time. In the middle layer, you're going to see there's a big technology and data component to examination time. Back in the '70s when they established the goals that we have now, they did sampling of about 20 cases per technology and went through all the 20 cases and did an analysis on them. We have (inaudible) right now, so we have statistics and data on every single application that is filed or has been filed. So, we're going to use that data

to do a much more comprehensive analysis on the technologies and the differences in the technologies here in the USPTO.

Our outreach. We've done internal and external outreach. I'll talk a little bit more about those in upcoming slides, but we wanted to get as much stakeholder information as we could going forward with our examination time analysis. And our quality and clarity actions. We're trying to do a lot of things. We've done a lot pilots. We want to increase clarity, increase quality as always so we wanted to see what we could use from our quality programs and how that will affect examination time going forward. And, of course, the implementation. Once we've put all of this together, we put it in the pot, we stir it up, and then we start figuring out how we're going to implement all of this.

So, internal outreach. We did an examiner survey and we had amazing participation. You can see that we had 83 percent of the core pretty much fully responded to our survey. It was a pretty lengthy survey. And we had about 900 comments. We had pretty decent participation

from our supervisors. There are tons of data. So, when you have 7,000 responses to 30, 40 questions there is lots of data and we're cutting it in different technologies, different grade levels and whatnot. So, we just barely got the data in the last couple of weeks and it's going to take us months and months to go through all that data.

Our external outreach, as you know, some of you helped us out on some of our roundtables that we had. We had them in Alexandria, Dallas, Denver, and San Jose. We had approximately 90 attendees. We had lots of written comments from our FR Notice, emails, and some from our IDEA scale as well.

Some of our next steps are to analyze both the comments from the internal survey and for the external stakeholders and also to do what I was saying about the data, is to evaluate our application data in our prior art searchings by technology, evaluate our recently quality initiatives, and also evaluate our groupings of our technologies using CPC. CPC is a big change, as I said earlier, and how we route cases and how

we group examiners together using CPC as opposed to USPC. That's a big thing that's going to affect examination time.

Lastly, from my slides, is after we put all this together the implementation is we're obviously going to negotiate with the Union, and we also want to create a process that is iterative, that can be redone not 40 years again from now but it can be happening every few years. We can do this process over again and keep our examination time at the proper levels and not wait, as I said, 40 years to do this all over again.

This is just the high level. We have tons of data that we're going through, as I said, both the internal survey data and also the data from the actual applications and our searching and CPC. So, that's kind of where we're at now. We're about four or five months into it and it's a very long process. Hopefully by the end of the fiscal year we'll have a lot more decisions made in the path going forward.

That's all I had for slides. I tried to keep the slides low. So, I'll open it up to

any questions that you may have.

MR. LANG: This is more in the way of a comment that this is of course a very important initiative and it is highly integrated with notions of quality with financial metrics and with pendency. It's really an axis over around which much else turns. I would urge the Office rather than to succumb to the temptations to take the input and then react in a cautious and incremental way, that really to be strategic and visionary about how we can optimize this very important parameter to make the patent system the best it can be.

If you look at some of the input that was collected from the public you can see that there is an openness to things like different models for prosecution to accepting that there may be a higher cost, making the proper allowances for entities that can't pay to accept different and higher costs in order to achieve a higher level of quality that can be achieved used the current model. So, I commend the initiative and hope it leads to big picture thinking.

MR. THURLOW: I was on the panel at the

Patent Office, I think it was the first one. I think Dan, you were on the one in California, I'm not sure if others participated. I think this is a real -- Julie did too, with Dan. So, I thought this was really important in the federal register. I think it's an important imitative so I (inaudible) everything Dan said.

From a public standpoint, doesn't it come down to some basic issues as I grapple with this. There is so much more prior art available so the natural flow would be the examiners get more time. However, on the contrary, there is so much -- electronic search means that maybe 20 years ago, 10, 20, 30 years ago, examiners had to read the documents rather than all the search means. So, there's a lot of things that kind of balance each other. And I imagine those are some of the issues that you're struggling with.

MR. WILEY: Absolutely. The searching is a big thing. We have a lot of metrics on application sizes, the number of claims, and everything that we can think of that measures an application. The amount of searching that an examiner does, we can measure

the volume of the search, the volume of the prior art that's out there that they routinely search, but a lot of the time an examiner spends on search is based on the time we give them now.

So, it's hard to -- the searching has been the most difficult so far. To try to figure out does one technology need to search more than another because it's so based on the time we give you now. If we give the fishhook art only 15 hours to do a case and we give a computer technology 30 hours, then, obviously, the fishhook art is going to search less because they're given less time. So, the searching part has for us been very difficult and we've got a lot more ground to move in determining the search burden for each technology.

MR. THURLOW: I mean, here is a very silly practical question: if someone is given 32 hours to do a search --

MR. WILEY: A case, I'm sorry.

MR. THURLOW: A case. I mean, they're using the whole 32 hours. And I try to relate it to like a law firm. Like if you're given a certain budget normally that's low budgeting a

meeting. So, I don't see this range -- well, the range is of course different art units, right?

MR. WILEY: The range is in technology. We range -- our average hours range from 13.8 at the low end, and this is utility, to 31.6 in the high end. So, there's quite a difference in the hours in the different technologies that we have here at the Office.

MR. FAILE: Just to add into that really quick, Peter, is there is the range of technologies that help set the hours and then there's also the scaling of position factor depending on the junior or senior level of the examiner. So, you've got a few different big things at play.

MS. MAR-SPINOLA: I have a question of when you're talking about search -- and this is because I don't do a lot of prosecution anymore -- the allowance, the time allowance that you're giving, is that just for the search or including the analyses of the results?

MR. WILEY: It's the whole prosecution of the cases that I'm talking about. When I say 13.8 is our low end that's for the entire start

to finish of the case on average for that particular technology.

MS. MAR-SPINLOA: Okay. To a certain extent, I feel like it would be helpful to have input from the labor force on this to understand -- because they're the ones that have to live with it in those areas. And if that's not enough time it would be nice to know. And to Pete's point about law firms being given timeframes and budgets that they have to live within, from the client perspective we still expect the top- quality product.

So, it is hard but I think law firms are good about letting the client know that they might need more time or budget or whatever. And that's a discussion that I think should be open and continuing with the labor force.

MR. WILEY: Yes, absolutely. I don't want to speak for Pam, but the POPA in the Union is very involved in all parts of this examination time analysis study. And the survey was meant to get that type of information from all of our examiners, not just the Union.

CHAIRWOMAN JENKINS: Mark, did you

have a question? I will recognize that Mr. Knight has joined us. So, welcome.

MR. KNIGHT: Thank you very much.

CHAIRWOMAN JENKINS: Anything else?

MR. LANG: Just one more comment on the search. I think it's come out that the technology and development and initiatives are providing more and more references that an examiner could look at. And that doesn't necessarily provide the time to actually review them. It pulls in the IT aspect that we're also going to need to progress in using the latest advances in technology to help examiners more efficiently go through the references that have been found.

MS. MATECKI: Okay. So, I'm Kathy Matecki. I'm one of the directors in Technology Center 3600. I'm here to talk about pro se assistance at the USPTO, and being cognizant that I'm the last item before lunch I'll go through these as quickly as I can.

MR. WILEY: There's one more.

MS. MATECKI: Oh, okay. Sorry. Got your hopes up.

(Laughter) So, anyway, pro se assistance. We had a couple of things that sort of spurred the start of this effort road that I would like to say we've travelled on the last couple of years. One was the AIA and then we also had an executive order, both of which were directed to having the Agency provide more assistance to small businesses unrepresented and under-resourced in ventures.

So, along those lines we want to talk a little bit about how many -- what is that population. You all know what a registered practitioner is. Everybody else is pro se. And you can see it's for -- what we've learned is that's something that's very personal. It's about 3 percent of our applicants but it is everybody. And it's the people that are really sort of at the heart of what a lot of us believe the patent system is about: the independent inventor who really wants to better himself, his country, his family. So, it's a very personal thing this effort. And you'll see throughout that we try and maintain that personal contact throughout the whole pro se assistance program.

So, we've always provided some kinds of pro se assistance, the IAC, different instructions, the examiners should draft claims when necessary. But we do want to consolidate these efforts, make them a little more transparent, reduce obstacles, and encourage innovation.

So, we had some goals for the patent pro se assistance program. Those included providing increased assistance, educate our applicants which gives us a better product coming in the door, and gather data, identify trends, and very importantly this idea of identifying best practices for providing assistance. We find when we're dealing with pro ses that a thing that's simple to a -- we think is simple when we're talking to a registered practitioner, you talk about the prosecution. Well, a pro se application who has never heard that term before is alarmed. They think they're being prosecuted. Not a good thing. They don't like to hear abandonment. So, these are the kinds of best practices that we have learned through the years of this program that we can educate all of

our examiners about and make this process easier for these individuals.

So, this is the basic overview of what we call the pilot program structure. We have an assistance shop and we have an examination shop. The assistance shop resides in the Office of Innovation and Development and that is a group that provides phone assistance in a variety of different kinds of assistance. And then the examination shop is the part that resides in my area. It is our unit 3649 and that is a group of examiners who examine primarily pro se applications, and that's been where we've gathered a lot of this data and gained a lot of learning.

So, as I said, the assistance shop has a variety of services. They have prefiling assistance since people who haven't filed yet need a lot of help. We take walk-ins. People come in, they can show us their application, we'll help them. They work with -- this is available also in the regional offices -- and they help develop training.

So, the art unit had two phases. We

launched the art unit 3649 in October of 2014. We had 15 examiners who were just 15 generalists. We had an application process, we got examiners from electrical, mechanical, and chemical disciplines. They spend 10 percent of their time assisting in the Office of Innovation Development, so they do provide the assistance with talking to the walk-ins, answering phone calls, supporting the trading development.

One of the important things that we did in this art unit in order to try and establish some metrics for our success was we have identified a pilot pool of applications, which is the applications that were actually assigned to those examiners in the art unit. And then we assigned an analogous group of applications that were examined throughout the rest of the examining core. And so, throughout this process we have compared various metrics for what's happening to the applications where the examiners are especially trained and dedicated to pro ses versus what's happening to the applications being examined in the rest of the core, to try and help us learn more from this pilot.

We literally went through, as I said, when we did this randomly we had identified several thousand applications and we took all the even numbered ones in one group and the odds in another. So, that was basically roughly how we divvied out our applications. We started out with 1,500 applications in the groups roughly.

So, then after two years we entered a second phase which just started last October. We were able to increase the size of the art unit to 21 examiners, and basically, we've continued with the same mode, you know, 10 percent of their time is spent assisting OID. We changed the way we select our applications a little bit for this second pool. We actually limited to applications which we identified as micro-entity as well as being pro se, so they meet both those criteria in order to be assigned to this art unit. And I'll explain the reason why we did that in a little bit.

One thing to note is that we do select these applications. We do not have the capacity to examine every application that's pending in the core with our 21 people, so we don't take

requests to get into the art unit. We continue a random selection.

Just as an example of the way this has become very personal both to the examiners involved and me as the director, I find this very refreshing to have this opportunity to deal with this program. The examiners in the art unit themselves adopted a motto which is SMILE, and it goes to their philosophy of how they will deal with pro se inventors, simplifying, maintaining customer service, listening. And this is the way they address every day in trying to be positive, build the trust of these inventors, some of whom feel like they've been very much marginalized. Maybe there's a disincentive for examiners to work for them. We have pens, we have a variety of things that have our motto of SMILE on it. I don't have enough pens for everyone, sorry.

(Laughter)

So, here's just some brief accomplishments. I won't go through all of them, but some of the highlights were that we did create a training module that is available to all examiners about working with pro se applicants.

And it has some of these best practices in it. We've had a number of examiners attend that workshop.

Another thing that was really interesting that the art unit did was last year the Department of Commerce ran a program called DOC Talks, and in that they basically solicited different agencies to do proposals to do what are similar to TED talks, common talk about your whatever initiative it is or effort. And they got over 150 different programs submitting applications to participate in this program from across the entire Department of Commerce. And we were selected to be 20 that actually got to present. They spent several months, the examiners worked hard on a presentation that basically told our story, not so much from a numbers and metrics standpoint but from, again, a personal standpoint of how inventors feel about their experience at the USPTO.

They had a very nice event at the Department of Commerce, where if you've been to the auditorium there, one of our examiners actually spoke and it was broadcast across the

country to Department of Commerce facilities.
So, it was very good and very meaningful, I think.

So, I will talk about a few results that we have seen with the pilot pool versus the control pool of applications. We are seeing a higher allowance rate which means that more of these people are successfully getting through the entire process. It's about 25 percent of the applications that we started examining have actually resulted in a patent at this point compared with our control group which is only about 13 percent. Both of those are much lower than what we know the usual allowance rate is. Part of that may be a feature of pro ses in general, but also keep in mind that some of these are still in the process of prosecution. We haven't concluded prosecution on all of these applications. We're running slightly less in time to first action. I don't know if that's a statistically significant difference.

Another thing that the team did was a stakeholder survey. We sent out about 1,500 surveys, again, to our people being examined in the art unit and in our control group and got a

reasonable number of responses. Not a huge number. Again, this was people whose applications were in all different stages of prosecution, so some of them actually hadn't had a first action, some of them were well into the process.

This is a dense survey, or dense slide. And I won't go into the details of what's up there, but the underlying important message that we found from the survey goes back to what I mentioned before about limiting our pool of applications to the micro-entity people. What we found is that the people whose satisfaction with the process increased the most were our first-time filers or people who had filed a very small number of applications. When those people were in the pro se art unit their satisfaction with the process increased significantly. People who had filed a large number of applications, and we do have many pro ses who are prolific and have a lot of applications pending, their satisfaction with the process did not change a lot regardless of where we examined them. So, we changed our model to say now we are going

to concentrate on those low filing numbers to get their feet wet comfortably with the process.

