UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, November 9, 2017

PARTICIPANTS:

PPAC Members:

MARYLEE JENKINS, Chair

BERNARD KNIGHT

JENNIFER CAMACHO

MICHAEL WALKER

PETER THURLOW

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MARK GOODSON

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BOB BAHR

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RICK SEIDEL

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ANDREW FAILE

Union Members:

PAMELA SCHWARTZ

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PARTICIPANTS (CON'T):

VERNON TOWLER

Other Participants:

MARTIN RATER

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DANA COLARULLI

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P R O C E E D I N G S

(9:00 a.m.)

CHAIRWOMAN JENKINS: Good morning. Call to order. I'm Marylee Jenkins, I'm Chair of the USPTO PPAC. Thank you for coming. I can't believe it's already November. The year has passed so quickly but we've had so many exciting and new developments and initiatives going on and we look to next year for being another exciting year for PPAC and for the Office.

I just want to touch a little bit on why November is important to us as a Committee. We work throughout the year. As you know, we have multiple meetings and quarterly meetings with respect to the public, and we meet now by telephone pretty regularly. Each subcommittee has a monthly call to try to stay more on top of issues and communicate more with the Office. We greatly appreciate the Office and everyone involved in that. I think it's been going very well this year and we look to continue to do that and look for better ways to communicate and get the message

out to stakeholders.

November is also an important month for us because this is when we publish our annual report. It will be published at the end of the month. Jennifer has it. It's a reduced-down version from last year. I'm promoting this, Mark. Everyone should read our report. (Laughter) Actually, we start in August. It's an accumulation of what we have done over the year obviously with the PTO, each of the topics. We focus this year particularly not talking about everything and all the great things that the Office is doing but on key issues that we felt as a Committee were things that we wanted the public to also focus on. So, this is our great report.

If you do not have the patience to read -- I think we're down to, I don't know. How many pages were we up to? 89. We were over 100 last year so we got down to 72, okay? So, that was in the hopes that people would read our report. If you don't feel inclined to do that we have an executive summary at the beginning with our recommendations. It's not

as long as 77 pages, but we really encourage everyone to read that and give us your feedback on it.

One of the other initiatives that we've been doing this year is getting more user feedback during the meetings and during the year. I greatly appreciate the stakeholder community coming out. We have received many letters, much input. Everyone has a different issue and we do listen, we do read it. We hope to continue to do input during this meeting. So, Mike and I -- Mike is not helping me because we get so many emails and so we will be trying to include your questions during the meeting. So, please appreciate that we want to keep the meeting going so we'll do our best to stay on top of it and get all of those burning questions out there.

With that, I think I would like to introduce who is sitting at the table and then we will transition to Joe. So, Bob, do you want to start us?

MR. BAHR: Sure. Bob Bahr with the

USPTO.

MR. POWELL: Mark Powell with the USPTO.

MS. MARTIN WALLACE: Valencia Martin Wallace, USPTO.

MR. SEIDEL: Rick Seidel with the USPTO.

MR. KNIGHT: Bernie Knight, PPAC.

MS. CAMACHO: Jennifer Camacho, PPAC.

MR. WALKER: Mike Walker, PPAC.

MS. JENKINS: Marylee Jenkins, PPAC.

MR. MATAL: Joe Matal, USPTO.

MR. HIRSHFELD: Drew Hirshfeld, USPTO.

MR. FAILE: Andy Faile, USPTO.

MR. THURLOW: Peter Thurlow, PPAC.

MR. LANG: Dan Lang, PPAC.

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

MR. GOODSON: Mark Goodson, PPAC.

MR. SEARS: Jeff Sears, PPAC.

MS. FAINT: Cathy Faint, PPAC.

CHAIRWOMAN JENKINS: Great, thank

you. Just one more thing. I just want to thank the Office. This has been an interesting year for the Committee. We have done a lot of change within the structure and the Office has been incredibly supportive in helping us make those changes to address stakeholder issues and concerns and to hopefully provide better feedback to you all. We greatly appreciate that. We greatly appreciate the Office's response to helping us do this report and answering all of, as I sometimes say, my stupid questions when I don't exactly understand what is going on. The Office has incredible patience and I personally want to thank them for all that effort.

I also want to thank the Committee. It has been a great pleasure being Chair this year and the Committee had just really stepped up. The energy, the enthusiasm, the commitment is something I personally appreciate, so thank you all. I look forward to next year.

So, with that I now thank Joe. And

I must do his title. Joe Matal, who I like to call Interim Director -- that's just my personal calling of Joe -- performing the functions and duties of the Undersecretary of Commerce for Intellectual Property and Director of USPTO.

MR. MATAL: Thank you, Marylee. Interim Director isn't actually my legal title, it's just the one that the Supreme Court happens to use because they found the official one too clunky for their opinions.

A couple of announcements for the group. First and foremost, the Patent Office Society recently celebrated its 100th anniversary. They held their ball on Saturday. As many of you know, the Journal of the Patent Office Society, a longstanding publication, is frequently cited in the U.S. Supreme Court and in other courts in patent cases. The organization had many judges and other prominent members over the years and is probably the premier social organization for the Patent Office, has held a lot of sparkling events. So, we congratulate the PTOS on its

100th anniversary.

A quick update on the Shared Services Initiative. There is really nothing to add since our last session. The matter continues to be under discussion with the Commerce Department. I feel constrained in what I have to say publicly. I think my interlocutors at Commerce would probably appreciate if it doesn't end up in Tom Stoll's write up of this event. I'll simply emphasize that PTO places a top priority on delivery of the highest quality IT management and hiring services to us, hiring the best examiners we can, and keeping our IT system up and running 24-7 is our number one priority and everything else pales in comparison to that. The downstream effects of any diminution in the quality of those services renders upfront savings, trivial in comparison.

I'll also note that we recently heard from the UK, Canadian, and Australian IP offices which have gone through a similar thing and have been pushed into similar types of collectivized administrative services

initiatives. I guess this seems to be a fad in the English-speaking world, something the management consultants must be pushing. But we heard that their experience with the program was unsatisfactory, that they saw a diminution in the quality of services, and that's definitely something that has colored our thinking. But that's all I can say for now about shared services. We continue to be in discussions and no decision has been made.

I've been asked to talk briefly about the Oil States case pending before the Supreme Court. We have two IP cases, patents cases, that will be argued before the Supreme Court on the 27th, Oil States and the SAS Institute. I continue to maintain that we're going to win the Oil States case. I've now seen Solicitor General Francisco's brief, it's excellent and makes a compelling argument for why PTAB trial proceedings are constitutional, that I'm confident the Justices won't be able to ignore.

I should note that this has come up in some of our internal discussions. By

coincidence I happen to be the associate solicitor who was assigned the Article III challenge issue the first time we were sued on this theory in 2014. I actually read all of these boring old Supreme Court opinions about the scope of Article III's limits on the ability to assign issues to administrative agencies, so I make my prediction with at least a knowledge of the case law. The case law seems pretty well settled and, again, my conviction that we'll prevail in this case is only further reinforced by the SG's brief.

People have asked, well, what are you going to do if you lose? And what are we going to do if a meteor hits the earth? We don't make contingency plans for every remote contingency, but I will note in passing that this is something that people forget. Two-thirds of our Board judges actually focus on the ex parte appeals, not on the AIA trials. So, two-thirds of the work would at least initially appear to be unaffected even if we got the worst possible outcome in this decision. And, of course, our judges are of

the highest quality and there is plenty of other work to do at the PTO so we're confident we'd find other roles for them in the event of that remote contingency.

We also have the SAS case being argued on the same day, a case that's a little less momentous for the PTO. But I look forward to attending those arguments in person. It will be an exciting day for the patent system.

A few other minor things to note. In the past I've talked about the Board's developing juris prudence governing serial or repeat petitions, multiple PTAB challenges against the same patent. I'd like to highlight three PTAB decision that were recently made informative. Unified Patents v. Berman, Hospira v. Genentech, and Cultec v. StormTech. There is a Law 360 article from October 30th about these decisions. But these decisions, again, which have just been made informative as kind of a guidepost for where the agency is headed, highlight the level of the Board's practice at the institution stage

of giving deference to the examiners' determination when an issue was fully fleshed out in examination and the relevant prior art issues were fully and accurately explained to and considered by the examiner. The Board effectively does give deference to implement §325 D's mandate that the Board take into account whether the same issues or substantially the same arguments had previously been considered by the Office.

So, for those of you who are concerned about the issue of serial petitions I commend those cases to you. They indicate how the Board through its own internal common law process is developing rules to address this issue in a way that I hope will substantially address some of those concerns.

I also had hoped to announce today that we'd be releasing a new standard operating procedure that addresses some of the issues of harassment through PTAB trials that we heard about occasionally from stakeholders. Petitions filed by hedge funds or by law firms simply sending a patent owner a draft petition

and demanding a settlement; all cases where the potential petitioner doesn't seem to have any legitimate interest in the technology in the case. We're developing a standard operating procedure to address that issue but we still have some implementation issues that we need to address. So, for those of you interested in that particular issue please continue to check the Board's website. Something should be up shortly to address that issue.

And finally, I'd just like to highlight how important IP has become in trade policy in this administration. This administration has made a real effort to negotiate a number of our trade agreements and PTO has been able to play an active role in advising the USTR and other organs of the executive branch to ensure that our patent, trademark, and copyright owners' rights are respected just as fully abroad as they are at home.

I'm proud to announce that PTO actually recently sent a detail to the Office

of the Intellectual Property Enforcement coordinator and we're actually in discussions to send another. We're very happy to have our people in the White House to emphasize the importance of trade issues and ensure that they're given priority in these trade negotiations.

So, that's all I have for you now, folks. I'm happy to answer any questions, but I'll hand it back to you, Marylee.

CHAIRWOMAN JENKINS: Does the Committee have any questions? I do want to share with respect to -- and, again, I want to keep calling it Shared Services, I know it's called Enterprise so bear with me. The Committee did feel that it was imperative for us to respond to the initiative that the Department of Commerce was putting forth with respect to Enterprise Services. So, in our report, which I know you're now going to read, we sent a letter to Secretary Ross as well as to Joe with respect to our concerns regarding Enterprise Services. So, that will be readable once our report is released at the

end of November. So, please take a look. We also got a response. Secretary Ross sent us a response with respect to our concerns and acknowledging our concerns so we were very appreciative of that as well. We will remain vigilant in this area.

MR. MATAL: I know this is an issue of great interest to the IP community. As I've attended events around the country I've personally gotten an earful from various patent owning companies about this issue and their views on it.

CHAIRWOMAN JENKINS: Peter?

MR. THURLOW: Thank you very much, Joe. I appreciate the comments. With the President in China and the importance of intellectual property and the international global IP system is there a specific -- for members of the public we say the administration, the Patent Office is working with the USTR on these particular IP issues is very critical. Is there something more that we can look at to share with the public that says here are the specific concerns rather

than just saying patents, trademarks, copyrights, trade secrets? Are there more specific issues that we can share with the public or cases or something else a little bit more definitive?

MR. MATAL: You know, there is but I'm hesitant to make that decision as to what to disclose. Shira Perlmutter, our head of International Affairs, I believe she's joining this meeting later -- oh, she's not? Okay. Well, is someone from OPIA coming?

CHAIRWOMAN JENKINS: Yes, Karin.

MR. MATAL: Oh, Karin. Karin Ferriter, the Deputy over there. She has a better sense of what we can disclose publicly and what we can't. PTO personnel are directly participating in a lot of these negotiations and some of the issues are closed to the public. Our stance on these issues and the importance of IP should be obvious to all.

CHAIRWOMAN JENKINS: Anyone else? Joe, thank you so much. I also want to thank Joe for his leadership for PPAC. We appreciate your support and we are here to

support you and keep moving IP forward, and keep moving the USPTO forward.

So, with that, who is next? We're doing a joint Quality Operations update. That's very exciting. Okay. We also tried to change up the agenda so if you notice there are certain tweaks to the agenda, we are trying to make it more user-friendly in a sense. So, with that.

MS. MARTIN WALLACE: Thank you, and good morning to everyone. Our first presentation today is going to be from Marty Rater, Chief Statistician. He's going to discuss with you a survey we did internally with our patent examiners, the Application Readiness Survey, which looks at the application coming in and how ready it is for an examiner in the examination process from the point of view of the examiner. So, I'll pass it on to Marty.

MR. RATER: Thanks, Valencia. Good morning, everybody. We're going to breeze through a couple of these slides. You can read those at your leisure. We want to get to

the data and we actually want to present a few questions that we're kind of asking and how we're going on with this study, and I think that's going to be an exciting topic for some of you all because we've heard from you in the past.

A quick overview. Historically OPQA and the Quality Program here has pretty much looked at work product. We've dabbled in the world of some case studies, some ad hoc studies over the past couple of years. We've historically looked at customer perceptions, we've looked at examiner perceptions. But all of our work was primarily related to the work product and the office actions being generated by the patent examiners.

So, going forward, we've been looking at this big quality more of a perspective and looking at all the different touchpoints in this system. We know there is a lot more that goes into quality than just the clarity or the correctness of an office action you receive. So, one of the things we've head over the times when Drew comes back

from meetings, Andy, Valencia, and you all, the PPAC Committee, has mentioned this in the past is well, how can we help you improve quality?

So, one of the topics that we thought we'd explore first is looking at what is the product that the examiners have to start with and looking at maybe some attributes of application and how ready are they for application and what are the impacts that they may have on perhaps timeliness, perhaps quality, or some other dimension of quality or timeliness that we haven't even considered yet.

So, in doing that first of all we kind of came up with a very vague description of application readiness and this is where we started out. We really wanted to just start out with identifying which attributes kind of relate to this patent application that examiners might say, hey, this has an impact on my efficiency or how well I can do it in terms of quality. We didn't specifically go out and ask our examiners what attributes

drive quality and how much does this change quality or does this increase timeliness or reduce pendency; we wanted to just say, hey, if these are presented to you in an office action or in an application how well is it to work with in terms of a broad definition of efficiency and effectiveness?

So, what we did is actually some focus groups first and identified 29 attributes and they're all listed, we'll show them on a slide. We're not going to spend time with me reading through all 29 attributes today. So, about April 2017 we did a survey, about 850 examiners participated in this survey. We basically asked them to evaluate 29 attributes. The attributes were in some broad categories, whether it was in the spec, whether it was in the claims or in the IDS. We asked them to say, well, hey, how important is this to you? We asked them to rate each attribute on a scale of 0 to 10 where it's not necessary for me or it's almost essential. And then we said, well, how often do you see this in the applications you examine? We

asked them to rate that from almost never to almost always. We did not ask them to rate a specific application. This was their experience over the prior three months or the periods (inaudible). Now, that's not saying an examiner didn't consider the application that was right in front of them or they're still holding onto kind of a little bit of a dogged application they may have seen a year ago or a fantastic application that they saw last month. So, we'll have a little bit of a bias.

Then what we did is kind of looked at the gaps and said, okay, this is maybe a high importance and it's being met in the applications we're seeing, or is it a high importance low frequency how often we see it? Just to give us an idea of where we might want to go so we could come back to you all and say this is what our examiners are asking, and at the same time internally take that data and stat seeing does this correlate with some sort of actions, quality of actions, or does this correlate with some sort of timeliness factors

that we can measure?

So, again, I mentioned the attributes. You can see we had 16 in the specifications arena, we had 9 in the claims area, and we had 4 in the IDS. These little numbers there that I've put next to you, you'll see the value of that in a minute or as you read this on the train ride home this evening.

This is just a very high-level summary of what the top needs were. We took those 29 and you see we did a wonderful job of synthesizing it down to about 15 items for you. I know that doesn't give you much but this was the top needs. What you're going to see is in that need category, again, the scale of 0 to 10, these were the items that basically 7.5 or higher was that scale of 0 to 10.

We'll tell you, just like any survey we do, when you ask somebody the importance and they know that we're going to share this data back there will be a bias of saying everything is important because there is

always that hesitation to say something is not important and that means you might not provide that again for us in the future. So, there will be a slight bias upwards on the need and how important it is.

Then on the experience, again, this is just basically the average of those 850 examiners. You can see there are gaps. You've got some gaps where the need exceeded the experience by 4 on this scale, sometimes you get one there on the specs, the detailed description of the invention, where the need is right there with what they're experiencing. So, again, different scales but you go, okay, let's move on, not a big gap there, move on.

This is Marty's handy-dandy summary for you so that you don't have to look through 42 pages of data. This is a crosswalk of all of these items. Again, you see the black dotted diagonal line there, that's the perfect need meets perfect experience. That's 1:1 ratio; for everybody that rated this a 2, they rated the other aspect a 2 as well and being met. We didn't expect that. Again, like I

said, on the importance it's going to shift to the right and shift to the down and that's exactly what you see there.

Then I've plotted a red line because this is where we start seeing large gaps between importance and performance -- or expectations. What you'll see really, what centers around, you'll see all those labels plotted with the Cs. Primarily that's the claim items that we had in these attributes. We'll go back to the claims. C4 is one of the ones, claims that are directed to the inventive concept, not broader than the inventive concept. And you're going to see also IDS, I think it's I1, IDS that includes the significance, relevance of each citation. If you go back you'll see that I1 is down there. It had a rather large gap because on the needs side it's over on the farther right at a 7, and experience it's still down there at a 2.

This is very preliminary. We're not saying anything is good, bad, ugly, indifferent about this. This is just our

preliminary discussions to see where do we stand before we move forward.

So, what are we doing to move forward? Well, first of all this was a perception. Perception is reality, you understand. But it was for a totality of cases that examiners are seeing. We want to confirm these examiner expectations and their perceptions that they put in there. Very much like what we see any time we go out to customer perceptions of examiner quality, we know we have certain customer bases that drive their opinion based on that case they saw three years ago and it left such a bad taste that they can't get over it. Is that the same thing that happened with maybe an examiner? Did they get a certain application that is still driving their perceptions?

So, we want to get in and kind of confirm that by looking at some applications and figuring out are these realistic and perceptions that we can drive? We want to identify some best practices and some applications that examiners have said we want

to see this and we can quantify and actually see some applications where these best practices were put in place. And then if we have value in all of our work we're going to do, establish some sort of monitoring program of application readiness or quality and incorporate that into our big quality assessment program.