Here are some comments which you can't really see. But these were the comments from the survey. We got about almost 700 comments, which again shows me that people were very engaged and interested in what was happening in the Office and in the art unit as a whole.

Some findings and things we've observed along the line. It would help -- one of the things we do struggle with is identifying what is truly a pro se application. You know, people are no longer required to just put in a power of attorney and we know it's pro se. So, the screening process is not easy. We have to look at clues, sort of where we're mailing things to really tell if an application is truly unrepresented or not.

Pre-examination is an area that pro ses really struggle with. We see some that may have, you know, in the double digits of papers filed before they even get a filing date. So, that's somewhere where we have a lot of opportunity to improve these people's experience. And in

general, just processing papers in the core, identifying when it might not be in compliance and handling that in a more efficient way for these people is another area of improvement.

I just want to close -- I went through some of the comments from our survey because I wanted to let you know that I get the occasional email from a pro se who, you know, almost invariably has something positive. I will say when we started this I thought I'm going to have more pro ses, I'm going to be getting all these complaining phone calls, which is what we tend to see with pro ses. And I will say in the last over two years of this experience I have not seen that as a TC director. My volume of complaining phone calls has not increased at all. In fact, I think it's gone down.

And I just wanted to quote one of the comments that came in the survey, in which somebody said, "The pro se staff was the most knowledgeable, intelligent, prompt, and helpful group of professionals I have ever worked with in the last 30 years. Bravo to all." So, I think that is representative of the kind of feedback we

often get and it makes me really happy. Our SPE of the art unit, Darnell Jayne is here. We can't have all 20 examiners, but it really is a very positive pilot so far.

COMMISSIONER HIRSHFELD: I would just add a quick note that as Commissioner it's rare that people send me emails and say, hey, great job here or there, right. (Laughter) Usually it's a complaint. But I have actually received multiple -- I've received no negative emails about the pro se art unit, and I have had applicants, multiple applicants, send me emails saying this is a fantastic program and the benefit that they got out of it, even though I think in at least one of the cases they didn't get their patent, is really crystal clear. So, anyway.

CHAIRWOMAN JENKINS: Picking up on the formalities, technical issues of having to file and respond, are you finding or do you know if most of the pro se file electronic or paper?

MS. MATECKI: They do file electronically. I don't know if it's as high a rate as regular -- the represented applicants. The use of EFS Web and the application data system

while they're trying to file electronically is a struggle for them. And we have actually met with the EFT Web people to make sure examiners and the people in OID are somewhat familiar with that system so they can provide that assistance. So, they do file electronically but it's hard for them.

CHAIRWOMAN JENKINS: It's hard for us sometimes too.

(Laughter) I thought about whether I'd say that or not. In the Trump Administration, I see the importance of innovation and jobs and pro se. And because the encouragement is to get folks out there innovating and protecting their rights. And it's fabulous that we have this pro se program. I find though that many, many people do not know about it. And so whatever we can do as a group and as an Office to get the message out. I mean, even people within the legal community don't even realize you can do pro se in IP. I get that so often. And I'm very proud that Arent Fox is a huge contributor in that area.

So, we need to not only look at what you're doing but also how do we better get the message out.

MS. MATECKI: And I will say that the slide that I went over really fast about the comments from the survey, there were a significant number of comments where people said I didn't know there was this much assistance available. So, they had found the assistance and were surprised.

MS. MAR-SPINOLA: I was in the RCE Pendency Subcommittee last year. And so, we had tracked the times and there were great improvements from 2016 in terms of pendency RCEs. So, I'm wondering -- and I don't recall if pro se applications were factored into that, and whether they were or not, do you have a sense of whether or not the prosecution timeline for pro se is commensurate with the other applications?

MS. MATECKI: So, the data you would see for RCEs and all of our pendency data includes all of our applications including the pro ses, so that's all included. As a general rule, I don't have hard data but I can tell you data I've seen

in the past, the major place where pro se's pendency is increased is in the initial filing. It takes them a long time to get it out of OPAP and get it singed to an examiner. After that they may take a little longer. As you can see, our art unit is running a little faster to final disposal, but that OIPE -- what's it called now? OPAP? That part is a significant delay for pro ses.

MR. GOODSON: Good morning. I'm an independent inventor on this panel and I have gone through attorneys and pro se. If we think back to the one slide you had, you had the scale from top to bottom. One of the areas it got lowest was website assistance. And I would just encourage you to, you know, spruce up that content.

As an example, a pro se inventor gets something back that says lack of an antecedent basis. He or she will be clueless. So, anyway. But I appreciate your good work. Thank you, ma'am.

CHAIRWOMAN JENKINS: Jeff, yeah?

MR. SEARS: With respect to the website and pre-exam formalities, is there anything on the website that looks like a checklist? A

complete application includes this, this, and this?

MS. MATECKI: You know, the OID people are the ones who manage the main -- the content of that site and I am not as familiar with that as I should be. I certainly -- the address there is where you can go and explore for it. And I certainly will look and see what's up there, but I'm not sure what's on there as far as checklists.

MR. SEARS: I would just make a suggestion for the Office. Even as a registered practitioner pre-exam formalities can be sometimes confusing and complex, but a very simple checklist for a pro se applicant, you must have a specification, you must have at least one claim, you must have a fee, you must have a declaration, a drawing if necessary. Something like that could greatly speed up pre-exam formalities.

MS. MATECKI: One of the things that we continue to think about and try and explore further is while we have our examiners specially trained now to deal with this group of pro ses, we would like to expand that to more tech support

because there are certain areas where it's not required to have the examiner's expertise helping with things like that. But if you had a tech support person who could offer that assistance that would be invaluable.

CHAIRWOMAN JENKINS: Okay, thank you.

MR. FAILE: So, I just searched the website real quick. There is a checklist in PDF form on the website. If you just search USPTO pro se checklist it will pop it up.

COMMISSIONER HIRSHFELD: Fantastic.
Great work.

(Laughter)

CHAIRWOMAN JENKINS: Okay. Are we good? Bob?

MR. BAHR: Hi. I'm going to do -- with Mary Critharis from the Office of Policy and International Affairs, we'll be doing the Patent Examination Policy Update, the Subject Matter Eligibility Update.

For you, Julie, my presentation will be data free. Also, I have a set of slides. I don't plan to talk through each slide, much of it is just background information so I'll get, if you will,

right to the point.

I think we actually talked about this or I may have mentioned this at the last PPAC meeting. We sent out a memo right around the time of the last PPAC meeting concerning decisions in McRo and BASCOM. In each of these cases the federal circuit found the claims to have subject matter eligibility. And that I want to say was the last memorandum we issued to the core in the subject matter eligibility area. So, that's from November.

What's going on at the Supreme Court? There are a few petitions, (inaudible) petitions pending. There are a few that were I'm going to say denied since our last PPAC meeting. The bottom line with Supreme Court action is there hasn't been any (inaudible) petitions in the subject matter eligibility area granted since Alice. So, people are still filing them but we haven't seen the Supreme Court take anything up since then.

Federal circuit en banc petitions. Similar to Supreme Court decisions, petitions from en banc review have been filed and denied.

The difference here is in these two cases normally it's the patent e-filing the en banc petition when a patent is invalid due to not subject matter eligible. In each of these cases, however, the subject matter was considered to be patent eligible. So, it's sort of the different party is now petitioning for a rehearing en banc. So, we'll see how these go.

But similar with Alice, the federal circuit has not taken any en banc cases in subject matter eligibility since Alice.

MR. THURLOW: Can you back up just a second.

MR. BAHR: Sure.

MR. THURLOW: So, the trading tech seems to raise an issue that Brian Hamlin's book about (inaudible) -- just, is there a general theme to separate the three into 101, 102, and 103? Or is there just -- am I reading that wrong? I'm not familiar with the case, I'm just --

MR. BAHR: Well, this is -- the bullet here is the petitioner's comments. And basically the petitioner was saying, hey, subject matter eligibility is separate from novelty

non-obviousness and enablement, where from the petitioner's point of view the petitioner felt that the Court was combining these in finding the claims to be subject matter eligible. It's sort of -- you know, we all know in this area there has been some graying of the lines between subject matter eligibility and the novelty non-obviousness considerations. But this is from the perspective of the person who is challenging the eligibility, saying, hey, these things should be separate.

MR. THURLOW: And just to comment, discussion purposes, if you look at that first one, the Amdocs, I'm not familiar with the case either, but whether features disclosed and specification in that claim may confer patent ability.

MR. BAHR: In that case -- I believe the language in the claim was something was enhanced and there was a prior proceeding where the phrase enhance was given a very special definition under the Phillips Claim Construction. So, using that language the Court found it to be subject matter eligible, whereas if you took the word enhanced

and was sort of giving it a (inaudible) reasonable interpretation, you might have a different result.

Okay. This is just a statement of -- this is Amdocs itself. This is just FYI. It was subject matter eligible. Amdocs was a precedential decision. Trading Technologies was different and it was issued in a non-precedential decision. It was actually the first non-precedential decision finding subject matter to be patent eligible.

Here is my summary of all the cases. Now, I don't plan to talk through each one of them, that's not my point. These are the decisions since the May 2016 update. The glass half full perspective of this is that before that update, and between that and Alice, there was only one case that found the claims to be subject matter eligible. So, since then we've had six cases. So, in the span of less than a year we've had six finding subject matter eligibility.

The negative is that these are the precedential decisions and non-precedential. And these are the Rule 36 judgments, so still the

vast majority of decisions are finding these claims to be not eligible. And also, if you look at this since we last met there were two precedential decisions on subject matter eligibility, I think three or four non- precedential, and almost ten Rule 36 judgments. So, the vast majority of decisions in cases are being done by the Rule 36 where it's just affirmed with a two-line opinion.

Moving on to our roundtables. We conducted two roundtables in the fall. The first was held here on November 14th. It focused on our examination guidance. We had somewhere around 35 speakers. And the comments there ranged from discussing our guidance to our examples to a lot of things about patent examination practices, or basically how decisions were being made at the examiner level.

I'm going to turn the talk at this point over to Mary. If you want to talk about the second roundtable?

MS. CRITHARIS: As Bob mentioned the first roundtable was focused on guidelines, and this roundtable focused on defining the legal

contours of patent eligible subject matter.

So, what we wanted to do with the second roundtable was facilitate a discussion on these issues and to create a public record so that the private sector, government officials, various lawmakers could look to this record for guidance in order to find the proper boundaries for patent eligible subject matter.

So, we hosted the roundtable on December 5th in Stanford University. We had 35 speakers. There was a pretty much interactive panel. We had 7 different panels and we had over 250 people participate via the webcast. So, we got a really great turnout. We also had a really diverse group of participants. We had people from academia, from the private sector, from small businesses, we had independent inventors, we had bar associations and trade associates. So, we were really thankful that we had this great turnout, so we've got this diverse set of comments.

All of the materials from the roundtable, the transcript, the agenda, as well as the written comments that were received from

this roundtable are all on our website.

MR. BAHR: So, with respect to the first roundtable, what are our next steps? Obviously, we're continuing to monitor anything that comes out of courts. What we got was some positive comments about issuing memorandums very quickly after cases came out. But then we got some negative comments saying what this is doing is resulting in your guidance being in half a dozen different places.

So, our next step is to combine all of our guidance to date into the next revision of the MPEP, so we're currently working on that process. And the MPEP process, its timeline is uncertain but I'm hoping it should be out, I'm going to say in the summer.

We are obviously still looking at the comments with respect to our examples. What happened when we set a deadline for comments on the Stanford roundtable, the second one, that resulted in a rush of comments on the first -- on the subject matter eligibility guidance. So, we got a number of comments there and we're also going over them. There were specific

suggestions with respect to examples and we're going through those to see what changes we should make if any to examples.

Ironically there we got two sets of conflicting comments. Some commenters were saying you need more examples, we need examples in this area or changes to some of the examples. Other commenters said you shouldn't be doing this by examples, you should just have guidance. We have enough court cases now, we don't need any examples, they're not helpful. So, it's always a balancing to take two different views and try and accommodate them.

So, that's the next step from the --

MR. THURLOW: So, on that point as far as differentiating between examples and guidance, I've seen it both ways so I can understand the arguments. But a lot of cases, when we go before the examiners or even there have been court proceedings in which judges refer to examples, so I find the examples helpful and --

MR. BAHR: Right, I'm probably not going to take all the examples off the web. A lot of people find them to be helpful.

MR. THURLOW: And then just real quick on the MPEP since it's so huge, I think the section is 2106 but to the extent that you consolidate that if there can be a notice, an email out, a lot of people subscribe to the PTO emails.

MR. BAHR: We won't be shy about that.
(Laughter)

CHAIRWOMAN JENKINS: Peter is -- we created a new subcommittee. The group knows but I want to share. The new subcommittee for PPAC is Section 101, and Peter is Chair.

MR. THURLOW: I want to do what Marylee just did and take a step back. Bob does this at each meeting. So, this is no news update on 101, but in light of the roundtables and in light of the discussions we've had and the importance of Section 101, we think it's an important area to continue to help and assist. And I'm looking forward to continuing to work with you. But it's really important. And we discussed a lot of other issues at the Subcommittee meeting. Yesterday Mary was terrific about the international aspects and so on. And it's really important, so.

MS. MAR-SPINOLA: I wanted to add really quick that I think the examples for 101 is very important to include. I think, obviously, you have to pick the ones that are the ones more at issue, whether it's biomedical or biotech and areas like that, software, cybersecurity. I can say that it's been beneficial to have some guidelines or even an example of an acceptable claim in MPEP. So, I think that's a great way to do it.

I did want to ask a question about whether the memoranda are in one place, such as on the website, so that to wait for an MPE to publish all those might be time consuming.

MR. BAHR: Sure. All the guidance we have issued to examiners on Section 101 patent subject matter eligibility is on our website. The way I get to it is I drill down into the patents, then there's something like rules/regulations and examining procedures. I click into that and then there's guidance to examiners. And you can see our guidance to examiners in all areas, 101, 112, 102, 103, claim construction. So, all of that material is on our

website.

COMMISSIONER HIRSHFELD: I feel like I would be remiss if I didn't give my views on the example issue because I know Bob has gotten feedback both about the helpful nature of examples and some suggesting otherwise. I've also gotten that feedback. It's from my perspective that the best bang for the buck is the examples. And so, I have every intention to continue moving forward with as many examples as we can. And I know Bob is probably sick of me saying that. But it's examiners that want them and need them. And people in the public -- you know, I used to obviously be in the role Bob now has, and when I would be out speaking, and even now as Commissioner, I get a lot of feedback from people. Those examples are great and they're really helpful, and keep them coming. And that's internal to the Office and external to the Office that that feedback comes to us.

MR. LANG: Speaking of feedback, is there any analysis of patents that have been issued by the Office since Alice and during the evolution of the guidelines and how those patents

have fared in 101 litigation challenges?

MR. BAHR: I don't know if we've done it from a patent. We certainly track every case that goes up from that perspective. The problem in looking at that is that when a 101 issue is raised you've suddenly narrowed the subset of patents dramatically. So, if you just measured our success by looking at the cases that have gone to the federal circuit it probably wouldn't look too good. And also, a lot of those cases were pre-Alice, so it's just hard to tell.

MR. LANG: My questions weren't focusing on the post-Alice patents.

MR. BAHR: I don't know offhand what the issue dates of those various patents were. And that's something that's really hard to track because the Alice decision came out, we obviously know that date, but we would have to check the dates against all the training we gave to see exactly what training was involved in the issue of that patent. Because when Alice came out we didn't immediately change to do what we do today. But that's a good idea. We should probably look and see that for the more recent cases.

COMMISSIONER HIRSHFELD: This is related. In the case study that was mentioned earlier, it wasn't one of the ones that was gone over about the correctness of 101 decisions, we do look at, we do have an analysis, and this is all still being formed and that's why it wasn't ready for today. But we have done an analysis that looks at the impacts of our training on our view of whether examiners' decisions were correct or not.

So, we're looking at it at that level, on an internal level. As Bob said, it rises to a different view when you start to look at trying to analyze based on the court decisions.

MR. THURLOW: So, my one big ask, I guess, coming out of this meeting is, you know, new Secretary of Commerce, new Administration, new issues, there's going to be meetings I assume back and forth with the kind folks to introduce everybody and stuff. Are you going to have a list of questions, a list of points to raise to them? In my opinion, 101 has not been -- an issue raised a couple years ago and more recently -- there's been a lot of the stuff that you see in litigation

bills and so on from the House and Senate. If this can be added to the list and saying the community is concerned with more than one. We discussed a lot of issues with you and Mary yesterday about applicants starting or considering filing first in Europe, and even considering China first rather than the U.S. To me that raises a real concern that the system is not working correctly if you can get protection in those areas and not in the U.S. So, my request, and I'd like to hear your comments, is if that can be included in a list of topics of interest, that would be appreciated.

MR. BAHR: Yeah, I'm sure it's on the short list of things to discuss.

CHAIRWOMAN JENKINS: So, again, it's exciting that we have a new committee, and clearly this is a new focus for PPAC as well. So, any other comments or questions? Input? Lunch? Yes? All right, so why don't we break for lunch. For the Committee, we're going into executive session, we're having a fixed briefing. So, if everyone from the Committee could go grab some lunch and come right back that would be wonderful.

Thank you.

(Recess)

CHAIRWOMAN JENKINS: I am being reminded we are now five minutes behind. We're on track again. All right. International. Very excited. Hello, Shira, welcome.

MS. PERLMUTTER: Hello, thanks Marylee. For every PPAC meeting, we think about which international issues to talk about that would be of interest. So, we thought today we'd talk a bit about IP and trade, and then about developments in our engagements in Latin America.

On trade, you've seen the slides. I am going to vary a bit from what I planned because of late-breaking developments. Clearly, we knew already that trade was going to be a major focus of the Administration, including on IP issues. What has happened since I prepared the slides is that yesterday the Administration submitted the President's trade policy agenda to the Congress to meet a March 1st deadline. This is a report that's usually issued by the U.S. Trade Representative, but because the U.S. Trade Representative had not yet been confirmed, the

Administration sent over an abbreviated version of the policy agenda. Once the ambassador is confirmed, USTR will send a more detailed version.

I wanted to raise this for a number of reasons mostly, of course, because of how it relates to intellectual property.

Hearteningly, there are a number of specific references to IP in the agenda. Among the key objectives that the report sets out is ensuring that U.S. owners of intellectual property have a full and fair opportunity to use and profit from that property. And one of the four major priorities that are identified includes protecting U.S. intellectual property rights.

Last but not least, the report notes that theft of intellectual property is one of the unfair practices that causes distortion of important sectors of the global economy and significant markets around the world. So, it's clear that IP will be front and center in the new trade discussions.

It is also worth noting that the report says that, "The overarching purpose of our trade

policy will be to expand trade in a way that is freer and fairer for all Americans. Every action we take with respect to trade will be designed to increase our economic growth, promote job creation in the United States, promote reciprocity with our trading partners, strengthen our manufacturing base and our ability to defend ourselves, and expand our agricultural and other exports."

The report says that, "As a general matter, we believe these goals can be best accomplished by focusing on bilateral negotiations rather than multilateral negotiations, and by renegotiating and revising trade deals when our goals are not being met."

And then last but not least, I wanted to point out that the report says, "The Administration has identified four major priorities. One is to defend U.S. national sovereignty over trade policy. Second, to strictly enforce U.S. trade laws. Third, to use all possible sources of leverage to encourage other countries to open their markets to U.S. exports of goods and services, and protect U.S.

intellectual property rights. And fourth, to negotiate new and better trade deals with countries in key markets around the world."

This confirms a lot of what we were expecting and sheds more light on what the Administration has in mind. We already know, of course, that we've withdrawn from the TPP. We know that there is an interest in updating NAFTA. And this confirms that there will be a focus on bilaterals including with the other TPP parties. In particular both Japan and the UK (of course not a TPP partner) have been mentioned for possible bilateral trade negotiations.

A couple of points to make. We, at the USPTO, expect to play a key role in the IP related components of these negotiations as we have in the past. But one other aspect that's interesting structurally is that even though trade negotiations are historically led by the U.S. trade representative, USTR, who has a statutory authority to do that, in the new Administration there will be a particularly strong role for the Department of Commerce under Secretary Ross. And there is also a new National Trade Council at

the White House. So, it does seem as if there will be tripartite authority on trade issues. So, we expect that as much as we've always played a role as technical experts in all of these negotiations, that role will continue and perhaps even be enhanced under Secretary Ross.

Let me give a little bit of a summary of what we do in the trade area, and in particular describe Special 301 and how it's been used to promote patent interests specifically. This is a list we put together of some of the trade-related things we work on. We work very closely with USTR. We act as the technical experts on all the IP provisions in trade negotiations. This means not only drafting and giving advice, but actually sitting by their side and participating in the negotiations.

Of course, once the agreements are concluded we help ensure that the parties are properly implementing their obligations. We do various reviews of what they're doing. In the area of patents, we've particularly focused on provisions that would support and promote harmonization of patent laws in a way that's

compatible and consistent with the U.S. law.

We imagine that in the coming months we're going to be focusing a lot on NAFTA and bilaterals with all the countries I mentioned. We also get involved in what's called the WTO Trade Policy Reviews, where existing trade agreements including TRIPS are monitored. We go to the World Trade Organization where they review every year about 20 WTO members, and we ask questions about what countries are doing with their laws and policies and procedures.

We also work on the annual Special 301 Report, so I thought I'd talk about how that works. Under the statute, under law, the USTR annually --

MR. THURLOW: Shira, I have one question for you.

MS. PERLMUTTER: Yes.

MR. THURLOW: So, before we jump into this, for someone that doesn't have your expertise like most people, we hear a lot about NAFTA but I'm not familiar with how -- say it's 100 pages, how significant are the IP issues in there. I know with the TPP there was a

significant -- there was a lot of particular issues. And NAFTA which was many years ago, are there a lot of IP issues or a little?

MS. PERLMUTTER: Yes, it has a lot of IP in it. And most of the NAFTA IP provisions were then incorporated into the TRIPS agreement. But of course, NAFTA was done before a lot of the new technology, especially digital technologies, had developed. So, in some respects it is out of date. During TPP negotiations we were certainly looking to our bilateral FTAs that were done since NAFTA to try to update what was in NAFTA. But it does have significant IP provisions.

So, under statute, the U.S. Trade Representative is required to issue a report every year that identifies countries that deny adequate and effective IP protection or fair and equitable market access to U.S. persons who rely on IP protection. And even though a lot of the focus of the Special 301 process has been on trademark counterfeiting and copyright piracy, there also have been issues involving patents and industrial designs, and I'll talk about some examples.

A new statute in 2015, just a year-and-a-half ago, added trade secrets to the list of IP rights that are covered. So, it's not just patents and trademarks and copyrights.

I think we can go to the next slide.

MR. WALKER: Shira, excuse me for a second. I have a question. In terms of advocacy for trade secrets, is that part of -- is that in your ambit?

MS. PERLMUTTER: Yes.

MR. WALKER: So, for the European Commission trying to drive the improved protection for trade secrets, I mean that's such a huge issue for companies. I really wasn't aware that you were doing that.

MS. PERLMUTTER: Yes. We have developed trade secret expertise. Last year we held a public forum here on trade secrets protection and we're planning another one this year. And we actually worked with the Commission as they were moving forward their directive, including comparing notes on what was happening here with the DTSA and how it compared to what they were trying to do in Europe.

What happens under Special 301 is that those countries that are the most egregious violators of IP are listed as priority foreign countries. Then there can be sanctions against them like the removal of certain trade preferences.

Others may be listed on a priority watch list or a watch list. They get increased attention and monitoring, but it's not as serious as being on the priority watch list. Countries take very seriously where they are on these lists and do a lot of lobbying and meeting with the U.S. government to try to convince us that they should be taken off the list.

Under the 2015 law, action plans have to be prepared for every country that's been identified as a priority watch list country and has been on that list for at least a year. The action plans have to have specific benchmarks for progress. If progress is insufficient and there hasn't been substantial compliance with the benchmarks within a year, then the statute allows the President to take appropriate action.

So, when you look at the trade policy

agenda that was just submitted to Congress you can see the emphasis on using our trade laws, and I think Special 301 will be an area of focus.

What we have now is a few slides that give you examples of some of the patent issues that have been raised in Special 301. If you take a look, this was from last year's report. For China, there were two particular mentions. One was the concern that patent holders are involuntarily forced to contribute technology to standards or to license on certain terms. The other issue had to do with pharmaceutical patent applications and standards that were inconsistent with what the United States and most jurisdictions were doing.

We also noted Indonesia for problems with granting compulsory licenses. Do you want to go to the next slide? In India, new incentives in proposed laws to pressure patent applicants to localize their manufacturing in India. And notably, the lack of an effective system for notifying interested parties of marketing approvals for generic pharmaceuticals so that potential patent disputes can be resolved early.

In Thailand, concerns about backlog. And then if you look at Latin America, most of the concerns had to do, again, with pharmaceutical issues including compulsory licenses and also with pendency. And particularly Venezuela, which as of 2016 hadn't issued a new patent since 2007. Pretty astonishing statistics.

So, this gives you a sense of what we do in Special 301. And I will say the Special 301 process involves submissions from stakeholders, from foreign governments to try to defend their records, and from any interested parties. A number of you may have submitted either individually or through trade associations. We are getting about 100 submissions a year. We along with all the other government agencies review them. We get input from our IP attachés based around the world as to what's actually happening on the ground. And we have specialist in OPIA in the laws of each country and region, and so they give input as well along with the attachés. It's a lengthy process involving a lot of interagency discussion, and then once the report is published we participate in the

drafting of the action plans and their review for appropriate implementation.

I don't know if anyone has any questions about the trade issues? Okay.

In Latin America last year, as I described I think in the last meeting or two meetings ago, we launched a pilot PPH program with Brazil's IP office. And that program took us several years of discussion. It was highly politicized but we were able to do it. The program sunsets next January and we're hoping to discuss extending it. We think it's been very productive.

It's a fairly limited PPH because even though in the U.S. applications can be filed for all areas of technology, in Brazil, as you may recall, they are limited to those filed in oil and gas technologies. Even with those restrictions, Brazil's office has received 36 PPH applications and 17 have resulted in issued patents. Now, that number may not sound that amazing but to put it into perspective, that means that those 17 patents were issued within 3 years of their filing date. That's an amazing improvement because the

historic pendency in Brazil has been 12 to 15 years. So, you can see what a dramatic effect that's had. These numbers really do highlight the benefits of the program in terms of more efficient patent examination and more timely grants.

The success of the program in Brazil has now led them to seek PPH arrangements with Japan and the EPO. And we're hoping that we can capitalize on that success by establishing a new PPH program with Brazil that will be broader in its coverage and scope.