So, this is really why we wanted to present it to you all this morning was these are the questions we are starting to ask, and we have a team starting to explore all this, and we'd like to know what other questions we should be thinking about, what impacts or what opinions you may have on some of this data. So, first and foremost, what's the best way to quantify readiness? We can say, hey, we'd like to see this but is there some value in asking that? Because keep in mind if we identify the examiners want this and we go back and ask you all to start providing that in applications, if there's no impact on timeliness, if there's no impact on quality, it gets harder for us to ask you and show you

what the benefit of that ask is.

So, obviously timeliness and quality are the big things we're looking at. We'd be interested in knowing what other dimensions we should be measuring. We know there are other things other than just quality and timeliness that make up the totality of satisfaction of examiners as well as applicants.

So, what are those? As I mentioned, we want to make sure are we looking at things that are occasional troublesome problems or is this a systemic concern? We want to maybe throw some of the applications we can't quantify up into our big data environment and see how prevalent these behaviors are throughout the entire population of applications. These are things we want to look at. And then, finally, is this something that applicant can effectively address? Again, we don't want to come out with recommendations, we don't want to have unwanted asks, and just like you offered to say what can we do to help us, how can we assist you in return for providing these

things that we may find valuable.

So, that's where we're at on this application readiness. Over the next year we're doing a lot of studies. This quarter we're starting to quantify and maybe do a review of applications to see how that quantifies and start mapping that data to actual outcomes.

MR. THURLOW: Marty, just a quick comment. This looks great. I think we've discussed this in the past, but from a practical standpoint as we file applications sometimes we have a docket of more than 25,000 active cases, clients -- I think half the cases that come into the United States Patent Office are from foreign. So, quite often we'll get the case and say get it on file and it's not as much as a view as we would like and as a budget related there too.

What I recommend for the study is for the track 1 cases, those are the cases that are deemed very important to the clients, especially if they're willing to pay the extra money and so on, so I think those cases are

deemed more application review-ready than other cases. So, if there's a way to measure application readiness from that standpoint. I can give you an example of a client application that we submitted. I think we submitted on September 10th and we got the notice of allowance just a few days ago, so that's a credit to the client, a little bit to the attorneys, and also to the Patent Office. That was ready. We knew the scope of the claims (inaudible) prior art. So, I think that would be a good thing to review.

MR. RATER: That's a great suggestion and I'm not taking notes but we have a team in the back here that's working on this study with me so they're taking notes. But that's a great control group to kind of monitor and see where we're at on that.

MR. HIRSHFELD: I'd like to jump in a little bit also. One of the topics we've discussed, Peter, and we're not there yet, but one of the potential avenues we can go with the readiness survey is to look at these attributes and try to go back in prosecution

and see what differences there were in prosecution. For example, if you have a straight translation or foreign case that's filed as a straight translation without somebody, a U.S. attorney, reviewing it can we tie that back to differences in prosecution that, for example, would be like an extra office action or to get things straightened out? And the intent there is to go back to all of you and let you know here's the cost of doing this, and that way you can go to your clients and hopefully help make an educated decision what the best path for any particular client is.

Again, I don't know if these numbers will be able to be used in that way, but that is part of the end game to what we want to do.

MS. MAR-SPINOLA: Thank you. This is Julie Mar- Spinola. So, a question I have too is whether or not -- I understand the goal, right. What I'd like to know is what will the work product be? So, for example, are we looking to ultimately have a set of best practices for the examiners or best

practices for the applicants and the prosecution attorneys? What would be the ultimate outcome of this?

MR. RATER: All of those things and even more. Like Drew said, there could be, hey, when we see this these are the types of rejections you're likely to see back. We really don't know where we're going to go. What we do know that we want out of this is we want to establish some linkage between what comes in the door and what that examiner picks up with some actual return on investment on the backend. So, whether that is any of those things, again, better quality from the OPQA perspective of this, fewer of these types of rejections, reduced pendency, all of that is actually wide open right now. That's kind of what we'd love to hear feedback on. Hey, we think there's some correlation here, if we think that's enough for us to explore it.

So, we really don't have a defined endgame yet at this point. We don't want it to just be focused on quality. We're willing to look at this in terms of driving something

else as well.

MR. LANG: I think this has potential for a lot of mutual benefit for both applicants in the Office, for applicants to better understand how they can shape their applications to result in quality work product and get it through the prosecution process more efficiently. I was going to take it a step further than Drew did in terms of looking down the road. Could we look at these indicators of input application quality, compare them to outputs at the IPR stage, you know, patents that have been invalidated in IPR, patents that have had issues with litigation over 112 issues, and see how they would have been evaluated under this process. I think that there could be some fascinating and meaningful results.

MR. RATER: And on that, Dan, like I mentioned, we're going to actually now once we figure out how to quantify this, quantify and measure some applications in the door. And our sample pool, which Peter just increased because now I have to look at track 1, is

going to include applications that have seen a bunch of -- you know, whether they have some sort of a pilot program involved and what were the final outcomes of these? Whether they ended up patents, whether they ended up abandoned, whether they maybe stopped it in appeal conference, they went all the way through the Board. So, that will be a rather large study set that we will look at to be able to measure these impacts. But that is one of our factors we're going to try to link to.

CHAIRWOMAN JENKINS: Great. Any other questions? We refer to Marty as the Data Guy. He loves data. And we appreciate that too. It is very important for I think both sides, both internal and external, to appreciate. It's a two- way street. We appreciate the fact that you're looking at this data and trying to give feedback to us, but it's also something that we need to do and get out to the user community that we also have to step up.

Who is next?

MS. MARTIN WALLACE: I'll pass it on to Andy who is going to talk about the FY17 recap.

MR. FAILE: Good morning. So, following Marylee's lead on let's try to do things a little bit different and try new things, and also coupled with a lot of comments I got from people that have attended PPAC, some of which are here in this room. I won't point you guys out. We thought we'd take a little bit different take on our stats review. As you guys remember, normally I'll come here or one of the ADCs will come and we'll show you a bunch of graphs and we'll start talking about it. What we thought we'd do this time is a little bit different and we do have all the graphs in your presentation but we actually kind of prepackaged some of the conclusions of what we saw in FY17 and we're simply going to walk through here's kind of where we ended up in the year. We'll do it that way and then the graphs are in the back that support the conclusions that we have here. So, we'll try that and I appreciate any

feedback from anyone about this particular format as well.

A big thanks to our Pendency Subcommittee; Jeff Sears, the Chair, thank you Jeff. Mark, Bernie, and Jennifer gave me a lot of great input on the presentation and things to think about so thanks very much to you guys.

So, let's get started. To illustrate the point, this is the one slide you really need. The rest of it will be talking about this slide. So, the key points of interest. This is kind of a summary of last year on some of the very high metrics that we had and I'll go into some level of detail on each one of these, give you a little bit of a flavor of how they ended up.

These are fourth quarter FY17 statistics, i.e., the end of the fiscal year for '17. Our first action pendency our average was 16.3 months. We did not hit that goal. We had a goal of 14.8 months so we're a little bit off of our first action pendency goal for the year. I'll go into the reasons

why we ended up there in a few minutes. Our total pendency was 24.2, our goal was 24.8 so we were okay there.

Very good note for all of us, USPTO applicants, practitioners, everyone, is our attrition rate continues to be low. It's at 4.1 percent and that's a pretty good attrition rate. That's extremely helpful to all of us. That means we're keeping people, we're keeping our senior people, we're keeping the seniority of the workforce, our most skilled examiners are staying. That's really good for quality, that's really good for moving cases through.

The last one in looking at our filings, our filings came in lower than we expected, and we'll talk a little bit about that as well.

So, this is the key points slide. First action pendency we missed our goal last year. We made total pendency. We're doing really well with attrition. We're keeping our people. And the filings are a little bit lower than expected.

So, we'll start with pendency. We

did miss our goal last year. There were basically three contributors to that. One is we had a hiring freeze. As everyone knows, we had a change of administration. It's not unusual at all when a new administration comes in to put a hiring freeze. This is a federal government-wide hiring freeze. We had plans in '16 to hire about 600 patent examiners. Before the hiring freeze took effect we had about 145, I think it was 144, examiners hired so we were short on that goal. So, there was a loss of what we call firepower, or resources to bear, on the applications as a result of that.

We also had been seeing from the examiners a phenomenon of the reduction in the amount of overtime that the examiners are taking to examine cases. Just by way of quick background, all overtime examiners use goes towards examining, it doesn't go towards any other activities. So, when you have a reduction in overtime you're losing a piece of that firepower to move cases as well.

We had a lot of discussion yesterday

from the Subcommittee about the whys of the reduced overtime. There is really no one contributor. We've been studying this for a while now to try to make sure we're doing accurate modeling or there are things we can do to increase overtime usage. The number is the number, so from a modeling perspective if overtime comes down in FY18 we'll simply model at that level. Behind it it's really important for us to figure out is there a phenomenon here that we can do something about or is it something that probably we won't have much of an influence on.

So, a couple of the contributing factors to reduced overtime that we're looking at is we have not hired in the significant numbers in the last couple of years that we have in other years, therefore, the seniority of our workforce is increasing. The more senior the examiner is, even though they might be authorized up to a certain amount of overtime, their salary and statutory cap only allows them to do a fraction of that. Just for instance, if you're in an art unit that's

authorized 32 hours of overtime per bi-week to do examining but you're a GS14 Step 10, i.e., a high-level primary examiner, you probably can only do about 5 or 6 hours based on your salary and statutory cap. So, as your workforce starts to become more senior more people are in that bucket, they're not able to do that much overtime. We think that's at least a contributing factor to it.

We've also looked at as pendency is coming down -- and, again, we missed our target in the first action pendency but it's still coming down -- we're starting to see phenomenon of dockets that are shorter in some areas than others. So, keep in mind there are literally hundreds and hundreds of different dockets throughout the examining corps. As those dockets start to draw down -- and we'll talk a little bit about the lower level of filings that we've had in a minute -- we're starting to look at overtime per area and starting to dial that overtime down. Sometimes shutting it off, sometimes just reducing that level of available overtime,

because we don't want to burn through those cases and have no work for examiners in that area. So, that's also a contributing factor to lower overtime usage.

So, we're looking at these things. There is no real one scenario that says here's why overtime is reduced, but the fact is that it has been slowly reduced over the past couple of years so we'll be modeling at those levels starting in FY18 so we have a good baseline.

The third contributing factor to first action pendency is we have completed our transition to our new classification system, CPC, Cooperative Patent Classification system, that I know we've reported on in several PPACs prior to this. As part of that, at the very end of that conversion we had examiners where their searches were pretty much spread out all over the place compared to what they were in USCL. So, we have a whole system and agreement with the unions where we're monitoring that very heavily with input from the examiners, and we're doing a data analysis

to confirm that their searches are in fact spread out much wider than they were in the U.S. classification world.

As a result of that, we have adjusted probably close to 1,800 examiners'' time upwards to take into account the fact that they are completely transitioned to CPC. There is a firepower draw on that as well which we model and will continue to model into the future.

So, those three things are probably the main contributors to our first action pendency missing the target in 2017.

Let's talk a little bit about filing trends. So, I mentioned that filing trends were down, one of our big results from last year. We had modeled our incoming filings, we call them serialized filings. The reason we say that is they get a new serial number. Think of that as a new case. For you practitioners those would be regular news, cons, divisional CIPs, et cetera. We model those at about a 1 percent growth. They actually came in at a little bit less than a

half percent at 0.3 percent growth. So, we're a little bit down on our incoming receipts in our serialized filings.

We'll probably be modeling a little bit lower this year and the trend seems to be somewhere near the 1 percent. Last year was a little bit lower but generally over the last several years we've been seeing somewhere in the 1 percent growth over the previous year.

Our RCE filings were down this year almost 4 percent, 3.8 percent. We're seeing RCE filings continue to come down so this was not an unexpected trend. We'll get into the Alice effects in areas like business methods a little bit later. We're seeing that actually as a big contributor to the RCEs. We've gone up the hill and down the trough and we're kind of back to pre-Alice levels in a lot of the stats that you'll see, RCEs being one of them.

We think that's generally good. Less rework on the backend, trying to reuse those resources instead of doing work on RCE to do a new case is generally positive. So, the RCE drop at 3.8 percent, we'll be using

that for modeling for this year.

On the other end of the spectrum, our design filings, the serialized filings, utility filings at about 0.3 percent. Our design filings were up this year about 6.1 percent. We actually expected them to be a little bit higher but they performed about what we thought, just a little bit lower. They are up considerably more than the serialized filings. That's going to cause us this year to start thinking about hiring more design examiners. We have just under 200 design examiners onboard now; we'll be looking at hiring up to that rate. You'll see their pendencies rising a little bit but kind of steadying out so we don't think a huge influx of design examiners is needed but we do want to chase that trend down.

Then the final thing, the provisionals, were down slightly.

Peter?

MR. THURLOW: I think just on the design filings, one area that's been getting a lot of attention, and correct me, is the

graphic user interface. I don't know if the PTO has been highlighting that or is in training on that?

MR. FAILE: The GUI stuff in design?

MR. THURLOW: The GUI stuff, yeah.

MR. FAILE: I can go back and check. I don't know - - the design filings I'm not sure exactly which areas are growing compared to other areas. That's a good point to go back and check. And it very well could be the GUI area. That's a pretty hot topic.

This is hard to see so I will do a quick summary. This is basically looking at the RCE filing rates this year. The thing to note here, this is by tech center. The change is over last year. All the TCs are down in RCE filings except for 16 (inaudible) which is slightly, slightly above -- 0.1 percent increase. As you'll notice in TC 3600 which has the business methods area that's the largest area that's down. They're down about 10 percent. You can see the RCE filings down across the board contributing to that 3.8 percent drop I talked about in the previous

slide.

CHAIRWOMAN JENKINS: Andy?

MR. FAILE: Go ahead, Mary.

CHAIRWOMAN JENKINS: Can we go back to the other slide? So, what's the next step, I guess? You're saying the filings are down but, you know, me, why? Is it because the applications getting allowed? Is it because they're abandoning it?

MR. FAILE: It would be good to get input from you guys why we're seeing RCEs being filed at a lower rate than normal. We have a lot of activity in the after finals space that we know we're resolving cases there before we get to an RCE. I'm sure that's a big contributor. I think I'm hearing some -- I think that's the answer there.

Beyond that I'd take any input you guys have for the downward trend. We've been seeing this and modeling this. There is an effect in Alice in 36 which contributes to it, but as you can see we're down across the board in each TC. So, it's not just an Alice phenomenon itself.

MR. THURLOW: This has always been a strange thing to me. This is a good thing, right?

MR. FAILE: Yeah.

MR. THURLOW: Years ago we had so many problems and this could be credit to all the work the PTO has done in the after final programs where when I first started 20 years ago we really weren't too much (inaudible) after final, now we do. We get more cases allowed. Exempt from a practitioner's point of view when I'm filing RCEs it's a good thing. And that's why the whole filing trend taking into consideration RCEs if it's lower is really not accurate. We look more at the serialized filings and even if they're a little bit up, 0.3, that's always the bigger thing to me. But this is good.

MR. HIRSHFELD: Peter, I do think this is a good thing. What we've historically done is reported out a combined filing rate of serialized and RCEs but that always seemed odd because, as you said, we want the RCE filing rate to be decreasing and to be getting these

cases wrapped up. So, we've actually bifurcated and that's why you're seeing the two numbers differently.

I do personally feel there are a lot of factors that are going into the lower RCEs including the good work by Andy and his team to have the after final programs to get cases wrapped up. What shouldn't be lost is an emphasis that we're having examiners reach out when they can to try to get cases wrapped up. If they see allowable subject matter that's not being claimed, trying to push that so that the examiners are reaching out more and being more proactive.

I do think we're still seeing some of the Alice impacts where there was a great -- after some of the case law, as you all know in here, there was a significant number of RCEs being filed. So, all those factors definitely weigh in. But I started the chat because I wanted to highlight that we also recognize that the RCE filings decreasing is a good thing and desirable and we want to see it continue with that trend. Serialized

filings, of course, we don't want to see those go down.

MR. FAILE: I like that singing in the background. That's telling me to move on, Marylee. (Laughter) I'll move on, okay.

So, talking a little bit about attrition. I mentioned that our attrition is actually in a pretty good space, 4.1 percent. That's across the entire span of employees and their entire levels of service. So, when you kind of break that up you get different numbers in different categories.

So, the first thing we look contributing to this 4.1 percent is what's our attrition rate for new examiners? That's the highest rate of attrition that we have and that's currently at 25 percent. To give you a little perspective, we range anywhere from the mid-teens all the way up to about 33 percent historically in our first-year examiner attrition so we're a little bit on the high side of that for FY17. That's always something we're looking at.

We had a good discussion yesterday

and there were some questions about the onboarding process, about the way the Patent Training Academy is dialed in there, four months in training, and the first part, is that working effectively. We tend to see a pretty high level of attrition in the first year historically. I think a good piece of that is just the nature of the job. This is a much different job than most people have either done if they're coming from a second career or coming right out of school, and there's an acclimation period for them in that first year. Sometimes people think, well, maybe this isn't the job for me.

When you get to about a third year of service, so you've been here three years or so, that attrition rate falls to 5 percent and then when we have people that are here 10 years or more the attrition rate really nosedives to under 1 percent.

So, this kind of confirms the trend that we've seen at the USTPO for a long time now, which is basically when we keep people past that third year and further the attrition

rate drops to really, really remarkably low levels. That's great for all of us, applicants, practitioners, and us, for retaining our senior workforce, bringing those resources to bear on both pendency and quality in the applications.

MR. WALKER: Andy, can I ask a quick question on that?

MR. FAILE: Sure.

MR. WALKER: So, given the low unemployment rate in the country, and I think we'll talk about maybe in the finance section about the number of new hires projected, but are you having trouble recruiting? Is recruiting an issue now that the hiring freeze has been lifted?

MR. FAILE: That's a great question. Maybe it's too soon to tell, Mike. I don't think so yet. We're planning to hire at about attrition plus a handful, probably just under 400 this year; I think at the 390 level is where we settled, which is attrition plus 50, approximately. We'll have a class coming in I believe in January so we're out doing the

recruiting, we're out doing those activities now.

That seems to be going fine. It's better for us in general to be hiring at the attrit plus a little level than it is to be hiring 1,000 or at 1,500 which we've done in the past. So, I think we're going to be able to be pretty selective in the types of people we bring in.