We're very happy to announce the other breaking news, that tomorrow we'll be launching a PPH pilot program with the Argentinian IP office. That program will run for three years and will encompass all technologies. So, it's not limited as in the Brazil case.

I don't know if people have questions about the PPH?

CHAIRWOMAN JENKINS: Real quick, we're running behind and the Chair is going to yell at herself. Was there an estimate of what you thought the Brazil PPH program was going to be?

Because usually you do that, right?

MS. PERLMUTTER: Good question.

Jesus, do you want to?

MR. HERNANDEZ: The program -- we were hoping to receive something in the order of between 70 and 100 within the lifespan of the pilot program, but right now I guess our goal under the pilot program was primarily to show that there was a proof of concept. Brazil had never been in a work-sharing arrangement at all, and it was hesitant to do so. It even opposed working-sharing efforts in different multilateral forms like the WIPO Standing Committee on the Patents.

So, the goal was primarily to get them acclimated to having a PPH, and once we were able to prove that the concept worked we could expand the program. Luckily, to our benefit, they were pretty much sold on the work-sharing structure and they established PPH arrangements not only with Argentina but throughout Latin America. And now they are currently in negotiations with having a PPH with Japan and Europe, as Shira indicated. So, we hope that given that backdrop

we can have a technology-neutral PPH that can benefit all sectors of the U.S. economy.

MR. THURLOW: Just very quick. The document you mentioned, Shira, this trade policy document that (inaudible) IP, I don't know if there's a way to send it to Jennifer that she could possibly distribute it?

MR. WALKER: I just sent it around. I actually found it online. So you should have it in your email.

MR. THURLOW: Mike is very good with the computers.

MS. PERLMUTTER: Very impressive.

(Laughter)

MR. WALKER: I pay attention to what Shira says.

CHAIRWOMAN JENKINS: What a great vice chair.

(Laughter) Thank you so much. And we can't wait to hear what's going to happen when we come back in May with the trade agreements. This is all new for everyone, I think. So, Shira, thank you.

Mark, we don't have much time.

MR. POWELL: I'll go very fast. I would like to state for the record what a privilege it is to work with Shira and her organization. I simply can't overstate the value of the expertise that they have because even some of the technical things that we do, we could run over some geopolitical tripwire which we may not have been aware of, so that's why we work so very closely with OPIA and the many things that we do. It's just absolutely excellent.

So, I'll be very brief. There's a couple of slides there. What I came to talk about today is what we refer to as the Prior Art Project which started some time ago, actually a number of years ago. If the USPTO has access to search and examination results of other offices why should we require applicants to pay the administrative costs to file it again in the form of an IDX. Can we not take advantage of some of the technology that we have to make things more efficient, both for the Office and our examiners and for the stakeholder community, right?

My update today is that while we have shared timelines with you before we have worked

to accelerate them a bit. And what we hope to accomplish by the end of this fiscal year based on quite a bit of input from the public and our examiners and the teams, and then more public input and so on, is to come up with some business solution that will encompass the outcomes here.

And when I say business solution I'm referring to not an IT solution, okay, but what do we want such a system to do? How do we want it to -- you know, to do or accomplish, not necessarily what's implemented in an IT sense.

So, there is the seraph and examine results, for example, from other offices. There are also information out of co-pending cases, other sources of information such as machine searches and that sort of thing. Looking at things in an all-encompassing manner.

That is the update as far as timelines. We're trying to get as much done as we possibly can in the next two or three quarters to get to some desired endpoint in terms of a business solution.

I would like to mention that Valencia and Rick talked about search enhancement. Dave

Wiley talked about the examination time analysis scenario. Dan Lang said something about how everything is integrated. All of these things really tie in to this bigger question of information, fears of information overload that Marty mentioned, the now infinite amount of prior art that Pete mentioned. And how to come up with a system where the information is useful and helpful, not only in terms of how an examiner may use it but even down the road with an issued patent. What are the legal consequences of what's considered, how it's considered, and so on?

So, this is quite a complex question which is a completely integrated problem in so many senses. And a fine example of how an effort really touches on each of the five areas under DREW. Clearly, it's a quality issue in Valencia's realm. Legal examination procedure, some international component, IT will likely be an implementation of some solution.

But most importantly the patent examiners working very closely with our colleague Pam Schwartz on these and the entire integrated

issue to make sure this is done right and helpful for all. So, with that I will cede the few moments back to the Chair and take any questions should you have any. Thank you.

MR. KNIGHT: I just have one question for you and Shira, which is on the patent prosecution highway how do we decide what countries we are going to enter into agreements with? Because Pam Schwartz mentioned yesterday that sometimes the search reports we get from some of the countries under the program, it's just not valuable to examiners. So, how do we decide what countries we're going to have agreements with? And is our focus on whether we're going to be getting good search reports from those countries or whether we can open up those countries to a U.S. patent holder so that they can get an easier patent out of that country based on their U.S. examination?

MR. POWELL: I think I can start with that and perhaps they can finish. But I think you sort of hit on it. When we engage one of the smaller countries in offices in PPH, for example, Brazil or Argentina or another, the volume of work

is very, very low, okay. So, we're not getting that many them from a smaller office.

And also in PPH keep in mind that it's not a rubberstamping thing. PPH is an indirect work-sharing process whereby work is indirectly reused. So, if we get superb work from one of the modern offices or whatever, their likelihood of a first action allowance is much greater. If work comes in that is not that helpful those benefits won't obtain.

I think the real key for us here, and for U.S. filers in particular, is in a place like Brazil who only recently indicated a willingness to use work-sharing to try to get something out the door. And as Shira mentioned, the IP situation in Brazil has been a very political thing. In dealing with them bilaterally but more so even in multilateral contexts such as WIPO. Even in standards and other very weedy areas.

So, I think that the advantages that we can obtain for U.S. filers but even in a greater sense by engaging a region which needs to be in the modern IP world is perhaps the greater outcome. I'll turn it to Shira for any further

comments.

MR. HERNANDEZ: I would just add to what Mark indicated, that we've pretty much taken a multifaceted approach. In part, you get input from stakeholders and the stakeholders let you know, hey, there's a 10 to 15 year backlog in country X. Is there any way that the PTO can have a presence there, as Mark indicated? And certainly, PPH helps solve that problem.

And Brazil is a perfect case sample because they have a 10- to 15-year backlog, so while in form we would accelerate a work product issued by there here at the PTO, in practice that would be a very rare occasion because rarely would we issue a patent after them. So, the main driver behind this is primarily for U.S. applicants to file there because, as you can imagine, the U.S. is a form of first filing usually. So, people would file here either domestic application or a PCT application and then select the markets that are ideal for whatever products they're trying to commercialize.

So, that's one thing. The second point

that Mark also alluded to was that there are also strategic reasons for doing this. I mean, Brazil was one of the biggest opponents to work-sharing at WIPO. So, not only are we looking out for our stakeholders' interests in entering the markets but also it puts us in a better place at WIPO international forums in forwarding our decisions such as having work-sharing in that setting.

CHAIRWOMAN JENKINS: Anyone else?

No? Thank you again. Mark, thank you, sorry. You always rise to the occasion though. Always.

I want to share because I have been calling out subcommittee chairs, Bernie is taking over a new subcommittee that we've combined and added. We had Human Capital and Outreach, which was previously chaired by Mike. Bernie is now taking that over and we've renamed it Patent Management and Structure. And that's going to also include a lot of different facets including the unions, regional offices, structure, why we do things. So, it's all good. Thank you.

I think we're on to the next one, yes? IT. Mr. Owens, you and your team, when you're ready. You're born ready? (Laughter)

MR. OWENS: All right, good afternoon. So, I'm going to let David Landrith, Portfolio Manager for Patents Work start this off and I'm going to interrupt him occasionally to add little tidbits of information. Kind of the good cop-bad copy scenario. I'll let you guess which one I am. (Laughter) Thank you.

MR. LANDRITH: With the Docket and Application Viewer we achieved full feature parity with a legacy tool in May of 2016. After 18 months of running alongside the legacy tool without major incident we pulled the plug on the legacy tool a few months ago, December 2016.

MR. OWENS: So, I'm going to be the bad cop. In red up there it will say that regular releases and address performance issues on Count Mondays. After we shut off eDan and removed it from the floor we hit a problem that we did not encounter during those 18 months. That was the load on the overall system in the database area and it's linked to the legacy palm product, which is the legacy database, had some significant issues which degraded the performance to an unacceptable level, or even below that, of the

system.

Over the last four Count Mondays three of them had to be shifted to Count Tuesdays and we have instilled a series of fixes to resolve that issue. The last Count Tuesday, which was a Count Tuesday because Monday was a holiday, did go well. We are rolling out a series of fixes to resolve this problem with performance.

We do not believe that after these fixes are done that this will continue to be an issue. But I thought it was important to let everyone know that even after running concurrently for 18 months you still might find problems as the load changes in the overall environment. And I thank both the unions as well as patent management for their understanding as we work through some of those issues.

The best thing I can say about this is that we've taken all the lessons learned here through this experience and made sure to apply it to all of the other projects including OC, EST, Patent Center, and so on, so we don't make the same mistake twice. Go ahead.

MR. LANDRITH: With official

correspondence we released this in production form to a pilot audience of 80 examiners. It is being used to process office actions by those examiners. In February, we increased that audience to 300 and we are looking to increase it further as we anticipate beginning training in Q3 or Q4 of this year.

With the examiner search product, we also released that to a pilot audience of 40 examiners in December. So, work on that is ongoing. A stress test that was designed to test to performance of the system in February identified bottlenecks. Those bottlenecks are currently being addressed. They have prevented the expansion of the pilot audience but as we continue to address those we'll be looking to expand the size of the pilot audience in anticipation of training in Q3 and Q4 of this year.

MR. OWENS: So, a little tidbit about EST. Currently the product in its current incarnation, we did meet the rollout in December into a production environment. And it did come ot my attention that the definition of the word

production is different depending on where you sit. In the CIO shop rollout to production means we have a production environment and servers that are ready to take customers and allow them to explore and use the tool. It does not mean that all of the bugs are fixed and it's ready to deploy. Almost no product ever goes from development directly into production with no issues. So, that was never the goal. We do have issues.

So, when we talk production or the instantiation of the beta it's the first usage where we do expect, just like with DAV, that we go through a series of iterations using the agile methodology to find and resolve issues.

So, though that date was met, we did find major problems with performance. There was flip rate but that wasn't the only important one. There was also a question of quality compared to the legacy tool, and some missing features or buggy functionality. This was all normal and as expected, and we are working together with Patents to identify and resolve those issues as currently possible, and to get to a better place where we can continue to increase the number of

beta testers just like we did with DAV.

I will point out that this project is at significant risk for slipping the date if our current plans to resolve those issues do not come to fruition. I am confident that we are very close, but I'll be even more confident once we complete some testing and get some positive effects from our changes.

Now --

CHAIRWOMAN JENKINS: John, can I jump in?

MR. OWENS: Go ahead.

CHAIRWOMAN JENKINS: I seem to recall -- was this something that you showed us months and months ago?

MR. OWENS: We have continuously shown you small iterations and steps, yes, along the way.

CHAIRWOMAN JENKINS: Could you drill down a little further because that's one of the things the Committee is going to be looking towards. Because this is the new and improved PPAC.

MR. OWNES: Stable and maintainable

being the two features once we get the quality down.

CHAIRWOMAN JENKINS: What's really -- I heard the IT lingo going on, the snipage. But what's really been impacted? Because one of the things that we've focused on for this Committee and also for the new members, and as long as I've been on PPAC is I've heard you, John. We didn't have the money, sequester, we were frozen as far as IT, have a budget, what's the Trump Administration going to do as far as cuts? Hopefully we're in the military area so he'll go up.

So, what exactly are you missing? Are you missing people, are you missing equipment, extra time in the day? I feel like this has been going on for a long time and there are certain -- with all due respect to Pam, the examiners need a good search engine tool to use and it seems like this has been going on for way too long.

MR. OWENS: It has been. We've been working on EST for how many years?

MS. STEPHENS: Five.

MR. OWENS: Five as part of patents, but when did we start? We didn't start until after DAV -- when did we really start?

MS. STEPHENS: I believe within the last three, I think.

MR. OWENS: Yeah. The last three years we've been working on EST. First it was figuring out what we wanted to build and how we wanted to build it. That took about a year. And then the last two years we've been building the tool. Though I know there is a lot of frustration with that, three years building a very complicated tool with millions of different documents from all types of different sources and replacing multiple decades worth of functionality in a stable scalable environment is not unreasonable. It seems like it, but in the realm of reality with the rest of the IT work that we've been doing that's not quite -- I do know that everyone would like it done yesterday, myself included. I'd like to very soon wake up to a day where I didn't have the old issues and had new issues to deal with.

So, we are very close. I don't think

we're a year off. If this does slip I don't see it slipping more than a quarter. Our flip rate is off by a tenth of a second. Our data quality is much more of a larger concern as far as I'm concerned. And we're measuring that by taking the EAST product and doing queries in the EST product. And in some instances when we do those duplicate queries we found bugs in the code; in other instances we found missing pieces of data, sometimes in EAST, the legacy system, that are now in the new system and vice versa. And we really have to make sure that the quality is there. Because the most important thing to an examiner is if I do a search I know that that search is complete.

And so we are at that endgame now where we gave it in December to some folks to use, we're shaking out those issues. And as soon as we get to the point where we are confident we will roll it out to more and more people just like we did with DAV. The goal is still to have it done by the end of the year, and if not completely rolled out significantly started.

We are in danger of meeting that if our

current fixes do not make the grade. I don't really think that we will miss it, but I did want to make everyone aware that this one is more risk than let's say OC is, which is the replacement for OACS which is in a much more stable position where we've already expanded the beta usage and it's already being used by those folks.

CHAIRWOMAN JENKINS: Just so you hear, PPAC is here to try to help and support, but if we truly don't know specifics of what we can do in that area to be supportive it makes our job harder. And, John, you know I've been there for the past four years. As Chair my position hasn't changed. IT is very, very important. You've heard me say it over and over again. We rely on it, we rely on the outside. If you guys go down we go down, and then I have to teach everybody how to paper file again. It's just not a good use of my time.

(Laughter).

MR. OWENS: I appreciate that. And I don't want to have to scan it all after.

CHAIRWOMAN JENKINS: Exactly.

MR. OWENS: I do know how important the

IT is. If there was something that I needed today -- and I think maybe I'm interpreting this wrong -- are you asking what do I need, what can I ask you for? I'm not going to ask you for anything more than what I have today. Even if I suddenly got an influx it takes time to ramp these things up. These projects right now are very close to the end. Adding an infusion of money, resources, and time could likely drag them down. If I had 20 new people join I'd have to train them which would take away resources, time, and money from actually completing the task.

In other areas of acceleration if we wanted to do more work, the thinner my federal employees are spent watching over even more programs, projects, and contracts, and deliverables the worse off we'd be. This Administration has not asked us to slow down at this point. I do not have an impact, to my knowledge, other than stopping hiring. But I don't think in the short term that that's going to majorly impact us because in reality when I hire a resource, by the time in the federal system that I go through hiring and acquiring resources

and they're brought up to speed and made useful I'll already be starting next year's work, knowing the fiscal ends in September.

So, if this hiring freeze actually lasts for an inordinately long period of time it will have a negative impact. But right now I have no budgetary impact from this Administration change whatsoever. All I'm trying to tell you is, for full transparency, we launched DAV, we replaced eDan, we had a problem, we're resolving it. It is a business impact, and I am well aware 24 by 7 of those business impacts.

OC is going well. EST is at risk of slipping, not horribly, but because of the natural turn of things we want to improve and make sure the quality is there. And of course, I will not push the product unless I am assured that the quality is of the highest degree.

I can't really look at the past, but looking forward will be choose to accelerate A or B or make a heavier investment in one area or the other, I'm not so sure. We go through planning every year with patents and we will certainly look at that investment based on the business needs.

And it's my job to keep you all abreast of what's going on there to make you all comfortable. And if you so deem it necessary, to advise and/or put in your report that you would like to see something done I'm happy to entertain that.

MS. MAR-SPINOLA: So, if I could ask a question now. It's very clear that you have more projects than anybody and the resources and the issues that you have to deal with, the legacy systems, all these things. So, I think what would help, at least from my perspective, is to understand what are your top three priority projects and where are they in terms of the timeline, your confidence level? Because an issue for us is everything interrelated, as Dan says, the top objective of the Patent Office is quality. And you can't get quality unless you have the infrastructure among other things. So, it's great news to hear that your budget is not impacted.

And everything you said about whether you had more resources, more heads, more whatever, there is always something that can get in the way or potentially cause delays. So, I

think that's thoughtful. What would help us, because we're here for the stakeholders, is to know what are the top three priority projects and why those three. And then importantly, when can we expect a replacement of the legacy system, because I think we all share a concern that that legacy system is not enough for all the things that we want to do here or are doing.

MR. OWENS: I definitely agree with that last statement, and I appreciate you all listening to me. So, I'm going to give you my top three priorities, not projects but top three priorities. And that's first and foremost the protection of the intellectual property and to meet the statutes of dissemination of information to support the business, which I am responsible for. The second is the operation and maintainability of the current systems as best as I can while we replace them. And third is the replacement.

Now, the reason that is because statutorily part of the Patents process is the dissemination of the information so that we can have proper filings and applicants. And, of

course, I have to maintain what we currently have or else our business stops because we are completely reliant on IT. IT goes away, yes, I understand that. I got it. Really, all these years. I just celebrated by ninth year here. I did get that. (Laughter)

And then third, it's the replacement only because we know analytically that those legacy systems continue to fail at an increased rate and there is very little we can do to prop up a system built 20 years ago on technology that's not supported. And, of course, that very first part, the safety and security of that information is paramount and the older the system gets, the less likely that is because older non-supported systems are not patched and their vulnerabilities increase over time.

So, that's in a big scope. What are my major priorities for Patents as far as projects go? This chart right here. And it is built in concert with Patents. I don't do this alone. DAV being a foundation of a new examiner tool replacement of eDan was important only because it laid the foundation and a lot of backend

infrastructure that took years to build. Hundreds and hundreds of other backend systems, computer systems, that you don't know about. But that was all rolled up into DAV.

The replacement of official correspondence for OACS which is our number one -- it's the big moneymaker, it's what Office actions are written in, it's also the number one call I take every day, and the system most likely to fail. It has the highest failure rate, the lowest stability rate of all the Patent systems.

And EAST which has its own limitations today, the replacement for EAST and WEST is of course search. And that is important because there is nothing more important to quality than having all of the documents and a complete search in the examiner's hands as quickly as possible. And we have serious limitations on that legacy system. I think this year alone we found another -- correct me if I'm wrong, Debbie -- six million patents, foreign patents and collections, that we've added six million documents to the system and it was already overloaded to begin with.

I have been since I got here in a race against time. And to provide a little history, I wasn't here back then but Patent systems replacement goes very far back into the '90s. There was EZ, which was the name of a program to get rid of the Patent system. PAM and PFW, which terminated right as I got here. Those three attempts to replace the Patent systems failed. This is the farthest we've ever gotten with Patents end to end.

So, we were already behind the 8-ball to begin with nine years ago. So, this is the closest we're gotten and I'm very confident that we will get there. We're going to hit stumbling blocks along the way as I've described, but we are getting there. But this is the priority, first cooperative patent classification became very big when Mr. Caplis was here and we did some shifting around to make sure it happened. And it's an ongoing endeavor.

But as far as Patents systems are concerned I am in a continuous race of keeping the current systems available while replacing them, and these are my priorities for Patent systems to

replace them.

Now, what you don't see here are the measurable systems, the backend systems, which don't have frontends that support it all. The other one that's missing up here -- is there a second slide like this? Is Patent Center, which David will talk about. This is the replacement for the frontend systems which affect you, as our customers because keeping EFT Web up and running is of critical importance. And just a few weeks ago we had a situation where we got a large bio-sequence submission and it crashed the system. And though we rectified that, it is important to keep that up and running, to ensure people's legal rights, which is my number one goal, that first thing I told you about, but it's also because this does drive revenue which happens to feed the IT initiatives. So, I am interested in that as well.

CHAIRWOMAN JENKINS: John, can I jump in?

MR. OWENS: Yes.

CHAIRWOMAN JENKINS: I was just thinking, this might be a really good topic just

to do alone for the May meeting, this particular topic.

MR. OWENS: Sure.

CHAIRWOMAN JENKINS: And maybe something that we can try to get generated is -- I love charts. He likes data, I like charts. Integration. (Laughter) We can do Dan's integration where we can actually see a chart with data and it shows us what IT is doing, what International is doing, what Quality is doing. So, we see it as a project, a system. I think that would help us. I'm very visual. Anyone else very visual besides me? I like charts and graphs.

MS. MAR-SPINOLA: I just want to say that I don't view it as your burden alone to have to deal with. And no one doubts that you and your team are so focused on these things. And the solutions that we're looking for too are not just for us or our legal rights. Of course, companies, all sizes, all business models who own patents have a reason to file for them and to protect.

Importantly though, and I think

everybody knows this as well or better than I, which is the whole patent system in the U.S. is to protect our economy. So, it's really -- we talked briefly about it in connection with 101, Section 101, is that our U.S. companies are filing internationally first because they can't get over the 101. And that, I think, impacts -- and that's not a system issue, right? We're talking integration. We're talking about everything holistically of the Patent Office. We need to have everything in place as best as we can. And I think it's a little ironic that while we're helping others we're kind of falling a little behind and we need to get back to the top.

CHAIRWOMAN JENKINS: One of the key points that I'm trying to make for the Committee this year is that we truly become an advisory committee rather than a reactionary committee. So, trying to think long-term and trying to see where we're all going in the system so we actually provide more value to the Office. So, still good, but real concerns outside and in.

I think with that I really need to segue towards -- David, do you have any other points

that you all want to make on what we're talking about now? I'll give you the last word. Yeah, I want to do this next time.

MR. LANDRITH: Okay.

MR. OWENS: We have nothing else then. Thank you.

CHAIRWOMAN JENKINS: Okay, thank you. Appreciate it. Onto Finance Budget. Frank?

MR. MURPHY: Thank you, and Dana's joining me at the table. We're going to go through -- and by the way, I'm sorry I missed some of your earlier discussion with the importance of the data, the story, the integration. This is really going to be good for us for the future. I like that. That's going to be helpful.

For today I wanted to go through a few things. I'll talk about where we're at this year; the kind of operating environment that we're in. Certainly I just heard as John gave an update that you've gotten some insights already to some things like the hiring freeze that we're in.

We'll also talk a bit on where we stand with the fiscal year '18 budget, which is imminent

in terms of our input to the Administration and the guidance that will come for the '19 budget, and we'll also give an update on where we stand with the proposed patent fee rule.

So, very similar to the last update we gave, we're continuing with the continuing resolution, a CR. The CR holds our spending to the last fiscal year's appropriation, and we've had two CRs for this year. The CR will expire, or is scheduled to expire, April 28th. What that will really amount to come April 28th, we have a few different options that will happen. This is some insight actually from reading the Washington Post and listening to the local news.

Either the Congress will pass appropriations, individual appropriations. That is their current intent, their stated intent. Given the limited number of Congressional days that they will be in office between now and April 28th, there's also talk of potentially doing what's called a "minibus" where they will take a number of appropriations and wrap them together. A third option could be an omnibus, and we've done that in the past where you

take all the remaining appropriations and pass them at one time, and of course, a fourth option could be that the Congress determines that we're going to extend the continuing resolution for a period of time, whether it be a week, or a month, so they could wrap that up, or if they make a determination they're going to go for the remainder of the year.

We're operating under the premise that they will, in fact, pass appropriations and that we will not have a continuation of a CR, but we're prepared to react in any direction that the Congress goes.

We also are under a 90-day hiring freeze. That took place with the Presidential Memorandum that came out right after the President took office. During that 90 days, he has asked the Office of Management and Budget and the Office of Personnel Management to come up with a plan going forward by the end of that 90 days. What we don't know is what that plan will be, and I'm not trying to do a crystal ball on what the Administration would plan, but it could be that at the end of the 90 days that the guidance that

comes from the Office of Management and Budget for out-year budgets will have incorporated the reductions that the President has alluded toward, or it could be that they're going to look to extend that hiring freeze for a period of time.

For the short-term, for this 90-day window, we have a minimal impact on PTO operations. I say minimal for two primary reasons; the most important of those reasons is that we had bifurcated the patent examination - the patent examiner hires that we had planned for this year, some in the first quarter and we managed to hire a number of folks before the hiring freeze went into play, and the balance of the patent examiner hires we had planned were in the latter portion of the year, so this hiring freeze didn't have a direct impact on patent examination fire power.

It does, of course, impact the support organizations that had planned hires through the year, and, as John just mentioned, for one of the key areas we looked at is to make sure we have the fire power to keep the IT investments going. In that short term he does not see that as an impact

on the ability to make progress on the IT improvements. Obviously we would be revisiting the impacts if that hiring freeze were extended or depending on what guidance the Office of Management and Budget and the Office of Personnel Management come out with at the end of that 90-day period.

In terms of the actual budget we have a couple of slides here; one to talk where we're at to date, what our projections are for the future, and you see that our planned fee collections and our year-to-date fee collections are very close, and our year-to-date spending is exceeding the fee collections, and that's intentional. That was planned. We have the operating reserve which allows us to go beyond our collections to keep patent operations moving forward, and that's what we had talked about internally in terms of an approach for this fiscal year to make sure that we had the key critical initiatives continuing to make progress.

As you look at the balance of fiscal year '17, our end-of-year fee projections are slightly below the end-of-year spending

projections; again, it was planned to be that. This is the data that was updated. The PPAC received the updated information in January on preliminary updates which is largely based on the new modeling that we have, so that is the data that reflects what our planned revenue and expenditures would be.

For fiscal year '18 and '19 we're actually working on the finalization for the administration of our updated fee estimates. We'll be sending that back to the Office of Management and Budget in the March/April time period. We're waiting on final guidance to come from Office of Management and Budget to give us the parameters for which we will build the President's Budget for fiscal year '18. When we provide that budget to OMB we will also provide a copy of that to PPAC, so you'll have the same information that we're submitting as part of the President's Budget.

For the fiscal year '19 budget, we are expecting the guidance to come from OMB in the summer time; then we would still be back on track under normal course of business to issue the

President's Budget for '19 to OMB in the September time period, and again we'll follow the same processes that we have in the past with making sure the PAC gets an advance copy of that as well so that we'll have the benefit of your insights.

And for the fee rule, we've obviously received the comments from the stakeholder community. We're incorporating that feedback, and we're finalizing the draft of the rulemaking package internally. We expect to send that to the Office of Management and Budget in the March time period. Assuming that the Administration is supportive of our moving forward with that, then we would expect that we will have the new fees published in the Federal Register and they would go into effect in September of 2017, so one month worth of the new fees for this fiscal year, then the benefit of having the new fees for the entire 12 months of the next fiscal year. Yes, sir?