Just a couple of other data points. We had a vacancy opening in Denver for about 20 or 25 positions and we got 450 applications for that. And, frankly, that's not that unusual; you usually get multiple, multiple applications per position. But that's a good trend we think we'll be able to look through those people and pick good potential examiners.

So, as you guys know, and Rick is here, you can help me jump in on this, we do modeling every year. We model all our variables to figure out how many examiners we need for that particular year and we do kind of a five-year plan on modeling. After the

year ends we always go back and we check the actuals for a particular year and look at what we model to see is there anything to be learned there for making assumptions for the next year and the year after that.

So, what we learned this year for variations of the model is that we had lower than expected serialized filings. We had modeled somewhere in the 1 percent range, came in at 0.3. Modeling on filings is always somewhat historical and somewhat based on intel that we get from PPAC and everyone else about where we think filings are going. We're trying to make the best assumption we can based on that information. It's very important for us to get the serialized filings right; that's a huge chunk of our work incoming receipts. We want to make sure we get that right so we can model how many examiners we need.

We had lower than expected RCE filings. We expected them to be lower but they're actually a little bit lower than that. Then we had lower overtime usage. All of

these observations will bring to bear on the FY18 models so we're modeling at a baseline that reflects the FY17 actuals.

MR. THURLOW: If I could just comment on the modeling because we do the same thing at law firms. We don't look at it from a U.S. standpoint, we look at it from a global standpoint. So, we work with plenty of companies that have operations in both U.S. and Europe and U.S. and China, and many areas around the world. You've all read about the new China IP policy innovation and all the concerns with 101, with companies filing in China and Europe, for example, first. So, we look at it from the standpoint of one year from some blip in increase in filings and then 30 months. We try to plan out from a business standpoint what's going to happen and how we can, quite frankly, maybe take in some of those applications. So, from a modeling standpoint you may want to look at that as we do.

The other thing is why. We've discussed many times in the past is maybe on

device or apparatus claims we do file the applications in some areas, pharmaceutical, life science, I should say making the method of use, especially in manufacturing. We don't necessarily do the method of making, we'll do that at trade secret because we don't want to disclose. It's harder to reverse engineer, not impossible. It's harder to reverse engineer when you have the device compared to laying out in detail what the method is, the pressures, the temperatures, all those details. So, we'll put those in trade secret protection and then have the device to protect the overall product that's for sale. That's where the trade secrets really come up in years since I started practicing.

MR. FAILE: Thanks, Pete. So, I'll start moving through these real quick so we can get to the next presentation.

So, one of the things we're always keeping track of, particularly in the business methods area, from a stats perspective in addition to other things, is kind of the effects of Alice. The large summary here is

we're basically moving back from a stats perspective to kind of pre-Alice levels. So, let me just kind of walk through a couple of things that we're seeing.

We had kind of a lull in RCE filings and then we had a spike, and now we're kind of basically getting back to pre- Alice RCE filing levels, that's basically bullet 2. The allowance rate dropped substantially from Alice and we're basically back to about halfway to the allowance level that we were pre-Alice. So, we still have some room there to get back to pre-Alice levels but we're about halfway there on the allowance rate.

We had a spike in reopenings after the PTAB. As you can imagine, cases were up there. Alice hits and there's some rework when it comes back to the corps. We're basically back to steady state as we were before Alice. We've worked through all of those sets of cases.

One trend that we are seeing that does not seem to be coming back, that has at least steadied out for at least the time

being, is the decrease in new applications or serialized filings in the business method area from about 1,300 a month pre-Alice to currently about 975 a month. So, as we're monitoring those trends we don't see that balancing back quite the way some of the other stats have.

Track 1, I'll call it Mark's program, Mark loves track 1. He's an avid user and gives me all kind of good feedback on the program. We still see great stats in track 1. I hope everyone else is experienced in using the program matches what the stats say. Average time from filing to petition grant, less than a month-and-a-half; from the petition grant to doing the first action, 2 months, very fast; and then from the initial incoming petition that's been granted to the final disposition, 6-and-a-half months. So, compared to average pendency for all of the cases these are pretty remarkable numbers.

Track 1 seems to continue to perform well. We bumped up to the cap of 10,000 applications per fiscal year in 17. We did

not go over the cap. We are modeling basically at the 10,000 level. It's pretty much from an application standpoint a drop in the bucket compared to the several hundred thousand applications that come in but we do continue to monitor this. We do have a 10,000 cap. If we start to go over that we'll need to take measures to raise that cap.

Patent term adjustment. As we've talked about in several PPACs now we are always monitoring our performance in the 14-44436 patent term adjustment framework. Our poorest performing category is our 14 months to do a first action. We basically had 56 percent of first actions were completed later than the 14 months; if you flip that that's about a 44 percent compliance rate with 14 months to get a case done. That is our biggest area to work on. We have kind of a five-year plan with different components to try to increase our performance compliance in the 14-month category. It will also be the subject for PPAC meetings and subcommittee meetings as I get some insight from the

Subcommittee on ways we can do that.

Our 444 categories which are very quickly the Office's response to applicants' response or amendments, our response to PTAB decisions and our response to issuing a case after payment of the issue fee. We're in the single digits, as you can see in that middle section. We're doing pretty well there. We'll continue to monitor that. There are no huge activities planned for that. Most of those resources and firepower and effort will go towards improving the 14-month compliance.

Then at the bottom, our total pendency. We had about 17 percent of the cases exceed 36 months, total pendency goal. Most of that was a contributor from the 14 months built into 36 months as our performance and 14 months; since we're out of tolerance there that's going to carry through into the 36-month pendency. The good news here is if we can get 14 months performing better the latter half from after first action to the final disposition we do rather quickly, we'll have good performance translated over into the

36-month category.

I believe the final slide, PTAB results for a high- level marker. Last year we had an affirmance rate of 56 percent, this is straight affirmance rate for '17. We had 12 percent affirmed in part, so depending on how you want to count that, that's either 56 or that's 68 depending on if it's affirmed in part or affirmed in most or affirmed in least, as people keep telling me.

We had tech center ranges from about 43 percent in one tech center to 68 percent in another. There is a graph, I believe it's the last graph in your packet, that shows the PTAB affirmance rates per TC.

Again, I won't go through all the graphs but they're there to support the conclusion we talked about here.

So, thank you, Marylee.

CHAIRWOMAN JENKINS: I don't know if I should say hallelujah. (Laughter)

MR. FAILE: I'll take it.

CHAIRWOMAN JENKINS: I comment Andy for battling through the Battle Hymn of the

Republic and every other rousing military song that we have yet to hear.

MR. FAILE: It inspired me.

CHAIRWOMAN JENKINS: And be inspired by, yes.

MR. THURLOW: As a former member of the military I especially like it. But I can never sing that good.

CHAIRWOMAN JENKINS: Questions?

MR. GOODSON: Andy, the Track 1 10,000, is that by rulemaking or statute, and should that number be adjusted?

MR. FAILE: I'll leave Bob Bahr to do the technical answer. We can adjust that. It would require potentially sitting down with the Union and talking through some issues.

MR. BAHR: A little of both. The way the statute was written is there is a cap of 10,000 except it says we can change it through rulemaking. So, yeah, Joe, it does.

(Laughter) So, we can change it but we'd have to go out with a notice and combat rulemaking to change the cap.

Now, as Andy said, we brushed up against the cap. We basically hit around 10,000 petitions but fortunately or unfortunately about 10 percent of the people who filed petitions they're not grantable. So, really we're not as close to the cap, and the cap is in terms of accepting them, not in terms of petitions. So, we do have a bit of headroom between where we are in the cap right now so we don't see the actual need to make a change right now.

MR. FAILE: What we do, Mark, is we're not just waiting at the end of the year to see if we hit the cap, we look at our monthly receipts. There's a chart in your packet that shows track 1 by month throughout the fiscal years, all the years track 1 has been in existence. So, we're constantly monitoring that and we can see trend lines, whether we're getting dangerously close to the cap or not. So far we did not see that in '17. We knew we were close but we looked like we were going to come under. It's early in '18 yet to do that. But we do look on a month

by month basis to try to get a gauge. Are our receipts coming in much more than last year because there's not a lot of headroom there, and then to the extent that's happening we'll be more biased towards looking at the cap. We won't be waiting until the end of the fiscal year to do that, we'll monitor each month's receipts until we get there.

MR. THURLOW: Bob, just a quick comment. I'm surprised that 10 percent are rejected because the initial track 1 program had the requirements and then they were subsequently softened. So, I don't know how you can mess it up.

MR. BAHR: With a large number of filings you have some people who I'm going to say will do almost anything. Incredibly, we have people who filed track 1 petitions and they just stop at the missing parts practice and never respond. It baffles me but it happens.

CHAIRWOMAN JENKINS: Any other questions? I'm going to give two shout-outs. I'm not going to sing them. We have one shout

out from Professor Crouch saying great job, Marty. And we also have a comment from Paul Ornville that I think he likes appeal better than RCE. He suggests that RCE has lost time, it does not get added to the term adjustment, it is better to appeal.

I think based on Paul's comment in particular it's always a struggle to figure out what the best strategy is and I think the Office is very good at recognizing the outside perspective that we all come at it from a different viewpoint. We may have someone who wants to spend time and money on track

or we may have a client who is a small inventor -- Paul, wherever you are -- who just doesn't have the funds to do track 1 and we want everything to be wonderful and perfect and a great review. So, I think the Office does a really good job of trying to address that. And the data is great.

Okay. Next?

MS. MARTIN WALLACE: Our last presentation on equality, will be presented by Stefanos Karmis and I'd like to introduce him.

He is the Acting Director of the Office of Patent Quality Assurance. Stefanos has been a senior advisor to our DC of Patent Administration to our DC of Patent Examination Policy, and has worked as well with the Quality shop. So, he definitely has the skills to work through OPQA until we have a permanent director in place. So, I will pass it on to Stefanos to talk about our FY17 quality findings.

MR. KARMIS: Thank you. So, as Valencia said I'm going to talk about our fiscal 17 quality metrics and also a little bit about our data visualization center. As you know, the PTO website has a data visualization center for things like filings, backlog, pendency. The quality one hasn't been updated recently partly because we switched over to a new review standard, the Statutory Compliance Standard.

So, one of the goals with the data visualization is to accomplish the bullets up here on the screen and that's to show graphical representations of the most common

requested quality metrics, provide details of quality review findings, and include some breakdowns.

As I mentioned before, we did switch over to a new standard. If everybody is not familiar with the standard I can give a little background on that and how it compares to our old standard. In our old standard we were really looking at whether the office action had a significant deficiency in it that halted prosecution or had a big impact on prosecution. So, for example, an improper 112 rejection coupled with a proper 102 rejection didn't really have a big impact because prosecution could proceed, that rejection could be withdrawn if the applicant presented arguments, could have had an omitted 101 in a proper prior art rejection. That may or may not, depending on how the application proceeds. Things like allowances, maybe misidentified claims where we could correct those later in pubs or something like that, were not really seen as big significant deficiencies but under our current standard

which is a much stricter standard we hold all that stuff accountable.

To give you an idea of what our new standard is, it's a statutory compliance standard. With our statutory compliance standard our first thing that we looked at was just the overall determination in the office action. So, was there a proper rejection or was there a decision proper not to reject in the application.

So, what you see here are the four statutory categories. These numbers were derived from about 16,000 MRF reviews, random sample of cases throughout the Office, done by (inaudible) in OPQA. For reference, all these numbers are either -- in Fiscal '17 we sent target ranges for these sort of based on Fiscal '16 data and also trying to take into account the new standard of review and other things we have going on in the Office.

All these numbers are within the

range or exceeding the range. For example, the range for 101 that was set for the Office was between 93 and 98; for 112 it was 87 to 92; for 102 it was 90 to 95; and 103 it was 88 to 93 percent. So, again, this is looking at individual determinations.

The combined case outcomes really where you see the bigger impact of the individual ones put together; it's the likelihood that all four statutes are compliant in the office action. You really see the impact of the stricter standard here where before maybe an improper 112 and a proper 102 was not considered a problem, under the stricter standard that is a problem.

So, one of the things we're looking at is different ways to take the data that we have and slice it, whether it's by TC, whether it's by office action type. In these combined case outcomes generally there's one thing that's wrong but sometimes it might be two or three, but most of the time it is one noncompliance that's affecting that combined case outcome data.

So, breaking down the data a little bit further. One of the things that we like to see is that between from non-filing to allowance the numbers tends to get better which means the issues are being resolved in prosecution throughout as we go through. Some of this stuff breaks down the numbers. I know Marty is the Data Guy, but I'm not going to go through all the numbers in complete detail here. Again, what you see for 112 is the numbers tend to get better, same for 102 and 103.

These next two slides are compliance slides based on discipline. I think maybe one of the takeaways here would be that in certain areas, like for example, mechanical probably has an easier time making a 101 determination than maybe an electrical art would, it's a much harder analysis in electrical, certain technologies may have different issues with 112. The prior art statutes, while the bars may look kind of skewed a little bit the numbers are relatively close with the consistency between the different disciplines.

I did go through that really quick. I think the big takeaway here for the data is sort of what our goal is with this data. Our goal really is to take this back end output of cases that we're reviewing and figure out how we can sort of increase the quality of the frontend work product, and sort of what this data allows us to do is find pockets of where we can train. We have upcoming 112 training, 101 training coming out. We are in the works trying to do 102, 103 training with a focus on other things like writing clear explanations or writing persuasive arguments.

The data can also help us look at the data before the training and after the training to see was the training actually impactful, did it create improvements in the data? The data also serves as a resource to the TCs for when they create their action plans. Recently for Fiscal '17 the quality leads within OPQA are meeting with the TC leads to go over some of this data and try to find opportunities where we can collaborate together on an equality effort.

This is one piece. There are other pieces to quality that I think will help boost these numbers, things like as our examiners get more used to CPC and searching in CPC as we go through our examination time analysis study.

So, that's sort of quick recap of the '17 data. Some of the feedback we'd like to hear from PPAC and the public is what sort of data you would like to see. Is this an appropriate level of data for visualization? We're also thinking about having more specific data but more in downloadable data tables. We don't want to get too weedy on a data visualization page.

MR. THURLOW: Stefanos, real quick, you can't emphasize everything but one of the things that came out in the subcommittee meetings is there is a perception in the public that every case has a 101 issue and I think it's only like, what, 15 percent of cases or something? So, if you can sing that out loud as they're doing next door, or let it sing, as Julie said at one of the meetings

yesterday, I think there's just a perception that's not correct in the public that 101 impacts every case when in fact in PTO it's 15 percent. So, I would sing it out loud.

MS. MAR-SPINOLA: I would like to commend the charts. I thought that they were very clear, so thank you for that.

A question or a thought that I had was it looks like the quality or the compliance suggests that there's quality, right. And so to your request about getting input or feedback one of the things that might be useful to the extent you have the data is if you can get the same overlapping time period between PTAB and examination and where you have the quality statistics -- maybe this is too recent, but if there's a period where you can overlap the data and see if in fact high compliance also means fewer rejections from PTAB. I think that's the ultimate, at least in my mind, measurement of quality, is that post-vetting, post-issuance vetting, and if it surveys the PTAB vetting then you probably have not only indications of quality

in the work product but probably moves the presumption of validity to validity, right?

MR. KARMIS: That's definitely great feedback. Marty, are you up here taking notes still for the data?

(Laughter)

MR. RATER: You know, that's always a tough one for us because by the time it gets to PTAB it's such a lagging indicator, small subset of cases, and then by the time you control for where those actions took. On the other side of the coin, we said okay, let's take a bunch of PTAB decisions and then review those and see where they were at final or where they were. There we need to kind of control that hindsight bias of the reviewer going, yeah, I would have caught that too. So, that is one of our tradeoffs but that is one of the things that we're trying to look at as we go to this bigger quality. It's a great point. It's a huge challenge though for us to overlay that like you suggest. It's very important to do though.

MR. HIRSHFELD: I'd just like to

reiterate that one point that Stefanos made and that's that this year and all those numbers represent a significant change in the way we've evaluated quality, and the change to statutory compliance from the standards we had earlier in my opinion puts us much closer to the way an applicant would look at a case and say what do they think is good and not good quality. So, I feel very good about where we're going. I also recognize that whenever you make a significant change, thousands and thousands of reviews, we need to do a lot of analysis of our own numbers and that's what we're involved in at this point.

If any of you have had the opportunity to go through that master review form, and I know you've had discussions of that, it is extremely extensive and there is an awful lot of information that's captured, I believe we're seeing the benefits of capturing all that information because we can be very granular in what we're doing. But just so we're all on the same page, we all, at PTO, recognize that since we've made this very

significant change we need to be able to really understand the numbers and their accuracies.

CHAIRWOMAN JENKINS: I think too, being on the outside so to speak, it's hard taking all of this information and then third-party information that then takes your information and interprets it in another way, to take all of that and try to provide good advice for a client. And every client comes at it in a different way so you really have to be very thoughtful in how you present it.

I think one -- and I'm just going to say it -- challenge that I personally have is knowing where that information is on the PTO website, and I know that's a recurring problem across the Office. So, one thing I would really encourage too is when you do these types of presentations is say this is where it is, this is where this is, several, several times because it's definitely worthwhile to know about, it's just hard to find. And I know you all know that but I just wanted to say it again.

MS. MARTIN WALLACE: That's a really good point. Thank you very much. We are in the process of putting the data sign up. We're going through our approvals and our check to have that up on our public website but we will be putting those up in the visualization center page that's been there for many, many years. So, hopefully it will be very easy. And that page also for quality will link to quality metrics pages as well that gives more in-depth information and definitions in order to give the public the background to understand what the numbers mean.

Also, I would like to just add since we do have a couple of minutes, I promise I'll be short, I want to thank the Quality Subcommittee and that is Dan and Jennifer and -- who am I missing? Where is -- oh, Marylee and Jeff because he's not here, as well as Peter who is with us for quite some time. We got a lot of fantastic feedback throughout the last year on the measures and what we had proposed and what the IP community

would like to see and how they would like to see it. It really upped what we did with our measures. So, thank you very much. The Subcommittee is just amazing. Thank you.

MR. THURLOW: Just very quick on that point, I guess we worked together on the outreach program yesterday in New York. Seeing a bunch of emails. I don't know if you got feedback, but credit to the Patent Office. The roadshows and people that can't make it down here or listen to these PPAC meetings and so on, I think it's good that PTO goes out and continues the outreach programs.

MS. MARTIN WALLACE: Thank you, yes. We're in New York right now. My association commissioner, Greg Vetovitch is there to get more feedback from the IP community out in the New York area. Thank you, Pete. You've been just fantastic in helping us to reach a great deal of people out there and get really good feedback that's helping us through this process. Thank you.

CHAIRWOMAN JENKINS: Any other questions? Thank you. I really enjoyed that

tag team, and kudos to all of you for focusing and staying on top of the issue while all that wonderful singing was going on in the background.

Actually, we're going to segue to hot off the presses, literally. Joe wants to share some hot information for us. So, go ahead.

MR. MATAL: I'm pleased to announce that today the Commissioner for Trademarks, to get into another part of the Agency, has issued a registration to Simon Tam for the Trademark of the Slants for a rock band. (Laughter) Simon had to take me all the way to the U.S. Supreme Court but he won 8-0. We're just lucky that Justice Gorsuch hadn't been confirmed yet because then it probably would have been a 9-0. So, today we are issuing the Slants Trademark. Congratulations, Simon. Sorry about the delay in issuing that registration. (Laughter)

CHAIRWOMAN JENKINS: Thanks, Joe, for sharing that with us. We're on time, thank you, thank you, thank you, with the new

agenda. We are going to segue now to International. So, Mark, are you going to start?

MR. POWELL: Yes, I will. It's a sign of excellent chairmanship to be on time, congratulations. (Laughter)

CHAIRWOMAN JENKINS: Thank you.

MR. POWELL: Thank you, and hi, everybody. For the International segment this time we have a couple of projects that we want to update you on, both of which we've discussed with you in the past but also in both of which we made significant progress over the last few months. I think it's important that we share them with you.

The first relates to the collaborative search pilots that we have been conducting with the Korean and Japan patent offices. We had a phase 1 of those and then are about to launch into a phase 2. These will be presented by my colleagues here who I will introduce momentarily. In a very broad nutshell, the collaborative search pilot is what it speaks to with an aim here of two

things: an improvement of quality and consistency but also the hopeful reduction in prosecution costs which could be incurred by having multiple offices collaborate on an invention early, hopefully saving extra rejections in various offices down the road.

We are about to launch the second phases of the collaboration pilots. Joe Matal last month in Geneva signed agreements with the heads of the Japanese and Korean offices to get those started. We are also in talks with the UK Patent Office as well as the German Patent and Trademark Office.

The second project is known as Access to Relevant Prior Art, and you all at PPAC and others have heard me say many, many times if we have access to the search and exam results of other offices, for example, why are we requiring applicants to file them again in an IDS? Part of our larger Global Dossier initiative is not only automating things and providing business solutions and that sort of thing, the broader initiative is also to examine what we are actually doing with an aim

to modernize, streamline, or eliminate processes that are really out of date in the 21st century.

Clearly, the Access to Relevant Prior Art Project is an outgrowth of that thinking. We have done a very thorough project. This project is cosponsored by myself and Deputy Commissioner Bahr, the Deputy Commissioner for Exam Policy, and it's moving along quite well.

What I will do now is introduce Jessica Patterson and Michael Neas who work for the Office of International Patent Cooperation and who are two of our key people who are co-leading this and other things here. We're also joined by Karin Ferriter from the Office of Policy and International Affairs, and I believe there may be a USTR question that was brought up earlier that when Peter comes back we can maybe circle back to you at the end.

So, with that I'll turn it over to Jess and Mike.

MS. PATTERSON: Thank you, Mark.

Good morning, everyone. Thank you for having us here today. I'm going to talk first about the Collaborative Search Pilot Program. My colleague Amber Ostrup came and spoke about this at the August PPAC meeting so I'm not going to go into a lot of depth on this, but I do want to just touch base quickly since we did just launch this last week for the expanded process.

In today's world we generally want faster results and lower costs along with more certainty and consistency of those results. We started the Collaborative Search Program with that in mind and work-sharing is how we achieved that. Like many of the programs and projects you hear about during the International update from the Office of International Patent Cooperation, the collaborative search program is a work-sharing effort. Work-sharing efforts are generally striving to improve the information examiners have and with most of those efforts like with Global Dossier we're sharing that information after the examiners have completed the work.

With the Collaborate Search Program we're looking to move that collaboration to the front end of the process, coordinating efforts at patent offices to provide an examination process and product that's more reliable and provides better results. When you participate in the Collaborative Search Program you're receiving expedited examination in multiple offices. Examiners are searching in their native language and in their databases and with their expertise and sharing that information between the offices. Together this leads to an increase in quality, consistency, and certainty.

Since my colleague provided a presentation on the findings from the initial CSP Program I'm not going to go into too much detail on the lessons learned, but I wanted to give you information on how to access that. I must have been reading Marylee's mind since I have provided screenshots on how to actually get to the CSP website.

From the USTPO homepage you'll just hover over the Patents' dropdown. You'll see

the International Cooperation, you'll just click on that. Once you click on that you're going to arrive at the OIPC homepage, and the Collaborative Search Program is the first initiative that's listed there. So, once you click on that you'll go right to the CSP page.

I'm going to talk very briefly about our expanded CSP Program. So, earlier this week on Monday there was a press release that talked a lot about this. It also provided a link to the Federal Register Notice that was published last Monday on October 30th which has a lot of detailed information about the Program. Our expanded CSP Program officially began last Wednesday with both Japan and Korea and it's going to continue through 2020. The Program will allow 400 petition requests per office per year, and we are looking at expanding this program, as Mark mentioned, to some other iP offices.

One quick shout-out that I'd really like to make is to POPA. Our team has expressed repeatedly that the great collaboration efforts between POPA and our

team on this program played a large role in us being able to actually kick it off last week.

Both during and after the initial CSP Program that we had for the last two years there were a lot of lessons learned. From those lessons we developed the expanded CSP processes. This time there is only one common process between the participating offices, so no matter whether you go through JPO or KPO it's the same process. As you may recall, in the initial program you had a different process depending on which office you went through.

There will be fixed timeframes this time throughout the process which we anticipate will reduce delays that are unnecessary and these timeframes have been agreed upon my all of the offices. The initial CSP Program was dependent on the first action interview program. We did find there were issues with that so we have removed that dependency in expanded CSP.

The search and evaluation will be occurring between the office before the first

action on the merits. So, the next slide is going to show you a process flow. This might be a little small on the screen. We do have this flowchart on the website but I think it does a good job to help visualize what this expanded process looks like. So, once the petition has been granted in both offices each office will be conducting a search and evaluation and then generating search results which will be exchanged with the other office. So, if you're participating in the program and you have a petition granted in both the USPOT and the JPO, for example, our examiner is going ot conduct a search and evaluation, JPO's examiner is going to conduct a search and evaluation, and then we're going to share those between the two offices. The JPO's examiner's' search will come to our USPTO examiner and our USPTO examiner's search will go to the JPO examiner.

The goal is for that initial process to occur within four months of the petition being granted in each office. Once that initial exchange between the offices has

occurred those offices are going to reevaluate the search results in view of what the other office has done. So, the USPTO examiner is going to look at what JPO has done and evaluate that and make any necessary changes in their action before they send out the office action to the applicant.

So, when that first office action on the merits is completed and sent to the applicant it's going to include the references cited by the partner office. The goal is for the applicant to have the first action within two months of those offices exchanging the search and evaluation results. So, within six months from the time the petition has been granted you should have a first action on the merits.

Application eligibility to join the expanded CSP Program is that it must be national stage application. It can be either a 371 application or a regular U.S. filed utility application. The key thing is that examination must not have started in either office. In order to ensure that the prior art

is applicable in both offices applications must share a common priority date, and if additional material is added at a later date the information must be disclosed simultaneously to both offices.

This program is free to join and applicants need to file a petition with the USPTO and request to petition a partner office.

When filing CSP petitions you can do that through EFS-Web here at the USPTO and then you need to file the petitions in the other offices that you're requesting within

days. You can file both USPTO and JPO -- well, actually I guess it's three, it's not both -- you can file in all three offices. So, you can do JPO and Korea and USPTO at the same time.

I would like to note that with the USPTO petition in this program you will be waiving 35 USC 122 because we will need to share that information that's unpublished with the other office. Again, the examiners will be considering the references that have been

received from the other office in the exchange and be providing a copy of that in the first action.

So, participating in CSP often requires a change in thought process for applicants with regards to filing strategies. One of the biggest hurdles that we've had when we discussed this program with applicants is that it does require the applicants to think a little differently about how they want to do their national stage or their national filing strategies. Many time there are applications in multiple offices that are about to undergo examinations simultaneously so the discussions with applicants is how do they file these in a way that allows them to take advantage of these programs. We recognize that it's often difficult for applicants to change their work processes but we think that the advantages in this program are substantial enough that it warrants taking a look at your processes.

In summary, with CSP we have acceleration at no cost, it's free, and the goal is to provide applicants with a first

action with foreign search results within six months.

So, here is some direct contact information for the folks in my office that work on this. I do encourage you to reach out if you'd like more information.

MR. THURLOW: Jessica, just a question on that. My sense is this program is not being utilized as much as it probably could. Is that your sense too?

MS. PATTERSON: Yes, it is. Yes.

MR. POWELL: I was just going to add that myself.

MR. THURLOW: When I first started many years ago I was an associate handling Canon's portfolio. Have you done some targeted outreach to those companies, Samsung in Korea, Japan?

MS. PATTERSON: There has been some targeted outreach being done. I know Amber and Dan, both who are leading this project, have done that. We did fine. We didn't reach the ceiling in the first initial phase. We had a lot of issues with not being able to get

a lot of participation. That's why some of the processes in this particular version of CSP have changed. But one thing that we've been asking and we would love PPAC's input on is how can we better market this. If reaching how more direct to different companies would be useful we're certainly open to that. I know I'll pass that feedback back to Amber and to Dan.

MR. THURLOW: I think the bigger companies whether it's -- forgive me, Marylee knows Japan pretty good, I think, Takeda Pharmaceuticals -- there are some big filers from Japan whether it's Canon or others and obviously Korea, so that's what I would recommend. Each of the different organizations I think the IPO just sent a team over to China. This isn't relevant to China, but I know in the New York Bar Association we have a team that goes to the EPO and JPO so I'll make sure that for JPO I'll share this information with them.

You've been great. I know you've been up to New York a few times and travelling

like everyone else, but maybe more targeted.

MS. PATTERSON: We have certainly been evaluating that. We've recently put together a detailed communication plan on how we intend to reach out to different sets of folks to try to market this in a better way. Thank you for your feedback

MR. POWELL: I would just also jump in. Eleven years ago we started the PPH and it was a little slow to catch on. Work with the ALPLA helped out a lot. Alan Casper with the ALPLA became sort of the private sector advocate for the program, so we were working closely with the ALPLA, IPO, and others. Something that has to be advertised.

The IP community can tend to be a little conservative, they want to see somebody else go first or whatever. But I think in the end, just like the Patent Prosecution Highway Program it may not be for everyone but certain advantages such as consistency and really saving prosecution costs, that's the key driver here. The word will get out eventually and then we hope the program picks up.

MR. THURLOW: I'm not disagreeing with you, Mark. The only thing about prosecution cost is that we normally budget a year in advance what's going on for next year and if this is something that may be not budgeted for because that would present a concern I guess. Because, for example, the track 1 we have to give them a filing budget and then just because you're getting examined doesn't mean you're getting an application allowed.

MR. POWELL: That's true.

MR. THURLOW: In the same situation in these cases where Japan is, I think, sometimes difficult in getting applications allowed.

MR. POWELL: This is what we want to see play out. So, for example, we have heard in track 1 while there is a significant upfront cost being able to get the thing closed out in a very quick fashion, less actions and so forth, may in the end balance that out. So, that is just something we need to measure and I think we're going to need the

participation of the community to do that. Thank you, Pete.

CHAIRWOMAN JENKINS: Let me just jump in too. I want to commend the Office for going back and looking at phase

which was a different type of format with the two other offices and coming back and giving us a new phase 2 which addressed some of the pluses and minuses of the earlier phase. And I agree with Peter for his suggestions, but also this is something that people are very set in their ways in how they sometimes do patent prosecution. So, I support the idea to get the message out, this is a really good program, but you need to think differently. This is a different strategy. This is your future as a patent practitioner and this is how you're going to do your patent prosecution globally differently in the next five years, next ten years. So, if you're on the cutting edge of this you're going to look really good to your clients I think.

MR. POWELL: I think that's exactly

right. Of course, in talking to practitioners it's like well this is my business, hold on. You know, saving cost, well, we still believe that if we can reduce the marginal costs of these applications we'll be able to afford to have more applications in the system given a company's or a small inventor's fixed budget for exploitation of IP in a given year. So, try to pass that along as well as something we surely believe in. The practitioners will always have the intellectual work to do and hopefully more of it.

MR. NEAS: Just to add in, one of the things we're talking about is putting together a presentation that looks at acceleration programs we have and comparing and contrasting them. So, if you're using track 1 or using PPH today if we can compare and contrast you can see maybe why CSP is attractive and a lot of people probably aren't really readily aware of the differences. CSP is an acceleration program, we're going to accelerate the first action. We don't accelerate beyond that so that's a bit

different than track 1 and PPH. Claim correspondence requirements are quite different than PPH. It's just the independent claims now, it's just to first action, after that it's whatever you want. That's different than PPH. So, I think there are some sales that we can do by putting these programs side by side.

CHAIRWOMAN JENKINS: Dan always brings up the first interview prior to first office action as something that -- and I'm astounded when you look at the stats because so many people don't use that. So, I know one comment from the user community that I've gotten is there are so many different initiatives going on with the Office, can you put them all in one spot on the website and highlight them. Even though we sit and say, well, we've been doing this for years, you know, a lot of the user community just don't appreciate that.

MR. POWELL: Well, that's one thing that Drew has been urging us to do is have that one slide with the different programs on

it. There are advantages and disadvantages or lack of advantage to each one given who may or may not use it, right? But I think the one thing we're doing is providing more options and avenues in particular ways. But I think overall it's a process of just letting the public know what's there, how it works, why it might help you.

MR. HIRSHFELD: We had had a patent's initiative page just devoted to -- and I was just trying to find it really quick and I wasn't able to locate it. (Laughter) But we will go back and make sure that that is up to date because that is exactly what's being discussed. I thought it was a wonderful one-stop shop to see what's similar and different about all of these programs. We will take that as homework to go back and make sure that's on the page.

MR. POWELL: Great. Now I'll turn it over to the team for the second part of our presentation on access to relevant prior art.

MS. PATTERSON: Thank you, Mark. One thing I would like to note about this

particular project is we have a very large team on this project that has included multiple business units inside of Patents as well as the Office of Policy in International Affairs and as well as POPA on the team. So, we wouldn't have made the success that we've made so far if it weren't for all those folks working together.

After the release of Global Dossier, as Mark mentioned, we saw an increase in questions from stakeholders about why they needed to cite certain things on an IDS that the USPTO already had access to. At the USPTO not only do we value the feedback that we get from our stakeholders, we're also continually looking at ways that we can increase patent quality and examination efficiency.

So, in the late spring of 2016 we began to investigate whether or not we could automatically import information into pending U.S. applications at the earliest point in examination. We recognize that there's a lot of information, a lot of prior art, outside the file wrapper today, often that's even

outside of our examination systems. Currently when prior art gets into the application the primary way is through information disclosure statements and examiner search reports.

So, we're taking a look at many electronic resources such as Global Dossier, the common citation document, our internal IT sources, to see how we can retrieve information that would be relevant to an application under examination and bring it into that file. We envision that this would lead to a potential reduction in an applicant's burden to comply with the duty of disclosure.

So, our outreach efforts in 2017 focused mainly on examiners, but I did want to include a few bullets on the outreach that we initially did with external stakeholders. My colleague Mike and I, in probably June I think of 2016, maybe late May, went to all of our regional offices and met with small groups of external stakeholders and conducted focus sessions basically just asking what do you think about this idea, how would it need to

work for you, and just get some initial input.

From those focus sessions we developed a Federal Register notice that was published in late August of 2016 which formally announced this project, announced a public roundtable which we held on September 28th, and a written comment period which ended on October 28th. All of those comments, the livestream from the roundtable, and the Federal Register notice are available on our website which unfortunately I did not put a screenshot of that in this part of the presentation, but you can contact us. Our contact information is in there and we'll give you a direct link.

This year we focused on our examiners. So, we did examiner focus sessions, those were smaller groups, in April of 2017. From that we expanded those focus sessions, conducted additional ones in June, and used all of that input to develop a survey that we sent out to all of our examiners, except for those design examiners, in September of 2017. We received over 5,000

survey responses and we are still in the midst of going through and analyzing all that data.

So, we aren't trying to come up with solutions to automate a paper-based system, but rather to think about what the solution should look like in an electronic age. With the various sources of prior art available we want to simplify a process of getting it into the application file in a manner that is easily searchable or reviewable by the examiner so that it can be considered with minimal effort on the part of both the applicant or on the part of the Office to get it into the file.

So, as I mentioned earlier, we've been evaluating multiple data sources. We're looking not only at what we can retrieve from these sources but what kind of format is that information in. So, is it in an image-based, is it in a text- based, what kind of format are we looking at?

We've also conducted application case studies and looked at more than 400 cases where prosecution has ended to see what would

have happened if the automated system were in place. What are the potential effects for prosecution and for examination? So, for example, would examiners have to look at more than they currently do or would an RCE been avoided, et cetera.

So, from the information that we gathered from our outreach efforts and from our research we recognize that in order to have great continued success with this project we needed to move forward with it in phases. In the first phase, which we're planning to complete during this fiscal year, we're developing and implementing a user interface for examiners that will in essence be a landing spot for all prior art that comes into the application, whether it's from an automatic import, applicant cites it, or the examiner finds it. So, you can kind of think of this as a master reference list.

This initial phase will import references into the file under examination from immediate U.S. parent applications. The user interface that we're working on

developing will also provide enhanced functionality to examiners such as allowing examiners to create a search string of U.S. patent documents that could be imported into their search tools. We will also be developing functionality to provide applicants with notice when references are imported and considered by the examiner.

This first phase will be a targeted release, so we will not be releasing this to the entire examining corps, and the scope and parameters of what that targeted release is going to look like are still under discussion. As soon as we have that information finalized we would be happy to provide an update to you.