MR. KNIGHT: A question, Frank. Is this new fee rule, is it subject to the Trump Administration's rule that you have to get rid of two regulations for every one new one you publish? And if so, do you have two to get rid of?

(Laughter)

MR. MURPHY: Yes, there's a -- it's a great question, Bernie. It's one that we're discussing internally as well. I don't want to be presumptuous on what the Administration's position will be on this. I will tell you my personal opinion is that this is not a new regulation. This is not a new rule. This is a modification of an existing rule, and that's where we are proceeding apace to submit this to the Office of Management and Budget. They are aware that we are in process of doing this, and we plan to submit.

We have not received any guidance to stop in that path, but when they receive that package we may very well get additional insights from the Administration, and if they do say that this is a new rule for which we need to come up with two to take away, I think we would be expanding the horizon beyond the USPTO to look to the larger Department of Commerce to see if there are other rules that could fit in that mode.

MR. KNIGHT: Let me ask you this. If you can't move forward with this rule to increase

the fees, then next year is it difficult to meet the budget that we have set forth, or how critical is this fee increase?

MR. MURPHY: It is essential for PTO operations as currently planned. We do have the mechanisms in place to relook at all expenditures, because obviously you have just two sides of that ledger; what are you going to spend and what are you going to collect. If the collections are significantly less, we do not have an adequate operating reserve to continue ad infinitum. We would as an agency look to prioritize all investments, and at that point I think you would see a stretching out of the replacement of the Legacy systems and a replacement of the new IT systems. That's the largest impact that we would have.

We would certainly also look very critically at any new planned initiatives; things that would be enhancements beyond core operations, so it would require a very thorough scrub and re-prioritization of what are the key initiatives that the Agency wants to move forward with. So, that's a long way of answering that the

fee rule is critical. Sir?

MR. GOODSON: Frank, I went through some numbers the other night and I was amazed at the number of companies -- I will not mention them on the record -- that, you know, as an example one company, 200 employees, \$400 million in annual revenue, are considered a small firm. This is not equity in my mind, but -- and I know the magic number is 500 employees. I believe that's under the CFRs. Is that correct?

MR. MURPHY: You have me at a disadvantage. I'm not sure what the rule is.

MR. COLARULLI: It's based on the SBA definition of a small business and it's 500. That's correct.

MR. BAHR: Actually the SBA has a special rule for patent fees where they set the number at 500. For other matters before the SBA they have different levels for different industries, but for patents they have one. It's 500 and it's set by the SBA, not us.

MR. GOODSON: Is there any way of addressing that or I'm just barking up the wrong tree? Seems to me there's a lot of untapped

revenue there from people who that can't afford it. I mean, \$400 million in revenue, come on. You're not a small business. Thank you.

MS. JENKINS: And that's not on the record.

(Laughter) Dan?

MR. LANG: I just want to get back to the two regs out, one reg in discussion. I think it's really important to be clear about what the PTO's activities mean in a period of expected deregulation. The fee-setting process is mandated by Congress, and the PTO is not creating a regulation in my view. It is simply complying with the statute that was passed by Congress and enacted into law by the President, and the steps that have been followed, they would be, you know -- they're not a regulation if it's a fee increase, and they wouldn't be a regulation if fees were being reduced as well.

In fact, and here's a very powerful argument that says that if the PTO were to not have the resources to do its job and to -- for example, issue patents not of the right quality level, that actually increases the regulatory burden on

American business, so I'm heavily in favor of the PTO proceeding with its fee adjustment, and I think that's entirely consistent with the deregulatory initiatives that would be pushed by the Administration.

MS. JENKINS: Drew, you -- now?

MR. THURLOW: I have a couple of quick questions. So remind me. I mean (inaudible) the PTO has the fee-setting authority, right? So, can, in effect go forward tomorrow? I have to say I know you want to get the stakeholder input, but we've had the PPAC hearings, meetings, got a lot of feedback from a lot of folks. What's preventing you from doing -- I'm not saying do it tomorrow. I'm just -- I'm trying to understand the process. That's my first question. I don't know when it expires though. When does the fee-setting authority --

MR. MURPHY: September of 2018.

MR. COLARULLI: September of 2018, yeah.

MR. MURPHY: So, we are proceeding with the existing fee, but we're not holding it up pending a ruling from the Administration, and

that's what will be going to the Office of Management and Budget in the March timeframe -- the end of March -- so we are proceeding on schedule. My point was strictly that I don't want to be ahead of the Administration as they get that proposed fee rule to make a guestimate on how they're going to come down on that.

MR. THURLOW: Then from a practical standpoint can you help me understand the process of it? So, if the federal government's going to increase defense spending, that's great, but other agencies are going to get cut. Then if your budget -- if the PTO's budget's cut say from \$3.2 billion to \$3.1 billion with the understanding that we have that the federal government has not actually given that. It's all based on user fees, and we take in \$3.2 billion. That gives us, if my math is right, an extra whatever money, what happens, in effect, with that money? That just goes into reserve that we could easily, hopefully, continue to tap into?

MR. MURPHY: Yes, there's a couple of key decision points there, so again without

trying to jump the gun for the Administration, let's talk historically. Because the Patent and Trademark Office is fully fee funded, has no tax dollars, it does not -- if the revenue or spending goes up or down -- does not affect the debt or deficit, so with that it's -- the technical term is scoring. It scores a zero. There's no impact to the federal budget.

Historically we had been immune from the kinds of cuts that you were talking about where defense is going to go up by X billions of dollars and other agencies coming down. In the scenario, though, where the appropriated level -- because we still are appropriated -- if we believe we were going to collect \$3.2 billion in fees and Congress appropriated \$3 billion, that \$200 million, if we were to collect that, the \$200 million above the appropriated level, that would go into the Patent and Trademark Fee Reserve Fund. That was one of the benefits established with the AIA. Those funds would be for the sole and exclusive use of the Patent and Trademark Office. They couldn't be used for other agencies, but we would have to wait until the

beginning of the next fiscal year to request the Congress to transfer those funds, so you would lose it from a timing perspective, but you would not lose access to those fees.

MR. THURLOW: In that timing you would be able to request the reserve from that's money that's in there, tap

(inaudible)?

MR. MURPHY: For the Patent and Trademark Fee Reserve Fund -- and I'm going to back up just a bit to talk the difference between that and the operating reserve, but for the Patent and Trademark Fee Reserve Fund, that is money that is collected above the appropriated levels. It goes into a Treasury account, and we must wait until the start of the next fiscal year before we can even ask for that money to be transferred.

MR. THURLOW: Right.

MR. MURPHY: The operating reserve, on the other hand, is part of -- it's one of the line items in our budget, so you have money that's going to go for salaries. You have money that's going to go for IT investments, and you have money that is sitting there as an operating reserve

that's available for use immediately.

MR. THURLOW: Okay.

MR. MURPHY: And that's, in fact, what we are using this year as we're spending more than we're collecting. We are consciously dipping into the operating reserve.

MR. GOODSON: When is the appropriate time -- or is there -- to mention letters that we've received and what potential action, because they dealt with the budget -- from some of the stakeholders in the community? We got one in the middle of the night the other night.

MR. MURPHY: That letter said -- I mean it's a good question. That letter was from an independent inventor organization that had concerns with the fee increases, so that was a good point but it's not something I would address today-- that's the purpose of the public comment period.(inaudible).

MS. JENKINS: We're going to be -- I mentioned that earlier that we had gotten letters. I didn't specifically say what they involved, but we're going to be posting those on the PPAC page --

MR. GOODSON: Okay.

MS. JENKINS: -- and I think we're going -- it's still a work in progress, but we may try to associate the letters received and mentioned during the meeting in conjunction together so you'll find them when they were mentioned --

MR. GOODSON: Okay. Thank you.

MS. JENKINS: -- and then we obviously as a committee have to figure out -- and with the Office obviously -- how and can we respond? Do we respond? So --

MR. GOODSON: Okay, great. Thank you.

MS. JENKINS: Make sense? Yes, this is all new. I don't think PPAC has ever -- thank you -- but I don't think PPAC has ever gotten letters like this, and they are appreciated, so we are reading all of them and paying attention to them, so, okay.

Any other questions? Finance is obviously very important to the committee, obviously important to the Office, so anything else? No? No? Okay. Escape while you can.

MR. MURPHY: Well, I told Dana I would

stay by - for those really tough questions. He said, "I'm just going to tap you."

MS. JENKINS: Yes, that was (inaudible). But it all blends in together, so we sort of see where it's coming. It's integrated. That's the committee word for the day.

(Laughter) Dana, what's going on on the Hill?

MR. COLARULLI: Sure, well, first I should say clearly the flood of letters you've received, it's because they got your memo; the new and improved PPAC, and they said "All right, we've got to get in on this."

MS. JENKINS: Touché. (Laughter)

MR. COLARULLI: So, I was actually going to start with -- you know, I heard John come up and say, you know, they're going to do good cop/bad cop. I couldn't decide which one I wanted to be today, so I'm just going to be the liaison to the Hill and give you a report of what's going on up there if that's okay.

So thanks, thanks for letting me give an update. It's certainly interesting time

beginning of the 115th Congress. It's the early days, so I'm going to give you a sense of what's happening in the early days. Certainly as I talk -- we talked about in the subcommittee yesterday and we said kind of at the end of last year, there's a number of issues that the Congress and the new Administration are trying to tackle early on.

This year IP issues tend to take a back seat to that, but already we've seen indications from the leaders of the two committees of our jurisdiction; the judiciary committees that they're interested in looking at IP issues. I'll talk a little bit about that, but early Congressional activity, we'll start there.

Certainly the Senate very, very busy with nominations. They've got -- I'll get to this, but they've got two more to go on nominations to the cabinet. There's a number of House-passed bills that have been targeting regulatory reform and reducing regulatory reform, so we've seen a lot of those bills passed, yet unclear whether the Senate would even take those up. Some of those also overlap with

Executive Orders that we've seen.

And then certainly -- and Frank touched on this -- appropriations issues and the budget and the timeline for the budget slowly becoming a little more clear. Agency's got their pass-back earlier this week. We understand it will be an outline coming mid-March, so we're watching that closely, and as Frank also mentioned, unclear whether we'll have another continued resolution or budget action; something that our two teams at PTO need to watch very, very closely.

My team also has responsibility to engage with the Hill. We're trying to read as much from tea leaves as we can from appropriation staff. I think they're also doing a little wait and see to see what the prerogatives of the new Administration and the President are.

On the House side, a similar slate. As I said, a number of bills on regulatory process. They're starting to look at the budget, too.

I thought this would be an interesting slide to show folks. We're very happy that the Secretary of Commerce was confirmed. He

addressed the Commerce employees earlier this week. About 1,200 other political positions throughout the federal government yet to be appointed and installed, but in terms of cabinet positions both Ben Carson and Rick Perry for Energy both were confirmed today. Two more left, so the cabinet is getting in place.

There's nothing else from this slide except just of general interest. We put the Cabinet in succession order. It's always interesting to remember my 101 political science classes and what the succession order is, so there you go. We try to be educational. (Laughter) Thank you, absolutely.

Also early Congressional activity as it relates to us here at the PTO. There certainly are things that we can do, and my team has a challenge in front of it that there's new members of Congress in both houses. There's new members of the committees, and some committees a few leadership changes as well that we're managing, so we're in this time when folks are still trying to come up to speed, trying to engage us.

I've tried to get them to understand

what PTO is all about, what's the scope of operations, and even some of the seasoned folks that we've engaged with up on the Hill -- we had a few of those folks here at the PTO last Friday and when we said a few things they said, "Oh, wow, I didn't realize that." You're 100 percent fee funded. Even some things that we take for granted, so that engagement I think is critical. Certainly helps us later on this Congress. A lot of individual staff meetings. Engaging -- this is a time when a lot of the Congressional caucuses start getting organized and thinking about what they can do.

We're looking for opportunities that we can help them put on programs for staff; educational programs, and highlight some of the issues that are most important to us, so we're certainly doing that, and there's a number of other events that we can get our staff to help support. And again, I take advantage of that visibility.

That's mostly the D.C.-based activity, but there's lots of opportunity in the regions, and our regional directors have been both engaged

in the normal outreach, but then we've been helping them to engage the local elected officials. Traditionally we've hit most of the federal representatives. We've had a great opportunity with the regional offices. Some of you have heard me say this before -- to engage state and local folks -- we're taking advantage of that, creating new champions, and we have lots of opportunity. People want to be excited about the fact that PTO is in their backyard and bringing some resources, so we're trying to fuel that and support those types of events.

Okay, this is the speculation portion of my presentation. A number of issues were left on the cutting-room floor last Congress. Many of those issues will continue. That's certainly the first two buckets that I'll talk about.

The Congress also probably during this term will react to some Supreme Court cases. There's -- in a few different areas there's cases coming forward, and then there's operational authorities that expire, so all those are kind of on our -- at least our initial plate of focus that we'd expect to be discussed this Congress

probably even within this first session really getting pretty far down the road.

Patent litigation reform -- certainly a consensus could not be built around comprehensive bills in the last Congress of those last three years, but likely that those issues will be raised again. I mentioned at the top, Chairman Goodlatte, the Chairman of the House Judiciary Committee, in a Press Club event laid out his agenda. A number of issues unrelated to IP but certainly he did mention that litigation reform as something he'd like to visit; likely revisit after the TC Heartland case directed to Venue is acted on by the Supreme Court sometime in the summer timeframe, so we'll certainly look at that.