Our immediate next steps are to continue to finalize and prioritize some of the outstanding decisions and questions that are existing. We do have some focus sessions set up with our users, design counsel of examiners, for late this month and early in December where they're going to start looking at some mocked-up images of what this user interface could look like and start working

with our Office of Patent Information Management to design functionality.

We are working on a communication plan to begin further engagement with stakeholders to find out what their needs are and to have them assist us with designing how it's going to look when we notify them or let them know that we've imported references, and we're going to start that in second quarter of Fiscal Year '18. We expect that this business solution will be released, this first phase, at the end of this fiscal year.

That is of course a targeted release, it's our target goal. There are many things that could impact that. It could be budget, IT, other issues, union issues. But our plan is for us to release that first phase at the end of this fiscal year.

Here is the direct contact information for the prior art email and for myself and for Mike. We'll be happy to take any questions that you have on this.

MR. WALKER: Jessica, what was the feedback from the user community when you went

out to the regional offices, and the stakeholders? Were they excited, kind of lukewarm, or what was the feedback?

MS. PATTERSON: I don't think they fully understood exactly what this could mean for them, but some of the initial comments that we received were interesting because not everyone does their citing the same way. So, they really didn't want to see us automatically importing everything. They wanted some sort of -- what do we call it? Gatekeeping option or some kind of combined where we pull in some things, like maybe we automatically pull in everything from the parent like we're planning on doing, but they have some ability to point and say they want us to pull something in. They want to have some level of control, they don't want it fully automated. That was the biggest thing we took away from those initial sessions.

MR. WALKER: The scope of claims may have changed, the claims may be very different from the parent case in some respects, so the prior art may not even be relevant. I was

just curious about that and with all the other IT issues and priorities where this falls in the hierarchy giving the cost for it versus the benefit to the examiners, benefit to the user community. So, I guess this is just a narrow project you're still going to work through and see how that shakes out. Is that kind of the idea?

MS. PATTERSON: Well, we put it into phases so that we could overcome some of the IT challenges and just in general challenges that exist at the Office. But this is one of Drew's top priorities. He'll tell you it's one of his biggest priorities in office. So, we've strived really hard to try to get this done in the timeframes that we have. We're working now on identifying what the outyears are going to look like and how we're going to define those as well. So, once we have that finalized we'll be happy to share that as well.

MR. POWELL: Right. I think one of the key takeaways is that in coming up with solutions in phases like this is because until

we get into this we're not really going to know all the answers, right? So, we don't want to try to build the final be-all-end-all product here without learning more as we go along, particularly the interactive part between the applicant and the examiner. Obviously we always have to look at IT and how it's phased in.

One of the important things is we're going to have this landing page, if you will, and we'll be able to use that to expand, to include different and more diverse sources of prior art. But the key thing is building this initial interface, integrate it into the examiner tool so we'll have that to start with, and something we can roll out relatively quickly is just pulling the information from the related cases. And, of course, as we go along we have to constantly talk to our examiners and to filers to find out how's it working and are we overburdening the examiner and those sorts of things which we don't want to do. It has to work for everyone involved here.

Again, the other takeaway over all this is we can improve, again, quality or at least the timeliness of information coming in from an efficiency standpoint.

But back to the cost side, not prosecution cost necessarily but administrative costs for applicants. If you add up how much is spent in simply filing IDSs across our hundreds of thousands of cases that are filed every year and if we could reduce that cost a degree by using technology and not having to resort to refiling information that's already available and that sort of thing we think that's important to the system. Again, multiplied out over a factor of all applications floating around the world right now.

MR. HIRSHFELD: I'd like to address Mike's question as well because I speak a lot about this project both internally and externally. It is truly one of those win-win situations where examiners, at least that I speak to, are really excited about getting the art right in front of them right away in a

very easily readable format. I think that's one of the struggles we're having now with Global Dossier, not to disrespect Global Dossier but it wasn't created for examiners and it's not the range that this prior project can do.

So, it's a huge benefit to the Office, as Mark just said, for getting information from the public perspective. And this goes more to your question, I get a lot of positive feedback about this mostly around us being able to do something in an automated fashion which reduces the burden on applicants to meet their duty to disclose. The feedback I get is why can't this be done tomorrow or in a month, right, and I know Mark and Jessica got into some of the IT issues. This is going to be phased, it's going to take us some time to do this. The easier part is phase 1 where it's all internal PTO systems, but where we are going and looking at other references that's going to be more of a challenge.

But I say almost across the board the feedback I get is very, very positive on

this both internally and externally. I know there are details to be worked out but I have yet to find anybody who is really saying this is a bad idea, we shouldn't be doing this. Rather it's the opposite.

MR. WALKER: No, I agree with that. And I think we know applicants having had this problem came up with their own automated tools to do it on their side to reduce the burden because it was so complicated. People probably thought why couldn't the Office do this 20 years ago.

So, I was just curious what the feedback was because you have a lot of priorities obviously, and if that's the positive feedback you're getting then absolutely, that certainly goes to the top of the list.

MR. HIRSHFELD: Yes, absolutely. And one of the questions we're getting is when the examiners have the references what will be their requirement? In other words, if they're not actually considering it does it have to be also submitted by applicant. And it's

absolutely our intent at this point to go forward with when the references are in front of the examiner they will be initially considering it just like they would be doing with any other references.

MR. POWELL: Just a couple other considerations, and as I mentioned at the outset, Bob Bahr and I are really jointly sponsoring this, is getting away from what we've been doing for so long in terms of initialing things and that sort of thing and what's printed on the face of a patent, it's a changed management for everyone concerned. After all, you're not litigating the cover page of the patent or you're not licensing the cover page of a patent, you're litigating or licensing a record, right? All the information needs to be there. But there are certain things that is really a broader changed management type of thing for everyone concerned. So, we're kind of working on those angles as well.

MR. THURLOW: Just a couple quick comments. To the extent we can help phoning

in the outreach, we've done a lot. We discussed how Patent Quality group is in New York and we try to help them in New York to the extent you go out to the country, we have California, New York, Boston, Washington, D.C, I'm missing a few. Can't forget about Mark in Dallas. Great barbeque there. (Laughter) So, if we can help with that, great.

The question I get based on all the conversations with Mark and Joe is when can we stop citing this. So, it's a good discussion. We understand it's going to take time but applicants say when do we have to stop citing it because people are using Global Dossier more, at least from the feedback I get, and finding it helpful. But then the questions come of when can we stop.

The other thing, I don't think it's appreciated enough in the public. I don't because I don't have a software background. This distinguishing factor between text and PDF is like kind of a big deal. It came up yesterday when an examiner was in a subcommittee, and I know that the PTO is now

accepting applications via text, but the issue of the NPL and the foreign references being in PDF and the fact that the Patent Office can't -- what's the word --

MR. POWELL: Convert.

MR. THURLOW: Convert. Thank you very much. Convert everything from PDF to text, that in and of itself doesn't make it searchable by the examiner. So, an examiner said yesterday during our meeting, very nice, she tries to go through it, she tries to read it and tries to do it but anybody with lots of prior art if you can't search it we have a much smaller volume, we can convert it and search it, examiners can. So, we'd rather see that search done sooner so that we don't get invalidated later on in PTAB or something.

MR. NEAS: You're right. We need those documents in text. So, there's a lot of dependencies for this program. You're probably aware, we're in the process of replacing the examiner search systems. So, part of that replacement at one point will include an enhancement of the collections that

it includes, and hopefully that enhancement includes foreign patent documents, full text, full translations.

One of the big hurdles we're going to run into when we start to source outside of the USPTO IT systems -- so for example, the prosecution in a foreign application -- and we can grab the citation of non-patent literature but how do we get a hold of the document? And the other office generally is not going to hand us that document. So, we want the document and we want it in text as well. So, we have kind of two hurdles: how do we get it and then how do we get it into text.

But all those things are part of this project. So, as Mark said, a living, breathing collection of the prior art in the application for the examiner's benefit but enhanced functionality as to how they can review those documents as well.

MR. POWELL: Right. And POPA has very much expressed a desire to have this stuff searchable, and it only makes sense, and also be able to provide translations on the

fly that are at least decent like the Global Dossier external site provides today. There are certain things in my mind that when we get to our golden city, if you will, is it will have to have those features for it to be the most efficacious.

MR. THURLOW: Maybe a simple solution is if I go on PAIR there right now and you have a foreign document in PAIR I can't get access to it unless I retrieve the file history. Maybe the requirement would be to submit the link that's associated with the document too, that way you can at least put the link but not the document on PAIR.

MR. POWELL: Yes, there are a number of ways it can be approached. But, again, there are so many different nuances and we've got to continue to work through all of these to get to the right place.

I think one other thing you can see from this project is that it's incredibly cross-cutting, right? We have copyright issues with regard to NPL, cross-border copyright issues, indeed. We have patent

examination type issues, we have quality issues, IT issues. I mean, it's across the board. And, of course, labor issues with our examiners. I think as Drew said, this is one of the most important things we're working on right now, and I think it could be historic, frankly, when we move down the road and get it all done.

CHAIRWOMAN JENKINS: Any other questions from the Committee?

MR. SEARS: Yes, I have one. First, I want to commend the Office on this project. I think it's truly exceptional and it really does have benefits for the applicant and the Office. The question I had is once the process is finalized and the references are imported, will the citations for those references go on the face of the issued patent?

(Laughter)

MR. POWELL: See, what did I tell you? (Laughter) If we're still doing that I guess they would, yes. The short answer is yes.

MR. SEARS: That's a fantastic answer, thanks.

MR. POWELL: A reference can't be more considered than another reference. In other words, if they're considered, they're considered and that's it, and they're of record.

CHAIRWOMAN JENKINS: I just want to also reach out to the user community and say this is the time to give input. And I appreciate the Committee's comments and obviously you'll look for more from us. But this is a unique opportunity to help develop this and try to think of different ways that we can help this process because it makes a lot of sense but there's a lot of mechanical aspects to it that really require a lot of detail and thought. So, it's a great opportunity for us. Thank you. Thank you to you and your team.

MR. POWELL: Thank you.

CHAIRWOMAN JENKINS: I think Joe wants to say something.

MR. MATAL: I just want to add that

we're very proud of this project at PTO and I wanted to note that Mark and his team were recently awarded Commerce Department bronze medal awards for their work on this --

MR. POWELL: Gold. (Laughter)

MR. MATAL: Oh, gold. The highest honor. Congratulations, Mark.

MR. POWELL: Thank you very much. I appreciate that.

Peter, you had a question with regard to the USTR and information available from them vis-à-vis our work with them on trade matters. Karin is probably the most apt person to handle that.

MR. THURMAN: So, last Sunday instead of watching football, I'm at a conference with 800 folks talking about U.S.-China issues, commerce. Lots going on there and obviously the President is in China. A gentleman professor from Beijing spoke about IP and gave his perspective on intellectual property issues and it was very kind of shall I say favorable assessment of intellectual property between U.S. and China. I left it

at that. I didn't ask as many questions as I'm asking today.

But the point came up in conversations in saying there are challenges, there are issues that we're working on with the Chinese government. I spoke to a few people. My point that I was asking Joe is that we know it's patent, trademark, copyrights, trade secrets but we really don't know much more than that. So, are there more specifics that we can share or is it just we have these concerns? I know of companies that have very serious concerns with source code being stolen and some of those issues that make the press, but is there anything more the Office has publicly available? Especially, we know what's going on with NAFTA a little bit. But these issues are important because we're dealing with the international trade issues and clients want to know what the Patent Office is doing with the USTR.

MR. POWELL: Karin, I should note because of the pending 301 investigation we have to be a little bit muted in how far we

delve into this.

MS. FERRITER: Yes, of course. Thank you very much for that question and that interest. I think at this point we should just emphasize what everybody sees in the media. We're concerned with forced technology transfer with China and the U.S. is fighting against that in each and every opportunity, whether it's a UN resolution that suggests that kind of behavior is acceptable and to our actual closed-door meetings with China or trying to do what we can to ensure that that kind of procedure stops.

I think it would be helpful to go into what else we're doing with respect to China, and as Joe suggested, what we can share publicly given this is a very public setting. I'm not scripted to say anything and I hesitate to speak beyond that.

I understood you're also interested in NAFTA. We have our fifth round next week and we will have three people going to be a part of that delegation, of course, that represents a much larger group of people. I

have with me Mary Cutheras, who is on the patent team in the Office of Policy and International Affairs. She has extensive trade agreement negotiation experience having participated in many, many sets of trade negotiations. She is mentoring some newer attorneys on that process.

Also, I have Carida Berdut who is here; she's on our enforcement team. But it's important, of course, not just to get a patents but to be able to enforce it. Our enforcement team carefully reviews that text to help make sure that we can enforce patents, trade secrets, trademarks, copyrights, all kinds of intellectual property.

Also, of course, NAFTA isn't just about intellectual property. There are at least 20 other chapters and we read all of those and make sure that it doesn't touch upon our equities. And we engage other people in the Office. In a few minutes you'll be talking to Nick Oettinger, and he has already reviewed the regulatory review part of the NAFTA agreement.

In addition to NAFTA next week is a busy week. We're going to have the U.S.-UK bilateral meeting, thinking about what we can do post-Brexit and what we need to do before then. Unfortunately, no fancy trips to London. Carrie gets to go all the way to the British Embassy in D.C. and participate by DVD. But she and another group of other UK experts will be doing that to try to think about how we can continue in this time of broader transition.

Finally, and something I've mentioned to you before, we have another round of negotiations under the draft Hague convention. This is something that our intellectual property owners are very concerned about because currently that draft text anticipates intellectual property judgments being able to be recognized and enforced in foreign countries. Of course, everyone here understanding the territorial nature of intellectual property thinks it's pretty ridiculous that you would somehow recognize or enforce patents across borders.

I mean, a U.S. patent is a U.S. patent and there is no need we see to recognize or enforce that in China or in other countries. We understand that Chinese patents is different.

Unfortunately, it's been a bit of an education campaign because many of the people in the negotiation are talking about other topics, more general topics. So we have been engaging with our foreign government counterparts to ensure that we have people with an IP background in that negotiation and we're encouraging our other stakeholders to reach out to their foreign government officials with whom they normally speak to make sure that if they can't bring an IP expert to the table at least they share our understanding of the territorial nature of intellectual property and our concern as the stakeholders have informed us about the ability to recognize and enforce across borders being contrary to at least the U.S. domestic interests.

So, those are three priorities. The

all happen to be happening next week but in the future we would certainly welcome the opportunity to go into these issues deeper and welcome the opportunity, if you're interested, to take the conversation offline. Thank you.

CHAIRWOMAN JENKINS: I think, Karin, that's actually an excellent segue back to you, so take the mic back.

(Laughter) So, based on some of the conversations that we were having in the International Subcommittee yesterday we thought it would make sense for Karin to do a presentation. So, it's all yours.

MR. THURLOW: The only thing I'd add is most people associate NAFTA just with Mexico. I mean, these are conversations of course with Canada too. And interestingly there has been a very general statement and I appreciate all the sensitivities involved. What we read in the Wall Street Journal and the papers is actually more about issues on the trade side. There are a lot of issues

everywhere.

MS. FERRITER: Yes, there are a lot of issues with respect to NAFTA; it's a 23-year-old agreement. Some of the provisions in that agreement obviously can be improved to address especially digital enforcement issues, but moreover technology has (inaudible) and there's an increased emphasis in our own law for certain products like biologics. As some of you may know, in the U.S. Patent and Trademark Office we advocate on behalf of data protection, or the market exclusivity that a pharmaceutical company will have that FDA effectively enforces to ensure that the innovative company has a period of time before which they can face generic competition. So, we're trying to make sure that those provisions and NAFTA are as up to date as appropriate and encompass today's standards for biologics.

I'm afraid I might have had a misunderstanding as to what you wanted me to address today. I think we're very much looking forward to in the future doing a deep

dive into topics that PPAC finds interesting. One of the topics that we had talked about perhaps was talking about trade secrets. Again, Carrie and her team have developed a real expertise in how trade secrets can be protected in the United States. There is a huge overlap with patent protection so we felt that the PPAC might be very interested in that. Again, what we're doing to aid in the enforcement of patent rights, we thought that might be something that would be interesting to people. And then, of course, all of our international activities to ensure that patent protection or industrial design protection in China and other foreign governments is you're able to obtain it and when you obtain it it's meaningful and enforceable.

So, we really welcome any topics that you would want us to go into and explore. We have many, many people who would be happy to come and give you their very detail expertise.

CHAIRWOMAN JENKINS: A little bit more detail on the meeting next week.

MS. FERRITER: The meeting next week on the U.S-UK Brexit discussions or the NAFTA negotiations or the Hague judgment meeting? (Laughter) There are so many meetings.

CHAIRWOMAN JENKINS: Pick a topic.

MS. FERRITER: Those are just three of our priorities that really came to mind. So, at the Hague next week we will be continuing to discuss the draft Hague Convention. This last round was in February. The U.S. was happy to see many of our brackets, texts that we didn't like put in brackets, so hopefully we can have it deleted. But we still have a lot of work to get intellectual property taken out of the agreement and to make sure that once it's taken out we don't accidentally have some provisions that are broad enough to sweep it back in.

So, we have a ten-person delegation going from the U.S. government to cover that negotiation. There are two people from the State Department because it's a very broad agreement covering many things such as

potentially defamation. We have one person from the Department of Justice, again, two people from the U.S. trade representative, two people from the USPTO, and some people from academia.

Again, this diversity of experience is important to be able to adequately answer foreign governments' questions about why does the U.S. oppose the inclusion of intellectual property. We need to be able to address that in an articulate and effective manner because there is so much willingness on the part of especially the EU to include intellectual property at this point.

CHAIRWOMAN JENKINS: That was it? (Laughter) I think a note for us on the Committee was the very broad interpretation of intellectual property with respect to the agreement and how the idea of particularly, say, a patent right in the U.S. is going to be interpreted as covering a possible procedure in China, for example. So, can you just articulate that better than I just did?

MS. FERRITER: So, there are some

explanatory notes to this work that suggests a lack of appreciation for the fact that patents are, for example, territorial. When we met with a secretariat we felt that the secretariat may not really understand that intellectual property rights are territorial and they were decided by each government. A patent right or a patent grant in different countries tends to have different claims, may have different claims.