In addition to Venue and a number of other provisions in the comprehensive bills, there's been continuing discussion about 101 within the stakeholder community and even some legislative proposals. IPO put one of -- some actual language out there for folks to discuss, so active discussion that we're watching. We believe our roundtables were helpful to further

that conversation. I expect that will continue going. Not hearing a lot of appetite yet from staff or members of Congress to take this on, but a lot of good work to prepare for when they might, and the certainly questions in the context of additional patent bills on whether there could be targeted changes to the PTAB proceedings. Those were part of that conversation. Again, all issues that -- likely to come up later this year.

MR. THURLOW: Dana, just a quick point.

MR. COLARULLI: Sure.

MR. THURLOW: Maybe you're very familiar with this, of course. Maybe another twist on the 101 issue is what we discussed in our new 101 subcommittee and what we discussed here today. That would definitely get the interest of members of staff of Congress, and the Congress is that applicants in the biotech/life science areas have been and will probably continue filing first in Europe and probably second in China rather than filing first in the United States, so I think that should raise a lot of concern with Congressional staff, so when we had the pleasure in New York of meeting with Congressman Goodlatte, which I told

you about, he wasn't familiar with the 101 issues. I think it gets a little sticky, and for people not in this IP world it gets confusing. He was very familiar with all the other issues in PTAB and stuff, but I think when you frame it that way it raises concerns that people can grasp a little bit better.

MR. WALKER: Yes, and Dana, just to add to that I think the bigger concern is not people filing overseas, people not filing. You keep conventions as trade secrets and so there's none of this -- there's public compact where you change public -- you know, publishing the invention in exchange for the limited monopoly, so trade secret protection -- I know people will drive to that if they can't get U.S. protection.

MS. JENKINS: And Mike is Subcommittee Chair of Legislation?

MR. COLARULLI: Yes, yes, and we had a very good subcommittee conversation yesterday, and I think I look forward to having more in-depth conversations about the different bills as they're coming out of the subcommittee. It's part of the new improved (laughter).

You know, I'll mention related. One of the issues I didn't raise here are issues of trade -- in the interests of trade, anti-trust and IP. I think that will also likely be a focus. It's unclear kind of how. It may be the subject of hearings similar to the way that counterfeiting issues generally are subjects of hearings for both our judiciary committees, so it's certainly in that context you're going to talk about international trends, and certainly both of those are troubling trends -- that there's some opportunities to make those part of the public record.

Copyright issues -- a kind of second bucket of issues that were discussed last Congress and are continuing. House Judiciary Committee -- a measure you may have heard me say before -- held 2-plus years of hearings that we watched very closely. I brought my colleague, Shira, along with me. She was here earlier -- you saw her -- to discuss various different updates to the copyright statute.

In the process of having those hearings, a lot of conversations about the

structure of the copyright office. Certainly there's a vacancy right now out of the new register of copyrights at the Library of Congress has -- is considering replacing and other issues like small claims court legislation which we expect to be reintroduced. We were able to provide some technical advice last Congress on previous bills.

We'll certainly offer to do the same this year, and then rounding up unleft business from the last Congress, implementing two copyright treaties: the Marrakesh Treaty and the Beijing Treaties, both bills that have implementing language that USPTO drafted, sent down to the Hill, and we're looking to have some more action on that. Certainly talk more about that, but they're ripe. They're ripe for action this Congress.

Last couple categories -- I mentioned that the Supreme Court is going to have a number of cases; T. C. Heartland I already mentioned, the Slants case on the trademark side. There's certainly potential of other cases related to PTAB proceedings or other issues that might

provoke legislative action. That's yet to be seen, but certainly that's an area that we're looking at closely. It's also an area where there's a great need for education up on the Hill, and again that's a role that certainly we can play to put it in context. What are these core principles of IP Law? How is the law supposed to work? What does the court say? So we'll look to try to play that role, too.

The last two bullets I have on this screen are operational authorities that expire. The fee setting we already mentioned expires the end of September 2018. Already we started the conversation both with the chairman and other members about the need for fee-setting authority. At the time of the passage of the AIA a sunset was placed in. Generally as a proof of concept, let's see how the Agency uses this new authority. When we were required by the AIA to submit a report about four years out on implementation, we did that in that we recommended that we make this authority permanent, now having done it twice and seeing how critical it is to our operations.

I will mention just on -- Frank, thanks

for taking all the tough questions on the fee reserve fund, but you did a great job.

I think, just to reiterate, the intent of Congress was that the Agency be able to set its own fees to fully recover the costs of its operations. Certainly there's some gray area and some discretion. That's the conversation that we had here with PPAC about those decisions and how broadly we scope our operations, things that we wanted, initiatives that we want to fund, but that was clearly the intent of Congress, so there's some language in our statute that helps protect us to make sure that that is the case, but I think that clearly that was the intent. We'll see how the EOs and the budget process plays out.

Last but not least, TEAPP -- mentioned that before -- is the Telework Enhancement Act and its PTO Pilot Program. It's two Ps. We have authority under that to be able to allow employees to waive their right to recoup the cost of traveling back for required training engagement. We've benefited from that as we've established TEAPP and expanded. That authority goes away on December 8th, 2017, so again, much closer in time.

We've had some conversations with the Hill about whether to extend it. We've also been doing planning back here at PTO in the event that it doesn't get extended, so again, another thing that we're watching. We'll see if the Congress decides to extend it or not. That's all I have in the slide deck. Questions?

MS. JENKINS: Can I ask a question?

MR. COLARULLI: The speaker's
(inaudible).

MS. JENKINS: I was like if we lose what was it -- TEAPP? If we lose TEAPP, where are you going to put all the examiners?

MR. COLARULLI: Well, I think -- so I think

(inaudible).

MS. JENKINS: Your office,
(inaudible).

MR. COLARULLI: My office, we have a big tent,

(inaudible). We could do lots more staff education. I think -- and I welcome Drew to add more, but I think on the patent

side. Trademark side we have TEAPPers also in PTAB and in TTAB. We made it very clear that certainly we wouldn't pull folks back, but we're planning for each eventuality. Drew, do you want to add to that?

MR. THURLOW: Sure, Dana. So, TEAPP is more about whose responsibility it is, where your duty station technically is, and whose responsibility it is to pay the bill when you come back to the Agency. So, from a management standpoint we like to bring people back periodically. Right now employees under the TEAPP program recognize that when they come back to the Agency, it is their dime so to speak. I know there's limits so I'm simplifying, but it's their dime, so to speak, that they would pay to come back to the Agency as long as there's a certain number of requests that are being made.

If the TEAPP goes away and is not extended, it does not mean that the employees all come back. It means their duty stations technically change, and they would be able to

remain where they are. The difference for us is if we want to bring them back, then it would be an Agency burden and the Agency would be paying for us to bring them back, so it's really an issue about money and finances.

MR. THURLOW: Just a wild question I guess -- so if the Administration or the government comes back and says cut regulations, two new regulations out there we want to cut across the board, is there a consideration of what those -- even remote considerations of what they would include? I mean, because the big impediment, for discussion, arguably, could be just the fees themselves, but is there a thought on, like, what regulations would -- impeding the formation of companies and jobs and how the patent office is inhibiting that or something? I don't know.

MR. COLARULLI: The best way to answer that question is the most likely target to that are not necessarily the types of rules that the PTO puts out which are intended to actually increase access to the government services and not -- and certainly not impede politically

evolved conversations. There are some other targets I think that some of those are going at.

I think OMB has been careful to try to provide some guidance that we know although that process is still continuing about what are the types of rules significant or otherwise that might fall into this, so I think as Frank had already mentioned, there are some opportunities to make some good cases for PTO or if they're not certainly the intended target we're working with OGC to make those arguments, but we haven't necessarily had the opportunity yet to fully make those arguments, so we'll be doing that. Other than that, it's tough to respond both on that and certainly on hiring because we're in the middle of a process.

MS. JENKINS: Okay, just real, real quick. I have a question from the audience: Chen from AIPLA. She'd like to know about shared services, so very quick because our PTAB folk are waiting very patiently.

MR. MURPHY: For shared services and for full disclosure just in terminology, the department has changed that name to Enterprise

Services. It's the same basic function. We're talking about collectively doing things in a more cost effective and a higher quality manner. They're in four areas: in HR, IT, finance, and contracting.

The PTO position has been and remains that we have independent authority over our administrative operations, and if it makes sense for us to avail ourselves of those services we would like to do so, but we don't want to have that as a mandatory requirement because we actually have, through the benefits of the PACs, actually improved our IT services, our HR services, our contracting services, so we're already performing at a higher standard than many of the agencies that would benefit from shared services or from Enterprise Services.

That said, we also want the ability to opt-in in the future if we see that the service levels have improved or the cost has come down so that we get the bigger bang from the dollar, and with that we've agreed to help with the stand-up cost of the Enterprise Services Center, so we are paying a pro-rata share, a fair share, for the

stand-up of the shared service center or the Enterprise Services Center, but not for the operational or the transactional cost because we're not participating in that.

There's one nuance that I want to make clear. Historically we have been using the HR management system, human resource management system. We have also always been participating in source selection, or strategic sourcing I should say, a contracting vehicle. Those two items the Department has moved under the enterprise services umbrella, and we would continue to participate with HRMS and with strategic sourcing, so in that sense we are participating in the department's enterprise services, but these are functions that we've always been doing.

MR. KNIGHT: Did I hear you correctly, Frank, that we're going to decide, like, on a cafeteria basis which services we want to participate in, but we're still paying a portion, a pro rata share of the overall cost to set up the enterprise operation?

MR. MURPHY: Yes, the best way of

looking at that is when you build that cafeteria, if you did not participate in the infrastructure, the standing up of the actual facility that you could then have -- in a year, two years, five years -- come in and say I'd like to get that burger and pay for the burger, well, all the overhead costs associated with the stand-up of the cafeteria you were getting for free. Other people were subsidizing you.

So, what we have said is we will take our fair share of the stand-up of that center that is going to provide transactional services later, and if we choose to participate in the cafeteria style, we're going to select one from column A, we'll pay for that transaction because we've already invested in the stand-up of the cost so we should be able to get the benefits of that as well.

MR. KNIGHT: Right. It just seems to me just as a comment that our appropriated fees have to go towards filling the USPTO's appropriated mission, and you may not buy any of these services if they don't make any sense, so basically in setting up this enterprise

organization we're using user fees to help other Commerce Department bureaus and agencies, and I'm not sure from my perspective if that's a proper use of our appropriated funds. How much are we talking about? Can I ask?

MR. MURPHY: Yes, in fiscal year '16 we spent \$6 million, and in fiscal year '17 while that number is being discussed right now -- there's no final number for that -- that was in the neighborhood of \$13 million. That's when our commitments would end because that would be the stand-up of the centers. And we're also discussing items on an individual basis. Part of that discussion that we're talking about is what functions the Department is adding-in for that stand-up. As an example our finance systems, our budget system, is totally different than the department. We will never use the finance shared-service or enterprise services, so we would not pay for anything associated with that. In that \$6 million also, though, is included what we previously paid for in HRMS, in strategic sourcing, so a portion of that \$6 million that we've already paid were for things that we've

always been doing.

MR. KNIGHT: Right, and I guess, you know, I'm not on the Finance Subcommittee, but just from my perspective there's \$20 million of user fees going towards a Commerce Department initiative that may never benefit the Patent and Trademark and Copyright systems, and so, I mean -- I don't know -- I just question whether or not we really need to participate in that and stand it up, and I say "we" I say USPTO as if I still work with you which I don't, but I don't know. Just as an individual member of the PPAC I don't mind saying that I question the appropriateness of that \$20 million payment.

MR. WALKER: But Bernie, I guess a question I thought I heard Frank say that the HR management system and strategic sourcing are now under this enterprise services umbrella. Would they not be available -- I mean, is it -- we had to contribute in order to get access to those areas of services?

MR. MURPHY: No, and thank you, Mike, for letting me clarify that. HRMS and strategic sourcing -- we've always been doing that with the

Department. When I say they put that under the umbrella, it's just the costs that we've had in the past that were associated with that are now categorized as enterprise services. Our operational commitments haven't changed for those at all. We still do strategic sourcing when it makes sense, and when it doesn't, of course we do not, but whether you had a shared service, enterprise service, umbrella or not, we would still do strategic sourcing. We would still do HRMS.

And Bernie, I do hear your point as well. The key being the second part of that \$20 million, that \$13 million, that is the part that we're in discussions on because we also share what the stakeholders have told us very clearly in terms of the concerns with entering into shared services, and we want to make sure that it is the best decision for our stakeholders and not just a payment for something that we may never use.

MR. KNIGHT: And along those lines is there anything that PPAC could do to assist the USPTO with respect to these negotiations with the Commerce Department such as -- or us to voice our

concern that our user fees should not be used for services that we may never purchase?

MR. LANG: We did already voice our concern in the annual report on this very issue.

MR. KNIGHT: I'm not sure that the people at the Department read the annual report, with all due respect. I mean, I think it would have to be more or less a targeted sort of approach to the Commerce Department on this specific issue to really have any impact at all.

MS. JENKINS: I think this is points well taken, Bernie. Yes, yes, so I did IT and you did shared services. Good job. So this is something that we need to discuss, is something that the committee as a whole needs to consider and obtain more detail on, and need to make sure we stay ahead of the curve so we're advisory, not reactionary. So, on that. Anything else? Any other questions, comments? No? Okay. Thank you. Thank you.

MR. MURPHY: Thank you.

MR. COLARULLI: Thank you.

MS. JENKINS: PTAB -- I apologize in advance. We are already behind schedule. It's

2:48. Can we just have a short PTAB discussion? I'll give you way more time in May. How about that? Is that okay?

MR. RUSCHKE: That's fine. Actually our discussion with the subcommittee yesterday was, I think, very good. We were trying to focus again on some of the specific requests that the subcommittee and the PPAC committee generally had made from last time, so we don't -- we don't have our full slide deck that we would go through, so I think that will be a positive thing for us.

MS. JENKINS: I think it's thanks to Julie. Julie is the new -- with all due respect to Peter -- Julie is the new subcommittee chair of PTAB. We love you, Peter.

MR. RUSCHKE: So, if I could maybe I'll just go forward. Real quickly, I thought we had a slide here, but on organizational structure we have sort of completed our entire management team hiring, so we now have underneath Scott and myself in the Office of the Chief Judge, we have four operational vice-chiefs: Mike Tierney, Grace Obermann, Jackie Bonilla, and I'm happy to announce formally for the first time we have

approval from the powers that be, Scott Wiedenfeller from the Solicitor's Office will be joining us as our fourth operational vice-chief. I'm very excited about that. As the name suggests, these are the vice-chiefs who are in charge of the day-to-day operations of the board as well as contributing extensively to the policy changes that the 10th floor might move us in that direction.

We also have a fifth vice-chief: Janet Gongola, long-time PTO employee who is our vice-chief for Engagement. Underneath each of the vice-chiefs for Operations are five sections with a lead judge for each one, and we have completed hiring of all of our lead judges at this point, and each section which we are now arranging by technology, we have about 10 to 12 line judges underneath each one, so we're excited to have the management team in place. It's been a long haul, and we've got everybody in before the hiring freeze, so we're very, very happy about that.

MR. THURLOW: So forgive me, I want to keep it

(inaudible) I want to respect

everyone's time, but there's, you know, we're talking about more PPAC outreach and stuff, and people that I correspond with really do appreciate the PTAB updates, so if we could spend at least five minutes, and then I'll add a little twist to it.

We talked about doing more joint presentations. If you put the presentation up, we could run through the slides real quick. It's not too thick -- and give you my perspective, and then maybe you could chime in based on our conversation from yesterday?

MR. RUSCHKE: Okay.

MR. THURLOW: See, we're being new innovative.

MR. RUSCHKE: So, for this the numbers are great. Keep on going down, rock and roll on the 15,000. Next one, sir. This addresses one of the comments that we said set them beforehand. The feedback that we get is that great. The overall numbers are below 15,000. This slide is new.

MR. THURLOW: What's really cool about it is that it shows that each one for the different tech areas. It's kind of still difficult slide to get through but the main point is it's not only overall numbers are coming down. The speed of review, so maybe you tell me if in essence if it took 30 months in fiscal year '15 to -- from the filing of the notice appeal to a decision --

MR. RUSCHKE: Correct.

MR. THURLOW: -- and now it's taking --

MR. RUSCHKE: We're down to 20.

MR. THURLOW: Down to 20 average but in some that could be as low -- 2,600 -- could be 15.33.

MR. RUSCHKE: Yes, essentially all of the blue, the electrical sections are actually below 20 months.

MR. THURLOW: Okay.

MR. RUSCHKE: And again, this is decided appeals so it's sort of a backward looking pendency.

MR. THURLOW: The reason why the focus on data is as we make decisions on whether to refile for an RCE -- do we have to -- final go to

appeal. To the extent people think it's 30 months as compared to in effect it's 15 months. That's a pretty big difference from a practical standpoint and something as we discussed I just want to emphasize because now where maybe years ago the appeal to the board was not really realistic because of the 30-month timeframe. It may be more realistic, so you may see even more appeals rather than refileing the RC. That's my --

MR. RUSCHKE: And our goal is to get down to 12 months of forward looking pendency, so we are hitting that. It's getting close to some of the tech areas, but we still have a little ways to go in some of the others, and I agree with you, Peter. I actually heard some anecdotal evidence this morning at the PTAB Bar Association meeting exactly to that affect that they'd actually received some 2015 appeals back in about a year -- a little over a year, and they were very excited about using appeals more frequently.

MR. THURLOW: Just a quick break. Do you like this little --

MS. JENKINS: A tad confused, but okay.

(Laughter) Why don't you let him go first?

MR. THURLOW: All right, all right.

(inaudible).

MS. JENKINS: Or Julie as she's now the chair.

MS. MAR-SPINOLA: No, no.

MR. THURLOW: Julie (inaudible). All right.

MR. RUSCHKE: Everything else on appeals, again it's the bread and butter of the board, and I think we're moving in the right direction on both inventory and pendency, clearly. We'll work on that slide. We'll take that as a note to work on the slide to make it a little bit clearer, but again the goal of it is it's essentially year over year the white spaces on each of the bars, we've reduced that number of months to get to where we are in FY '17 for each of the tech centers, which is again, for the electrical sections in blue are all 15 or 19 months, so we're obviously heading in the right direction. In every single tech center we have reduced pendency.

Trial statistics -- go through them

very quickly. Again, we're at 6,380 petitions total. Vast majority are IPRs. Not surprising again if you look at technology center.

Electrical and computer are over half followed by mechanical business methods and then chemical and biopharma. This has remained fairly constant throughout the entire AIA period, so no surprises here.

This is a slightly different slide that we have put up before. This is essentially a month-over-month intake by trial type. Again, the Y-axes are a little different so be careful when you look at the numbers. The most important thing I want to point you to is in the IPR section. We have been typically going around 150 a month. Now in January you see that spike up to 237 on the far right-hand side. That is the largest number of petitions that we have ever received since AIA was passed.

We have not been able to identify any specific reason for that; for instance, a large majority of related or family cases that came in, or one particular petitioner that was particularly active that month. Was it the

holiday for some reason and they saved them up from December? We just don't know. We're keeping an eye on this.

Our February, although a short month, did come in fairly strong. I don't have final numbers for you on February today, but that is something that we will keep an eye on because that's -- if it's a lone spike, and we've seen those, that's fine, but this is a significant spike that we've seen.

MS. JENKINS: Do you ever do anonymous surveys? Thought about that?

MR. RUSCHKE: I don't think we ever have, no.

MS. JENKINS: Well, there you go.

MR. THURLOW: The quick for the joinder request that's included in the 237?

MR. RUSCHKE: We probably haven't -- I don't know if we've actually received any joinders at that point since it's so --

MR. BOALICK: That's just raw file (inaudible), so whatever kind, so yes, that would include requests for joinder. They're not broken out that way.

MR. RUSCHKE: And then again the two bottom scales - - again, PGR is very small numbers. We will see where that goes. CBMs generally again -- a general trend downwards as they're being used less frequently.

This is a new slide that we added in to address the specific request as to whether our rule change last May which would allow new testimonial evidence that the patent owner is able to submit a preliminary response phase was being utilized by the patent-owner community, so if I can explain this a little bit. These are, again, based on technology which is interesting.

Pre and post means pre-rule change and post-rule change, and underneath the post-rule change the solid bar underneath is the percentage of patent owners then who are actually submitting new testimonial evidence in their preliminary response.

It varies significantly by technology, interestingly enough, so the biopharma and chemical are at 56 and 68 percent, and then the electrical and business methods are around 38 percent, so while the overall numbers of patent

owner responses are coming in, there has been significant use of the patent owner response, and so I think that's -- this was as -- this rule was enacted in specifically in response to stakeholder feedback to provide fairness in the proceedings, so I think it's gratifying that people are actually using it quite a bit; at least a third of the time in every single technology center.

MR. THURLOW: So very quickly, the follow-on question that we get from that is, "What is the relationship between the institution rate for those cases where you get the information submitted as compared to not?"

MR. RUSCHKE: So, we don't have that data in this slide, but this morning I actually did hear a study from one of the law firms who escapes -- I can give you the name later, Peter. They actually said that they didn't -- it was fairly similar data to ours, but when they looked at the institution rates it didn't make a difference one way or the other. They were essentially still -- which we'll get to in the next few slides -- at about a third and

two-thirds, so it really didn't make a difference. People are taking advantage of it, but it's not really moving the bar one way or another.

We had this slide but just the green line last time, which was essentially the institution rate in all trial types,

(inaudible) since the beginning of AIA, and you asked us to break this out by trial type. Again, what you can see here is that we see a stabilization of our institution rates down to about two-thirds, so one-third -- and the point that I've been making extensively which I again made this morning at the PTAB Bar Association was that one-third of patents do not -- or the petitions -- do not get instituted on, and they do not see any AIA trials going forward, so it's only two-thirds, and that green line includes partial institutions, so we're actually

skewing it a little bit higher than it normally would if we look at it on a claim-by-claim basis.

This then breaks it out by IPRs, and as you can imagine, the swamp of IPRs swamps the data so it looks almost identical to the overall numbers. Again, leveling off of the last three fiscal years at around two-thirds instituted, one-third denied.

Interestingly in CBMs, again smaller numbers that we're talking about, but again somewhat of a stabilization but perhaps it's slightly lower in the 50, 55 percent range.

I'm going to put up the slide for PGRs. Again, cautioning you that the numbers for FY '17 are extremely small, and one or two petitions either way is going to make that number significantly different, so I wanted to put it in for completeness, but I also don't want to mislead anybody as to what that actually means, so I would say stay tuned on PGR data to see if that's significantly different than any others at this point.

The last slide that we actually debuted

yesterday to a subcommittee -- and we really do appreciate your feedback on this -- this is, I think, a new way of looking at a lot of the data. If you recall, we had walked you through an extensive

(inaudible) slides with stepping stones and cylinders and bar graphs, et cetera, et cetera, and the feedback we'd gotten from stakeholders was that that dataset is confusing for a number of reasons; primarily it was based on a claim-by-claim basis which is how track things internally at PTAB, and the stakeholders wanted to know whether it filed was by petition or by patent. This is very close to being the same in this dataset.

They also wanted to make sure that we were encompassing all of the phases of the AIA trials. Before our data was only driven by what was in the -- what had actually reached a final written decision and that was skewing I think the

messaging and the reliance on some of the PTO data, so what we've done here is say we're starting you off at 6,380 petitions, and during the red phase which is pre-institution we have essentially 1,000 that are still open, 777 that have settled, a few dismissed, a few requesting adverse judgment, and again 1,357 denied; about a third of the petitions when you look at that number.

After that we've instituted about two-thirds. That's the large blue bar and then again there's been some joinders. There's 653 open cases, and bottom line on the far right-hand side only 22 percent of all of the petitions that we have ever received from the beginning of time have ever reached final written decision; 1,416. And we had initially focused at that very far right-hand side and the entire patent community would focus that on the fact that once you get to that phase the vast majority of claims are held unpatentable, but the point that people I think are missing is that, again, to get to that final bar on the far right, a third of the cases go away because they don't get instituted, and if you look

at post and pre-institution settlement, that's around 25 to 30 percent, too, so maybe another third, so those are the two hurdles that you get over before you get to the final right-hand slide.

We did show this briefly -- just this slide -- sort of a sneak peek at the PTAB Bar Association this morning. Apparently it ended up on Twitter within about 15 minutes, and the verbal feedback that I got right after the talk was very, very positive. They like seeing the entire timeline, and it seemed to address their major issues that we're now looking at it by petition as opposed to by claim, and we're including all the open cases as well and not confusing them.

MS. JENKINS: Well, I hope you gave us credit.

MR. RUSCHKE: We did. I actually said we previewed it at PPAC. Absolutely.

MR. THURLOW: It's much easier to understand, so thank you.

MR. RUSCHKE: And that's the end of our presentation.

MS. JENKINS: Peter?

MR. THURLOW: No, I'm good.

MS. JENKINS: Bernie? You were there. You were on the panel, so you didn't hear his presentation. Were you on the same panel?

MR. KNIGHT: David went first and did a great job.

MR. RUSCHKE: Thanks, Bernie.

MR. KNIGHT: And he did mention us, by the way.

MS. JENKINS: Oh, good, good.

MR. THURLOW: The question I do get -- is there any -- we went through the quick fix. We went through the substantive rule changes. Is there anything in the mix to consider additional rule changes?

MR. RUSCHKE: Well, we certainly have to worry about the two-for-one potentially, but as I said this morning and I think I've said to you, we realize that there are issues out there; the amendment issue, the serial petition issues, due process, even claim construction standard. All of those things we are still looking into. I don't think anything is off the table at this point, and it's always there to be improved upon;

processes, substantive as well, and with the ultimate goal of fairness and efficiency.

MS. JENKINS: Anyone else? Thank you.

MR. RUSCHKE: Thanks, Marylee.

MS. JENKINS: Again, theme -- fewer PowerPoint slides but very helpful and appreciate that you listen to us. Drew, you want to just close a little bit, and I'll wrap up.

MR. HIRSHFELD: Sure. So I will keep this very quick since we're way overdue. I think great PPAC meeting. I -- as I know, everyone else in this room seems excited about next steps and what we can do, so we're looking forward to that as we proceed forward.

I'd just like to congratulate the two of you; Marylee and Mike for your new roles and welcome our two new members, Bernie and Jeff. Very happy to have you on this really great group of PPAC members so thank you for that, and I'd be remiss if I didn't mention at least my deputies who are here who I think is an absolutely fabulous team, and one thing that I always feel really good about is I feel like they make decisions based on what's right for the system and there's no egos

at all in our group, so I think together we'll be able to accomplish a lot of great things. So, thank you very much. I hope you had a great -- I think we had a great meeting.

MS. JENKINS: Thank you. I just want to close. I appreciate the comments. Really look forward to the -- as Dana was saying -- new, improved. Look forward to everyone's participation. I think this was a good meeting, so let's continue and keep the ball moving forward, so I'm going to move and will someone second?

MR. LANG: Second.

MS. JENKINS: Thank you, Dan. So adjourned. Thanks.

(Whereupon at 3:05 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

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

(Signature and Seal on File)

Notary Public in and for the Commonwealth of Virginia

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