So, we are still in the education process for many governments to make sure that they understand that and that the legal analysis in one country as to even what's prior art, as I'm sure Jessica and others can give us some very precise examples of why a decision in one country may not be an appropriate decision in another because in the U.S. we have a grace period, other countries do not. So an invalidating reference in the UK would not necessarily be an invalidating reference in the U.S.

So, we're having to educate people as to some reasons why you wouldn't want to

recognize a novelty decision or a lack of inventive step decision in one jurisdiction and have that be applicable in other countries.

CHAIRWOMAN JENKINS: Yes, well said. Thank you. I think this also is very important because the Office is an important voice with respect to these issues. I know one thing that the Committee appreciates is just the level of diversity in what we are doing with respect to the Office and other areas with respect to agreements and negotiations. So, yes, we definitely want you to come back on a regular basis and help educate us. This is important for the user community.

MR. WALKER: I would just emphasize that. I mean, I can just say from the user community how much people rely on the Office -- (laughter). That was great timing, the music. And rely on the Office in the areas of these trade agreements. It's so hard for people on the outside that are so busy to follow the conventional and biological

diversity, access in benefits-sharing, UPOV updates, a tax on UPOV. And these things are so closely intertwined with all these other trade negotiations, I tell you it's just impossible to follow.

So, I think those interested in strong IP rights are just so dependent on the Office in this area to be highly engaged and to protect the interest of the IP-loving community. So, thank you for doing that.

I would like to hear something more on some of the biological aspects of these trade agreements and what's at stake, what's recently developed, because it's kind of hard to track unless you're right in the middle of it.

MS. FERRITER: I have been to many CBD meetings and Nagoya Protocol. I'm happy to fill you in. I did want to remind people that the USPTO will be having its intellectual property attachés coming back the week of December 11th and the Chamber of Commerce will be hosting them on December 14th so we hope to have a good turnout from the public to come

hear about our intellectual property attachés and their work.

Also, the State Department is hosting a really important meeting on December 5th with respect to some specific biologics issues with respect to sequences and how that information is shared. We're following that issue extremely closely because it has such a significant impact on our intellectual property owners. If anyone is interested in that please follow up and I will be able to give you the details as to where that public meeting will be.

MR. MATAL: Mike, I just wanted to add Shira Perlmutter is unavailable today. I assume she's at one of the trade negotiations. But she gave a pretty strong statement about what's at stake with this Hague Convention at the TPAC meeting last week. Actually, it even got covered in the press some.

If you take this concept seriously of cross-border enforcement of judgments and extend it to IP then your counterpart patent in China when that's invalidated by a Chinese

court or found not to be infringed by a Chinese product, if you take this idea seriously that would carry over to the United States and your U.S. patent would be -- I mean, it seems ridiculous but that's what cross-border enforcement of judgement means. To anyone who is familiar with how IP works it should be pretty evidence why it's a non-starter.

MR. LANG: I was just going to add on that the Hague Convention issues, they do sound very important. I don't think that there is a lot of awareness out in the community. I had not heard about it until yesterday really that there is this potential for foreign courts to be parsing U.S. patents and making judgments that are relevant here in the United States about infringement and validity. So, I would recommend to continue to push back on these issues in the Hague but also amping up the publicity.

MR. THURLOW: A few more points. The issue with territory and geographical limitations, that's not as clear as just

simply U.S. patent applies. There have been Supreme Court cases that seem to change every now and then, you're well aware of that. We always when we're advising clients the whole make ease and sell in the United States, but a big part of the patent is everyone wants the U.S. market so the import issue. When you start getting into the international issues this is really critical. So, even though there are geographic limitations you're 100 percent right, we try to extend them because of the import and everybody wanting the U.S. market. Take that for whatever it's worth, but that's always a very important thing when we deal with global companies.

Then the other issue, as I think Joe mentioned or it came up, so many things start with IP but like in the starter market you get the IP so you get the venture capital. In certain areas, for example, just using China because I was at that conference, it starts with IP but it almost seems like these countries are fighting for your applications or for your company's filings to be made first

in certain countries. So, you have China saying not only do we have a better 101 program but we have a new revised FDA policy. And they went into extensive discussions about that. So, they want the global companies to start there.

It's just fascinating for me to see how this whole thing is working out. Dan Sullivan was at a conference I went to at NYU and there were folks from EPO saying basically we have a better 101 program here and we can get it. So, it's almost like it's a fight, a regulatory regime fight, for all of this work at least where it will originate from. When it all gets into trade it's just really fascinating to watch. So, take that for what it's worth.

CHAIRWOMAN JENKINS: So, I think you've gotten some feedback from PPAC. Obviously we are very, very interested in hearing what happens after your meetings with respect to the draft Hague Convention in particular. We welcome other input that we think would be relevant to the user community.

Yes?

MS. FERRITER: So, just to ask a question, would the best timing be in the next monthly telephone call or do you want us to wait until the next in-person meeting?

CHAIRWOMAN JENKINS: I'm probably looking to both. I think the public would be very interested in what's going on, so as we plan for February -- which we're trying to do now, FYI everybody -- let's put that on the agenda.

Any other questions for Karin? And, again, this was very last minute so we really appreciate Karin jumping in and helping us here.

MS. FERRITER: And please don't hesitate to grab Carrie or Mary as they try to leave.

CHAIRWOMAN JENKINS: Can you guys wave? They're right over there, they're waving. Thanks.

So, why don't we segue to Nick?

MS. MAR-SPINOLA: While we're waiting for the next presentation this music

compels me to thank the veterans and the military for their service including our resident veteran. But I want to thank you, everybody, for your service.

(Applause)

CHAIRWOMAN JENKINS: And one thing, for people reading the transcript they won't understand many of the references. We have had all sorts of military songs going on in the background, we now currently have a trumpet brigade it sounds like. I'm not sure what's next so I'm reaching out to Jennifer to keep us advised. But thanks, Julie.

Nick, all yours.

MR. OETTINGER: Good morning. Thank you again for having me. My name is Nick Oettinger, I'm senior counsel for Regulatory Legislative Affairs, coming today to give you a brief update on PTO's work on regulatory reform. This is a little more of an update than last time.

One thing I wanted to let you know is we are publishing three notices of proposed rulemaking this fall. One is already out,

there is a link on the public website. If you go to the Federal Register section the link is here as well. This is a proposed rule concerning trademark regulations, and there are two more in the pipeline that are currently being reviewed by the Department. One concerns patent regulations, the other concerns some regulations administered by OPIA and Office of Enrollment and Discipline.

The first one that is out I think will give you sort of a sense of the other two that are coming in that they are an initial step. These are regulations we had identified at the Department based on the working group's review. There had been a report that the Department has not made public but where we identified a number of regulations that we found were out of date, no longer needed, represented some slight burden, could be removed without changing a lot for anyone. All of these proposed rules will see comment. We anticipate following them up at some point later with final rules that will probably remove some or all of these proposed

regulations.

This is sort of still our initial efforts on this work. The working group that we have continues to meet. We continue to take public input. Our website remains the same. We'll update it to provide a link to these MPRMs. As I say, I expect the one related to patent regulations to publish hopefully in a few weeks. The Department does external review, we send it to OMB, and then we publish it in the Federal Register. I hope it will all be out by Christmas, but if you want to look at the trademark one I think it will give you kind of sense of what the others will look like.

Our email remains open. You'll see in these proposed rules we both asked for comments on the particular regs we proposed to remove and then broadly anything else. The Department has expressed interest in doing a follow-up report at the end of the year which would be just sort of an update I think on where we are with these. But our group continues to meet regularly. This continues

to be a priority for us as we do rulemaking.

As I mentioned last time I was here, these executive orders are the framework for our doing regulatory work as we go forward. Every rule we do includes our thoughts of these priorities. The administration had an event at the beginning of October that was sort of highlighting some of these efforts. For DOC it was focused on the NOA rule. There was nothing specific about PTO, but these remain a priority to the administration. We follow them as we do rulemaking, as we consider revisions to regs in the future, and your input, the input of the public remains useful to us as we do this.

My contact info is there but if you wish to reach the group or look at our website it's sort of a minimal update but I'd be happy to answer any questions if anyone has anything.

MR. THURLOW: Nick, what has you outreach been because it's a topic of much interest but I guess -- you're very kind, you come to the PPAC meetings and so on, but are

you going around to different association events talking about what you're doing?

MR. OETTINGER: No, we have not been in the working group. I know from talking with people here who have sometimes been at events we make them aware of what we're doing and I think it maybe comes up when other PTO folks are out and they kind of mention this. The MPRMs have sort of been the focus of our work at the moment. I would say that has been our primarily public outreach now. I anticipate we will probably follow up with those once they're out with something that maybe is more like an advanced notice of proposed rulemaking or a general request for comments.

But at the moment we've been focused on getting these rules out which would be our first kind of bundle of here are some things we're looking to get rid of that we found to be sort of old or non-needed. But I think we, as a working group, when those are out and with the public will be looking to do something probably a little more concrete, but

this has been most of what I have done, we've been working on them here.

MR. THURLOW: We've done a lot of the roundtables. I don't think the Office does them as much so you don't need to, I'm not advocating that. But in the past we've done a lot especially before the AIA and that seems to bring people together. You're well aware of what was done on the 101 area between the Office and in California. So, it's a way of kind of doing it both in the Federal Register notice and then in that same notice mention something about a roundtable because that kind of grabs people's attention.

As Marylee said, a lot is going on. There is a lot interest in this but people haven't seen too much with respect of meat to anything so they're waiting and I'm not sure what - - forgive the expression -- what meat there is but there is a lot of interest.

MR. OETTINGER: That's useful, thank you for that. We have had some discussions here and I think we'll look to make that concrete to add ourselves to other events that

are ongoing. I'm not sure there is enough regulatory reform that it would be a whole event standing on its own, but we'd certainly be more than happy -- I'd be happy to attend other events. I'm going to talk to some of the folks in Patents to see if there are things we can add ourselves to in some useful way.

MS. MAR-SPINOLA: Nick, I have a question. As part of the process is there a priority of identifying which regulations might be of greater interest to look at reforming, or is it like an update, just going through all the regulations and identifying? Because I think if there is some more specificity to which regs are being considered for new rulemaking then I think you might get more pointed feedback from the stakeholders and the public. Just a thought.

MR. OETTINGER: Thank you for that. That's useful. I can say that part of our initial review, and from one of the perspectives we have internally, is it was easy to identify things where as we read

through all the regs we could say here is a section that no one has used in decades, why is this sort of on the books? It's not a concede removal of that, it's not going to suddenly eliminate massive burden for someone who has not been using it for decades, but those are things that are easy from our experience to know if no one has used this for decades this is not something we need to continue to have in the Federal Register.

But broadly for the administration there is interest in particular in cost-savings now for a lot of PTO regulations. Costs that exist are not necessarily apparent. We're not issuing operating licenses that industries have to buy in order to continue running a factory or something like that. That's where some cost savings have been found in other regulations that the administrations look to get rid of; we're duplicating licensing requirements and if we eliminate them there are large savings.

But if there is perspective from external parties on places where there is cost

savings, burden to you and if a reg was revised or removed and that burden would be eliminated that certainly would be useful for us to hear about. I think that's something we'll emphasize as we're doing further outreach, that cost savings are of particular interest because these requirements for demonstrating removal of costs later, if we do rules that are subject to the requirements we'll have to show some off-setting cost savings where OMB deems that applicable.

MS. MAR-SPINOLA: So, would that also include the area of -- for example, the PPAC has made a recommendation that small entities have a commensurate discount for filing petitions for IPRs, for example. Would that be part of this process and program?

MR. OETTINGER: I think that would broadly be part of regulatory reform, but the fees that federal agencies charge for services including PTO's fees for filing, issuing, appealing, anything else, are not counted as costs by OMB as part of their, say, regulatory framework for how they look at rules. So, the

measuring of cost savings that OMB is doing really is administering this process and kind of scorekeeping; how are you doing if you've cut regs and what fees have you saved is compliance costs in the sense of in order to operate your factor we require you to buy very expensive air scrubbers. So, that's a cost of doing business that you must imply. If a federal agency charges a fee for a service, we're processing X for you and we charge you Y dollars to do it, OMB doesn't count that as a cost so reductions in those fees or elimination of a fee wouldn't count as cost savings where OMB is looking to tally that up. This is sort of just OMB's internal administration, how this works. Something where you no longer had to send in forms or a form shrank, that might be kind of cost savings in a sense of now you spend less time doing some interaction with us.

MR. KNIGHT: This is Bernie Knight. Nick, just to clarify, and tell me if I have this wrong, but this first phase is in response to the President's executive order

which says for every new regulation an agency is going to issue you have to basically get rid of two existing regulations. So, the first phase of this is to go through and find the regulations that the USPTO no longer needs, or the user community no longer needs. And then I think the second phase is really sort of what Julie was just asking about which is now which new regulations are the PTO going to issue for every two that were removed? Is that accurate?

MR. OETTINGER: No, I would characterize it a little differently. So, the first executive order -- and I'm afraid I don't have links anymore in the slides -- but the two for one executive order from the end of January when it was issued imposed a requirement on agencies for future rulemaking that if they were going to issue new rules -- and later OMB gave more meat this this -- but if they would issue a new rule they would need to eliminate two existing regulations and if the new rule imposed cost there must be offsetting cost savings achieved

by the elimination of regulations. OMB's subsequent guidance sort of made clear how exactly that applied.

It does not apply to all new rulemaking, only where OMB deems a rule significant. For PTO many rules, if we are kind of tinkering around the edges, minor procedural issues are not deemed significant so not all of those requirements go in place. But both cost savings and elimination of regs are required by the executive order. Through our proposed rules, through our work with the Department in the Task Force, we've gone ahead before it has been required for new PTO rules, and we have identified regs that can be eliminated, you can both identify some regs that have been eliminated and those may or may not produce cost savings. If some of them also produce cost savings you're effectively banking those reductions with OMB. OMB's guidance has made clear you can sort of do this in advance and you're ready now for your rule that will require you to show I have eliminated some regs, I have saved some costs.

But both requirements exist now and are a focus of our rulemaking where OMB imposes (inaudible) requirements. We issue a rule in the future and OMB says show us the two you have eliminated, you're imposing new costs, show us how you've offset costs, we will be looking to actions we've been taken in the past or proposing at that time to say here has been an elimination, here has been cost savings. Does that answer that?

MR. KNIGHT: Yes, thanks.

MR. THURLOW: One point I'd make is we probably had three different sessions at the Bar Association in New York on this and other phone calls with clients that have interest in this, and I can appreciate the difference between a statute and a regulation itself but a lot of times we have to say, well, that's in the AIA and that's not a regulatory change. Have you come up with that problem because there's a thing -- correct me -- about changing regulations but the AIA is what it is and Congress has a lot going on with stuff and a statute is a statute and

that's much more difficult to change?

MR. OETTINGER: Yes, that's certainly been part of our thought process, and I'll say this is something that really it's both the executive order and then OMB's guidance has given us a better understanding of it because we don't issue a regulation per say, we do rulemaking as you're going to see from the rules that will come out for patents or the trademark rule that's out. We propose a rule, the rule might affect a number of regulations; in this case it will propose elimination of several regulations. The executive order talks about eliminating regulations but there is still some disconnect. Rules and regs are not exactly the same. In both cases statutes are separate from those and will impose requirements on us regardless of how we change our regulations.

So, our focus in what we are reviewing and where public input would be useful is where regulations of the PTO are encountered, where something in 37 CFR 1, or 2, or 11 or anything else that you encounter

you feel could be improved, has a burden you think could be refined or reduced, we would look to rulemaking to make changes there. But OMB's count, the thing they are looking for in savings in the two-for-one, is did regs come out enabling you to do new rules. I can see it doesn't seem all kind of intuitive, I don't know. Some of it's very --

MR. THURLOW: We've discussed this but just for the record the issue for applicants, you've heard the discussion this morning on IDS, just with everything going on that's an area that at the top of the list is ripe for a change or reconsideration based on everything.

MR. OETTINGER: Yes, that's the usual feedback, thank you. It's something we would discuss internally with the working group and with Patents. But there is certainly an issue for us as we look at regs to see, well, there are statutory requirements here, even revision of our regs won't change anything about what one has to do with the Office. So, this is something we can

consider.

CHAIRWOMAN JENKINS: Clear?

(Laughter)

MR. OETTINGER: They're playing me out, I think.

CHAIRWOMAN JENKINS: Yeah, Rhapsody in Blue earlier, I was waiting for the finance folks to come in for that music.

I appreciate Julie's comment. That's one thing that the Committee I know -- and you've explained it well, thank you -- but one of the things the Committee is very focused on is small and independent inventors and how the Office can help them on multiple fronts including fees, so we're always attuned to that. Are we good? Any other questions? No? Thank you, Nick.

MR. OETTINGER: Thank you very much.

CHAIRWOMAN JENKINS: On to finance, budget.

MS. PICARD: Good morning. I'm cognizant that I'm the last one before lunch and the music is kind of rolling us into that.

CHAIRWOMAN JENKINS: And we're on

time. (Laughter)

MS. PICARD: We're on time which is great. I know Tony sends his regrets. He's not able to attend today. But I think that the update is going to be similar to those you've seen in the past. We're going to talk about the three budget rules, give you a status on the patent fee rulemaking, and then open it up for questions.

I'm going to start with 2017 which is the year we just ended. This slide shows you a little about our fee collections. The green bar up there on the right is showing you where our actual fee collections ended for 2017 and it compares it to two different sets of plans. The blue bar includes the plan we officially put in the President's budget for 2017, which as you remember is a year-and-a-half in advance. In making those estimates that was at a proposed rulemaking level. I think we estimated the fee rule would be in place in April of 2017 which obviously didn't happen. So, those are the differences between the plans.

The red bar is our most recent plan and that included lower fee rates. I think implementing the fee rule in September, which also has not happened -- I think in general when we look at our actual compared to plan we did have lower than planned or estimated application filings which meant lower than planned estimated fees and also lower than estimated maintenance fees. And I say that very carefully. Our estimate and our forecast for maintenance fees included higher than normal renewal rates because we saw that in a couple of years and we just looked at a two-year trend. When we look at a ten-year trend the actual for 2017 is renewal rates were very consistent with the ten-year trend. So, in the previous most recent years we saw a blip, I'm going to call it. We've incorporated that new information into our forecast for the future. So, even though we collected less than planned maintenance fees I don't see that being indications of changes in renewal rates in our data. So, that's fees for 2017.

The next slide will talk about just overall how we ended the year. All of those numbers above the first line is related to what I'll call our resources. The first one is our fees, the middle one you see what we started the year with our operating reserve, the rest of those lines are adjustments we make for timing and other income that comes in, recoveries of prior year obligations, things like that.

In total we had and I'll round $3.2 billion of resources for the year. We spent $2.9 which ended the year with $252 million in our operating reserve. That is less than originally planned knowing that we had expected the fee rule to go in place earlier and things like that and we're managing with that. I'll talk a little bit about that as we get into 2018.

So, 2018. I think most of you know that we are operating the year under a continuing resolution which for that means that we have to stick it prior year spending levels. So, our adjusted spending level for

2018 is based on our $3.2 billion from last year. There is a note in there that it includes a recision and I just want to be clear about what that means. It's a recision of our estimated spending that we could spend during this period of time through December 8th. It is not rescinding any user fees. So, when the CR ends that kind of goes away and becomes moot. For us it's really not significant. I think it impacts us by about $3 million, so it's nothing concerning the way we operate.

2018 markups on the Hill. Both House and Senate are recommended that we are appropriated $3.5 billion which is below our President's budget level request. As we get into the future slides you'll see PTO is not terribly concerned about that because our President's budget request estimated the fee rule going into place sooner than we had planned. We don't believe that even if we were appropriated $3.5 billion that it would impact operations at all. Our requirements in the President's budget are $3.5 billion also.

As filings are coming down and everything we're in the process of re- estimating and aligning all of our 2018 fee estimates and spending plans so I don't think the appropriation level is going to impact us at all. We're also looking at how we closed out 2017, where we are projecting to end 2018 as we plan to do the President's budget for '19, which I'll get into in a second.

This slide is simply just a split of the President's budget estimates between Patents and Trademarks. Again, I want to clarify that for 2018 operations I think the appropriation level is going to be more than sufficient for us to operate under.

2019. We submitted the budget request to OMB in September, so September 11, 2017. So, right now this budget is within the administration. The results of that are not public until the President issues the budget, which as you'll see the last bullet there is intended to be in February 5, 2018. We'll get kind of a pass back from OMB at the end of this month. We'll be making changes to that

based on that pass back. Frankly, for us there is usually not a lot of information in the pass back and we're spending more of our time during this period looking at our 2008 actuals, looking at how fees panned out, looking at our production models and deciding where we would like to update or adjust any of the information for '18 and '19 going forward.

So, we plan to give PPAC a draft of the budget in January of 2018 and that will be updated with all of our recent estimates and everything as we work through it in these couple of months.

The last thing I wanted to share is fee rulemaking. I think the last time we were here and briefed for PPAC we had announced that we still hadn't had the final rule. Right now we have had it approved and we are in the process of posting it with the Federal Register. So, that's good news. It's given us some certainty as to where things are. We expect it to be loaded in the Federal Register and made public next week sometime; we can't predict the exact date. Fees become effective

60 days after it's posted in the Federal Register which would put us somewhere around the middle of January of the new fees coming into effect.

I just wanted to take the opportunity to thank PPAC, members of the public, and the feedback we received on the proposed rulemaking because the information we received in the comments gave us information to make changes to some of those fees and you'll see those when they get published next week.

So, that is the big news for the financial stuff pretty quick. I don't know if anybody has questions.

CHAIRWOMAN JENKINS: Thank you, Michelle. I will say PPAC is very focused on your last bullet point which is the fee setting expiring on September 16th.

MS. PICARD: So are we.

CHAIRWOMAN JENKINS: So, yes, obviously. And it's addressed in our annual report so please read. (Laughter) Highlighted. So, this is very important.

Very important for the user community. We hope their attention is focused on this date as well and well before that.

Questions on the budget? Dan?

MR. LANG: A couple of things. One, on the fee setting authority I think that the process that the Patent Office followed in coming to this stage in the new fee adjustment is I think a great example of being open to input, about considering the Patent Office's needs and considering what it really takes financially to produce quality product. It really builds an effective argument to why this fee setting authority should continue and it's broadly accepted by the stakeholder community.

The Second thing I wanted to note, and I don't think we can let it pass without note, is that the operating reserve is still dwindling somewhat and is far below its targeted levels. We hope that over time that situation will improve. We know that from time to time there are interruptions in funding and that's an important protection.

The goal is to have a three-month operating reserve and now it appears to be around a month or maybe even a little bit less.

CHAIRWOMAN JENKINS: What did we recommend in the report?

MR. LANG: Increasing it.

(Laughter)

CHAIRWOMAN JENKINS: Three months, right?

MR. LANG: Three months, yes.

MR. THURLOW: One thing from a client standpoint -- actually, I'm not on the Finance Subcommittee so the issue of increasing the rates has been talked about for a long time, clients as when that's going to happen. The extent happens in January. You're going to do all this, but just to make sure in the past you've done it where you've provided a table with the existing rate and then a new rate and I think the changes in red. We get a lot of what are the changes? And we know about the PTAB changes and so on, but to the extent you can help us in that, you know, we just take the link from the fee

schedule page on the PTO website which we can find very easily, that would be helpful. Especially, we could talk about this with David when he talks about PTAB, but there are going to be changes on the PTAB fees in particular that will be somewhat significant. So, a lot of PTAB practitioners will find that helpful because, again, it goes back to budgets and budgets are very important.

MS. PICARD: Thank you for your comments. I did talk about how during these couple months we're going to be spending time looking at both the fees and the spending with our target goal looking at the operating reserve and the direction it's going and making sure it's going in the right direction. And I appreciate the support and the recognition of importance of the operating reserve. I think it's been something that has helped the Office weather through some of these times. And we'll make sure we post that table. We plan on doing the same thing.

MR. KNIGHT: Michelle, Bernie Knight talking. I know you know me. (Laughter)

But, anyway, I wanted to ask you with the reduction of serial filings and patents and the concern that Dan just raised about the reserve fund, when you go ahead and you look at how there's going to be less money coming in with less filings are you looking then at reducing costs within patents or taking the money out of the current operating reserve to make up the deficit from the number of filings that you were expecting?

MS. PICARD: I think we're looking at both sides of the equation, obviously both costs with the reduction in revenue. The reduction in application filings is a reduction in workload. So, we need to look at the patent modeling, what that means for hiring and whether we're going to make changes there or not. But I think when you look at the total costs for the Office -- and I'm just going to keep it to the Patent organization as a whole -- filings aren't the only input, right? So, we're also looking at some of the other initiatives and everything we're doing, and it might not be as obvious the changes

we're making specific to the level of filings in the workload coming in the door, but we do look at that.

And also, just looking across the board at everything we're spending; we're spending on IT, we're spending on support. If we're in a year where things are lower because filings are lower do we need to keep doing everything we're doing, and just being really prudent, efficient, with our spending overall.

MR. KNIGHT: Thank you.

MR. GOODSON: Quick question. I know Mr. Owens is no longer with us, but in terms of IT there has been a lot of money, I believe well-spent, over the last several years to improve IT. At some point in time we're going to catch up and I don't know if that's going to be the next year or two or three. How is that factored in, or is it?

MS. PICARD: When we look in our five-year outlook that's in the budget we look at our plans for spending IT and I think that's one of the things that we're going to be focusing on in these next couple of months

and preparing the updated numbers for the President's budget in 2019. At what point do the IT spending change, at what point are we catching up to where we're doing that? But as of right now we do consider all of it. The other thing we consider is IT is always evolving. The backbone of everything we do at PTO is highly automated and based on IT, so we also don't want to get ourselves in a spot where we were five, six, seven years ago where we were so far behind it took us so much to catch up. So, we're trying to find that right balance, recognizing that as an agency we will probably always be spending money on IT, it's just how much and how significant that is and find the right balance.

MR. GOODSON: Thank you, ma'am.

MS. MAR-SPINOLA: I guess mine is more of a comment than a question, but Andy had presented earlier about the high attrition rate for first years. From a corporate standpoint attrition is very expensive in terms of the training costs and backfill costs for these things. So, I wonder if the numbers

that you showed, in particular the $100 plus million decrease in the reserves, how much of that can be attributed to this attrition rate? I don't need to know, and I'm not sure it's particularly pertinent to know, the exact amount or portion, but it seems to me that 25 percent attrition rate within the first year which is probably the bulk of the time if not all of it to training and things that it's a costly thing. So, maybe some further analyses on not only the reasons why but the types of individuals who may be -- maybe there's some kind of trend to see on that.

But anyway, as I said, it was more of a comment. But I thought that attrition at that early stage was probably the most expensive cost hit to any department as opposed to, for example, even if the attrition rate was higher it may be a third year, I don't know, because you've got some return from the individual. Anyway, thank you.

MS. PICARD: Thank you for that. I will just add that I think that's something that the Agency has focused on for many years

and has recognized it which is why you also see us focusing some money on expense and time in our recruitment and employee engagement activities, recognizing that it is more cost-efficient for us to spend a little more money to keep the folks on than to have to keep spending the money over and over again to train. I don't know, Andy, if there is anything you want to add to that.

MR. FAILE: Sure. So, obviously you're right, Julie, that having a 25 percent attrition rate in the first year is something we obviously want to improve on. Again, back to the earlier presentation, we have seen that historically literally over the past decade or so run anywhere from the mid-teens up to 33 percent. So, we're a little bit on the high side of that curve now but this is not an unusual phenomenon.

What we've tried to do, and to answer other questions, so an examiner comes in and they spend the first four months in the training academy, they are doing cases around the second month but they're kind of doing

cases at a slower clip than they would be when they are released to the technology centers to work. So, there's a significant training investment in the first year. When they get back to the technology center they're still training, they're still coming up to speed. We have looked at the academy setting. The academy setting used to be eight months on a previous iteration and we scaled that down to four. We feel that we're right sized at about the four-month timeframe so when they get back at the technology center they're picking up and working more one-on-one with their supervisor and the other primaries. We think that's been an improvement over the previous course.

We spend a lot of time, as Michelle said, in recruiting both on our side and with OHR trying to do the best job in identifying what are the types of individuals that do seem to do well in a patent examining job. The long and short of that is we don't have a great blueprint of this person would be good and this type of person wouldn't be.

What we have done a lot lately within the last couple of years I would say is we really train the recruiters up heavily on explaining what the job is. We want people to come into the job with the expectation that this is a job where you're basically doing research on a time constraint within a production system. It's all reading and writing; there is no hands-on invention, checking of inventions, et cetera. Some people don't actually know that.

So, I think setting the expectations up front more specifically about what type of job someone is getting into when they become a patent examiner and then talking about how you progress through the ranks with promotions, et cetera, we're hoping that that would at least give people a better sense of what they're getting into.

So, we're trying all kinds of different approaches there. We would love to have that attrition rate as low as possible. Historically we've been somewhere in this neighborhood for years and years now so we'll

continue to work at it. I appreciate the comment.

MS. MAR-SPINOLA: I didn't realize that the high level was about 33 percent. So, anyway, thanks for that clarification.

MR. THURLOW: From a training standpoint a lot of clients, companies, and law firms are sending some really junior associates and patent agents to the Patent Office's step program because it saves us money, we don't have to do the training, and they really get the same training. And that's received a lot of favorable feedback. I think the nice woman spoke last year or so on that program. But that I think in the last couple of months a number of clients have reached and said what do you think about this and it's been really good.

MR. FAILE: Yes, thanks for that. We also get a lot of positive comments from the step program. We actually do a survey and the answers are in the 90-percentile range about the material, the way it's delivered, the value of the program, et cetera. So, I

appreciate that.

CHAIRWOMAN JENKINS: Any other questions? No? Seeing none, I think we can go to lunch, yay. (Laughter) The music stopped. It is noted.

(Recess)

CHAIRWOMAN JENKINS: We are ready for PTAB. Is PTAB ready for us? (Laughter) The floor is yours.

MR. RUSCHKE: Thank you very much. Let me get my slides. So, Scott and I will be presenting our deep dive on PTAB today. Briefly we'll be going through a number of obviously hot topics associated with PTAB: multiple petitions, a number of recent precedential and informative decisions that the Board has put out, motions to amend in the Aqua Products Decision. We are announcing formally our SOP9, a new one on remands that is formally going out today. We also wanted to discuss our existing SOP1 on expanded panels that has gotten a significant amount of attention lately. Then at the end we have some additional hot topics which we call

ongoing developments with respect to Supreme Court cases and other cases in the news.

I'd like to spend a fair amount of time on a study that we're calling the Multiple Petitions Study. This is essentially something that we've been building on at the Board for the last couple of years, that when there's an issue that's been discussed in the public and the stakeholders if we have the ability to have some data that we can present to frankly the Board but also to everybody that's what we've been trying to do. We did that with the amendment study. If you recall we launched that about April of 2016 and we update that regularly.

On the multiple petition side this is something that we have been working on for frankly over six months; it's a lot of data. It's very, very important I think because of the issue of multiple petitions out there that we understand what is actually happening if at all possible, and try to do that in an objective way so that we can have substantive discussions about what changes can and should

be made potentially to the process.

So, I did want to talk a little about our methodology. As I said, it lasted for about six months or so. We actually did a very comprehensive look through June 30th. We had to pick a cutoff date, obviously. So, we looked at all IPR, PGR and CBM petitions before that date. That's 7,168 petitions that we looked at. And when I say we that's primarily Lead Judge Bill Saindon and his team who were leading the charge on this work. Again, the judges were taking a very, very strong hand in this study.

The 7,168 involve 4, 376 patents, 1,633 patent owners and 1,423 petitioners. We had to rely on as much metadata as we could to get some of the data but we also had to do some of it manually. Our systems were just not capable enough. We wish we could push a button and get results out but we had to do some manual studies as well.

We decided to organize this underneath eight different questions, and when we looked at these eight different questions

it was really in response to a number of stakeholder concerns, things that we had seen in the press that we weren't sure if they were accurate or not. We really wanted to see sort of the magnitude of some of the issues that are out there. I'm not going to go through each one individually. Before I get on, all of these slides are posted on the PTAB website. I'm going to try to move through them fairly quickly.

We also had a webcast, something that we've launched called Chat with the Chief. It's in addition to our Board site chats that we have on an every-other-month basis. The Chat with the Chief, when we have something of this magnitude or something really important that we want to get out to the stakeholders that's how we're going to launch that. I had one on multiple petitions where I walked through this data with Lead Judge Bill Saindon and recommend you to that video as well.

With that, let's get right into the study. This is actually not our data but I

think it sets the stage quite nicely as to where does PTAB fit into the U.S. patent litigation landscape. We've represented this in sort of a Venn Diagram. Approximately 85 percent of all IPRs in 2017 have co-pending district court litigation. I think that's what people certainly know and accept. But the converse is not true. There is less than a fifth of district court cases involved and challenged in district court that also involve an IPR. So, essentially 80 percent, four-fifths, of all IPR litigations out there are not involved in the AIA and they proceed as they would if the AIA had never been passed in 2011.

MR. THURLOW: A comment on that. That's the first time I've seen that second point so I think it's good that you bring it up. Just to tell you, when we go to pitches, you know law firms do a beauty contest to see new litigations, we always put a litigator on there, we always put a PTAB person there. So, that data is new and I think it's worthy to be discussed and I'm interested in seeing the

feedback on that, but I'm not really -- it's kind of the first time for us seeing that so that's really not realistic to us. But the data is what it is, so.

MR. RUSCHKE: Yes, we've heard that too. This is data from Lex Machina. I also believe there was a study by an academic, Arty Wry --

MR. BOALICK: I think RPX had a similar --

MR. RUSCHKE: RPX had a similar study. But I do believe some academics also published some data on this as well. It seems to be fairly confirmed that it's in 15, 20 percent range. Again, you have to be a little bit careful because some of the proceedings in district court might have multiple patents versus PTAB proceedings only of course having a single patent per proceeding. So, there's a little bit of apples to oranges there.

MR. THURLOW: I'm not saying you're wrong, of course. I'm just saying it's new to us so I'm curious what we'll see on the blogs and other things about that.

MR. RUSCHKE: I think what you're raising, Pete, is an interesting issue. I think as we go through the data part of the data was very surprising to us. So, when you looked at it -- I think that's the value of going through the objective hard data because it's nice -- again, if stakeholders have personal experiences we understand that. If you're a patent owner and it seems like every single time you sue there is an IPR, sure, this data doesn't seem to make sense to you, it doesn't feel that way. But that is the hard data that we're looking at. I think you'll see that theme frankly throughout some of the rest of the presentation.

MR. MATAL: David, if I could just add a point. We believe the Lex Machina data is pretty reliable. They've been reliable in the past. Not that we've double-checked them on this. But the last three years they found it was right around

percent or a little over 15 percent, and then about a third of the cases are denied institution and 15 percent settle before

institution. So, the portion of district court litigation that ends up with an instituted IPR is about 8 or 9 percent in that data.

MR. RUSCHKE: Thanks, Joe. Again, that's the value I think of the hard numbers when you actually start parsing it out in the environment.

The next question we asked is how many petitioners are filed challenging against each patent. Now, this goes to this notion that we've seen out there about patent owners being quote unquote "gang tackled" by petitioners. There are a lot of petitioners coming after individual patent owners. And this is what we found, and we represent all of our data in a pie chart as well as a tabular chart for ease. Essentially,

percent of patents are challenged by a single petitioner, so 1:1, if you will, in the ring. And an additional 10 percent are challenged by two petitioners. So, 95 percent are challenged by essentially one or two petitioners.

We also found, if you see those numbers as you go down, the most number of petitioners per patent was eight. So, the largest quote unquote "gang", if you will, was eight, but seven or eight only occurred in about two or three patents out of a total of 4,400 patents. So, that sort of quote unquote "gang tackling" doesn't often occur.

What also is in this data -- and we will be publishing on our website by the way our raw data as well -- is that as you go down the chart in the number of petitioners per patents more and more of those petitioners of course are defendants in a district court litigation. So, it kind of makes sense that as you go higher that they're just being litigated against more.

MR. THURLOW: How many times have you put this information out there? I know you're doing it today. Has it been out, this stuff, last week or so?

MR. RUSCHKE: So, the Chief Chat was approximately two weeks ago and then shortly thereafter there was an FCBA webinar that we

did a partial -- we didn't have the full hour that we had. And then I spoke to this at the Georgetown Berkeley event last Friday as well. So, trying to get it out in almost every venue that we speak at.

MR. THURLOW: Good.

MR. RUSCHKE: So, we're on question 3, how many petitions are filed against each patent. Now, again, this goes to essentially that we're seeing 67 percent are challenged -- each patent gets challenged once, one petition, and that essentially 87 percent are challenged by one or two petitions. It's only seven or more petitions in a very, very small amount, 1.3 percent, that we're seeing. So, the vast majority are being challenged once with one or two petitions essentially.

Question 4 is going to if more than one petition is filed against a patent when are the additional petitions filed? Now, this is actually some new data and, again, we're trying to get at motivation which of course is subjective to the petitioner by looking at

objective data as to time of filing. But, again, I think it's fair to say that we've seen and heard that the primary worry is that either in the patent owner preliminary response or at the DI stage that we have provided information to additional petitioners out there to file what has been called roadmap petitions or follow-on petitions, sort of things like that. And it's in that time period where there's a potential for abuse and harassment of the patent owner.

So, again, we're looking at these three different phases. This is our standard time line. If you look on the next slide you'll see that, again, when there is a single petition filed against a patent it happens 41 percent of the time, but if they're filed on or near the same day before the patent owner preliminary response and before the DI that happens in about a total of 79 percent of the cases. So, the interesting part is that little green slice, that happens between the POPR and the DI, and then the red slice, 16 percent, happens after DI. That green slice,

those 16 percent, is where there could be a potential for abuse, a potential for harassment, and what might be called a road- mapping piece.

So, that's part of the study we wanted to get out there to see is how often is this really happening, because in that early stage, as we see in 41 percent, there is just one petition and then in 38 percent of the time there are multiple petitions but they're all filed fairly close together. Again, we don't know the motivation necessarily but I thin if you dig into the numbers a lot of those are to get additional page limits, a large of claims in the patent that you're trying to challenge.

So, who are the petitioners filing these petitions? This is a little tricky for us to do. We're trying to figure out who are filing in that red 16 percent slice where there is potential for road-mapping. That slice comprised about 1,054 petitions after the DI.

We did not have the resources to

look at every single one of those 1,054 petitions manually. And it wasn't just our data. We had to actually go to litigation databases to try to figure this out. So, this was a big task. Instead what we did is we looked at a subset, 169 cases, which we think is statistically significant of the entire 16 percent. And what we found are they filed essentially into two buckets. The first bucket up there in the green box of that 16 percent, about 9 or 10 percent, the petitions are filed by a defendant, so the petitioner has been sued. Or it's the same or different petitioner but there was a filing due to a change in litigation, primarily an amended complaint. That happened. So, additional claims were added in and the defendant essentially sought additional petitions challenging those new claims that he or she wasn't aware of to begin with. Also, a number of those petitions filed after the DI were for joinder, which of course you can only do that after the DI has been filed.

So, the green box is made up of

things where those behaviors, and we just throw it out there, might be termed quote unquote "acceptable", that was reasonable for a petition to file after the DI stage. Probably not a roadmap although there was a roadmap laid out for the petitioner at that stage, that's absolutely true.

If you look at the red box, that is the potential for abuse. So, 6 to 7 percent of all petitions it seems like what we're looking at. And that is, again, where the petitioner is not a defendant. We don't know the motivation for why he or she is filing after the DI. Again, it wasn't due to a major change in the litigation, although I will give a caveat there. It was a little tricky for us sometimes. We didn't have the resources to go into the complete litigation record. So, if there was a change in claim construction, for instance, or something that came out of discovery, we really weren't able to dig down that deeply. So, even of that 6 and

percent there still might be legitimate reasons for filing multiple

petitions after the DI stage. So, I think that's an interesting piece of the puzzle.

Again, this is a subset; all the rest of the data that we have has relied on the comprehensive 7,168 petitions filed to date.

MS. MAR-SPINOLA: David, Julie here. Before you move on would you take a minute to explain road-mapping?

MR. RUSCHKE: Part of the criticisms of allowing multiple petitions is that the Board was allowing the petitioner to learn from their earlier mistakes and we were allowing them to correct those earlier mistakes until something stuck. And the best way to learn was to see our DI, our decision to institute, where we give a claim construction, we show what one of ordinary skill was looking at at the time, or how we were reviewing certain elements in the prior art. So, we had provided a roadmap and a very clear DI that if there was something missing, an element was missing, then the petitioner could go back and find a reference saying, oh,

no, no, there actually is a reference that teaches that.

MS. MAR-SPINOLA: So, how does that fall into the analyses or multiple or serial petitions?

MR. RUSCHKE: Well, again, that's usually in the realm of a single, although it could be multiple, petitioners. Again, it's that you've had a shot with petition number one, it failed, but you got some information from either the patent owner and its preliminary response or primarily in the DI from the Board, and you were able to correct it again. There are situations where some people have said -- and they've come back again, and again, and again until they get it right. And then finally we grant the petition and the trial is instituted.

MS. MAR-SPINOLA: Okay, thank you.

MR. RUSCKHE: Sure. And that actually builds on this next slide too. So, this is, again, looking at individual petitioners and how often are they coming after a patent owner again and again and

again. It's this notion, the narrative that has been out there, is that petitioners are just going to keep filing petitions at the Board until something sticks.

So, I want to define round so everyone is on the same page. This is an individual petitioner. So, the petition is filed and then there is a decision to institute. That's a round. And then under this road-mapping he or she gets another shot in round two, and then another shot in round three, until they get it right. What we found and I thought was pretty interesting -- and that's on this next slide here - - is that 95 percent of all petitions that are filed in this manner are in the petitioner's first round. So, again, the petitioner, 95 percent of the time he does it once and that's it. And, in fact, essentially the vast majority are in that situation, there are 369 out of a total of almost 7,000 petitions. They utilize a second round and it very rarely, if ever, occurs in the third or fourth round and never more than four rounds. So, the most we have

ever seen is a petitioner going after a patent owner four times. 95 percent, they go after them once and that's it.

CHAIRWOMAN JENKINS: Every time you to file a petition do you have to pay the new big fee?

MR. RUSCHKE: Yes.

MR. THURLOW: Not only that but when the changes go into effect, yes.

MR. RUSCHKE: Some would argue the existing fees are big. (Laughter)

CHAIRWOMAN JENKINS: Clearly we're not in the same path. (Laughter)

MR. RUSCHKE: Yes.

MS. MAR-SPINOLA: But there is a component of refunds, right, when it's denied?

MR. RUSCHKE: Correct.

MS. MAR-SPINOLA: So, it's true that there is a large upfront investment to file the petition but if it's denied there is a partial refund.

MR. RUSCHKE: Yes, if they ask for it. That's correct.

MR. THURLOW: They have to ask for

it?

MS. MAR-SPINOLA: Yes. That would be an interesting statistic to know.

MR. RUSCHKE: That would be. I don't know the answer to that, Julie.

MS. MAR-SPINOLA: All right, thank you.

MR. RUSCHKE: Sure.

MR. KNIGHT: David, it's Bernie. I'm just wondering if in this analysis where you're talking about a roadmap if it might be better to also include the petitions that are filed after the patent owner preliminary response because they are getting a roadmap from the patent owner at that point. So, I just wonder if the numbers might be more viable or more representative of mapping if we included the other 5 percent.

MR. RUSCHKE: So, we definitely have looked at a number of that data and, again, that's part of that little subset of data. One thing I said, although we're representing this now on the website this is an ongoing project for us. There are a lot of other

different ways to slice and dice this data. One of the things that I would appreciate is that if there is something on here that you would like to see -- and that's an example, Bernie -- that we're not necessarily presenting it doesn't mean we haven't looked at it yet, we probably have, it's probably just not necessarily ready for primetime. So, we wanted to get a large amount of this data out. This is a good first step but it's not the last step.

MR. KNIGHT: Okay, thanks.

MR. RUSCHKE: I wanted to move on to 7, what is the institution rate counting by patent versus counting by petition. Again, a little bit different, not necessarily on the multiple petition side, but it addresses comments that we've seen that our institution rate data, which was always based on a per petition, somehow was not accurate because it wasn't based on a per patent rate. Again, it was a little tricky for us to get the data; we couldn't just push a button. But you'll see on this slide the green data is the

institution rate by petition and that's what is fairly typical that we've seen. This is since AIA began. 87 percent initially quickly dropping to 75 percent. Now we're seeing it stabilizing right around two-thirds, 67, 68. 64 percent last year.

When it's done by patent that rate tracks very closely to the per petition rate. It is slightly higher, that's true. Last year it was 70 percent per patent versus 64 percent per petition. But I think the data is showing that there really isn't any sort of masking of the institution rate data. It's slightly higher based on per patent but they track each other very, very closely.

I'll get to question 8. This is the last question. I think this is one of the most interesting slides. Again, this is our waterfall slide that we've talked about and this is what Joe alluded to earlier. We've talked about this for six months when we launched this two PPACs ago, actually. Again, this is showing in the red side versus the blue side an institution rate of about

two-thirds. I still remind people about the institution rate. The institution rate in Europe, Japan, and Korea is 100 percent; there is no institution phase. In the United States we give patent owners the institution phase which results in one-third of those petitions never seeing AIA trials. And as Joe aslo mentioned, we see the settling before or post-DI of about one-third as well.

The question that came up with this is that this is fine but, again, what does it mean per patent? So, what we did is we took this data and we translated it a little bit to give it a little bit more context. This is what we came up with. The green is on a per petition basis and the blue is on a per patent basis. What we looked at is all of the petitions and all of the patents that we'd seen until June 30th of this year, and what is the final disposition? So, these are not pending cases, these are the ones that have actually reached final disposition.

So, when your patent on minute number one gets attacked at the petition stage

what is the likelihood and what's the likely outcome at the very end? What we're seeing is that the patent remains unchanged in 58 percent of the times that the patent is challenged. That's 69 percent of petitions.

Now, when you first see this data it's very contrary to what I think has been a large narrative out there that 80, 90, even 100 percent of all patents go down in AIA trials. That's actually not the case. We are seeing that a large majority survive completely unchanged. It shouldn't be too surprising because, again, with the waterfall slide a third aren't instituted on and a third settle. And at the final written decision stage 20 percent we find completely patentable.

MR. THURLOW: On that, what you hear in patent speak a lot is that a case gets instituted then I believe it's 70 or

percent of the cases and you're in deep trouble. So, that's more the rhetoric. It's not all the filings together if your case gets instituted. So we actually counsel at

the very early stage, at the institution stage and so on depending on what side you're on. But the number that you hear most is that if the case gets instituted 70, 80 percent of the time the patent will go down.

MR. RUSCHKE: I do not disagree. That's why if I go back to the waterfall slide, again, when you get to the final written decision after institution -- so of the 7,500 petitions out there we've only written 1,700 final written decisions. And, yes, indeed, we see 65 percent all claims held unpatentable. So, I totally understand that. But I think what we feel was missing was how are you counseling your client on day one when you get hit with a petition? And that data isn't out there that we've seen. I think one of the things that we're trying to make sure is that when you talk about the numbers a lot of assumptions go into it, and it is stage, it's timing, particularly at the 70, 80 percent number, yes. But that's only after -- you had to get instituted, you didn't settle, and you actually got a final written

decision. All of those things have to happen before you get to that number.

MR. THURLOW: So, taking it a step back. This is great. This is great. It's very helpful to the public. You mentioned it when you started your conversation. We had similar arguments that weren't accurate based on claim amendments. You folks did the study and that was very helpful and we use it in practice.

I'll make one more point on 101 issues. I said earlier today everyone things 101 is involved in every case and when you look at the data it's is only 50 percent of the cases. So, this is very valuable to all of us. I'm just saying you probably have to make this argument a number of times to let it sink in. But it's very helpful so big picture, good job. We may poke some holes in it but it's very helpful for the community.

MR. RUSCHKE: And again, if we've looked at the data incorrectly or we've made some assumptions that aren't useful to you please let us know because, again, this is

still a work in progress. From an old in-house counsel guy, you know, if we get hit with a petition and my client comes to me and says what are my chances of this patent surviving because it's royalty-bearing? I don't necessarily the answer is 80 or 90 percent. It could also be, according to this data, the last bar, if you look at that, the chances at that stage of the proceeding is 29 percent that your patent is going to be held completely invalid.

MR. THURLOW: Just to poke holes, 69 percent of all petitions result in the patent being unchanged. How do you know that because a lot of settlement proceedings -- well, you know it because you get the settlement. That's right. So, as far as how they've been changed and so on, normally those kinds of discussions are confidential but the Board gets that information.

MR. RUSCHKE: Well, we do but we didn't really -- essentially if it settles -- we didn't find any claims unpatentable. In that situation they remained

unchanged as far as we're concerned. I mean, there wasn't anything that we did -- nothing that the Office did to the patent at that stage by settlement. That's between the parties.

MR. KNIGHT: David, I was just on the realm of additional data that you could look at. Just wondering if you looked at -- for the 16 percent where this follow-on petition is filed after the institution decision, have you looked at this same analysis to see if the patent remained unchanged? You know, the percentage of patents that remained unchanged after the follow-on petition is decided?

MR. RUSCHKE: We have that on our to-do list. Actually, I think that is an interesting statistic.

MR. KNIGHT: Okay, great, thanks.

MR. RUSCHKE: Again, we really do appreciate -- it's those sorts of comments that are extremely helpful to us to make sure that our data is helpful to you.

MS. MAR-SPINOLA: David, if you

could go back to the waterfall chart, when we talked about this yesterday for clarity the reference to petitions are all petitions.

MR. RUSCHKE: Correct.

MS. MAR-SPINOLA: Do you want to speak to that?

MR. RUSCHKE: So, whenever we put out data we try to be very explicit about what we're talking about so people are comparing apples to apples. So, again, if you're talking about per petition, per claim, per patent, the data is obviously going to be different. We have assembled, particularly on the waterfall slide, this is the universe of AIA proceedings. IPRs, CBMs, PGRs. On some of our state of the Board slides that we put out every month we will sometimes divide those out and have IPR versus PGR versus CBMs.

Generally what we see when we've done that is, of course, the vast majority, essentially 95 percent, are IPRs. That's what we're dealing with here. So, again, another layer to the statistics could be to peel out CBMs and peel out PGRs and just look at IPRs.

That's another thing that we could do as well.

MS. MAR-SPINOLA: So, what we report or include in the PPAC's report is a total of 1,901 petitions were filed in Fiscal Year 2017 which breaks down to 1,812 IPRs compared to

PGRs and 48 CBMs. So, that's helpful to know. Even though this waterfall chart includes all three the inclusion of PGR and CBM really don't impact the percentages don't much.

MR. RUSCHKE: They won't, no.

MS. MAR-SPINOLA: Yeah. And I think that's important to know.

MR. RUSCHKE: We have done a little bit of data mining where we were looking at institution rates based on IPR versus PGR because, again, if you look at our institution rate data that's everything. And, again, one of the problems with that is that we get so few numbers of PGRs and CBMs these days that any change up or down on institution is just going to really skew the data. Everything is being swamped by the number of IPRs.

MR. WALKER: David, just a quick

question from the audience about whether or not there is a waterfall by patent? Or would you expect it to be much different based upon the data in here?

MR. RUSCHKE: To answer the question succinctly, we do not have a waterfall slide exactly looking like that per patent, but I will point the viewer or listener to this slide because, again, here is a situation where it's essentially taking certain parts of the waterfall slide. You can see their patent owner request, adverse judgement, that's part of the waterfall. PTAB filing some claims, all or none unpatentable, that's also part of the waterfall. So, we've just taken select parts of that out and looked at it per patent.

I think that's an interesting idea, is that maybe because they're interrelated it might be good for us to point out where the data is coming from so that they can see that. I think that's helpful.

This is just the summary. I'm going to move fairly quickly. You can see the data here, we've gone through it. Again, this is a

nice, succinct summary. I want to spend just a little bit of time here and I know we've got a lot of issues to cover. One of the things that we did look at, again, if you remember this slide, these are the number of petitions filed against an individual patent. In this situation, again, approximately 1 percent of patents are challenged by seven or more petitions.

So, what are those? When there are large numbers of petitions what happened? You kind of want to know what's going on in those situations, right? So, what we did is we looked at some of the worst, if you will, extreme outliers because we were trying to see are there trends, are there buckets of these outlier cases that we can somehow figure out? And we're trying to say that these are very unusual. They very rarely happen. Again, 16 patents out of 40,376 challenged patents, one-third of 1 percent. Again, it seems to be driven by three things: a large number of claims in the patent, a large number of defendants, or a large number of joinders.

Those seem to be the driving forces.

So, let me just go quickly to two extreme outliers, number one. We were trying to figure out what is the largest family of patents that has been challenged by a number of petitions? 125 petitions filed against 10 patents totaling more than 370 claims. Huge numbers, right? And when you see the 125 petitions that seems incredibly enormous. Peeling the onion a little bit away from it, we're seeing that all of the petitions were filed by defendants, every single one of them had been sued.

I think importantly, again, this is why in some of these extreme outliers you've got to look at the fact that the district court required a petitioner from each defendant in order to grant the stay. 65 of those petitions were joinder petitions, copycats, me too; no additional work necessarily on the part of the patent owner. It was the same exact arguments.

I think interestingly each claim faced on one ground of invalidity. One

ground. So each claim had to be defended by the patent owner once. That was only one challenge. There weren't all these different hits being taken on it. Again, that was how we instituted in the initial decisions and tried to focus the large number of petitions for this patent family as well as we could. Interestingly here there were no follow- on petitions. These were all filed essentially on the same day. So, there was no road-mapping going on in this situation.

We found all claims unpatentable. Every single one of them. All of our decisions were upheld by the Fed Circuit and Rule 36. I think it's an interesting case study because you kind of want to know when you see that 125 petitions what really is happening and why did it occur?

The second case study is our extreme outlier number two where we find the most petitions. 26 petitions were filed against a single patent. Boy, that seems like a lot, right? I mean, you really want to know what's happening there. That patent had 306 claims

in it. There were three different petitioners and there were waves of district court litigation. But again, essentially when you looked at it there were a bunch of settlements with respect to some of the petitioners. Those dropped essentially 13 petitions out once the cases were settled prior to DI leaving essentially one petitioner filing

petitions and those petitions were filed to address over 200 claims.

So, we're seeing that in those extreme outlier cases. And frankly a lot of these are in the early stages of AIA in the 2013, 2014, 2015 timeframe. I mean, it's not that long ago but in AIA terms that is the early part of AIA history.

I would be remiss if I didn't talk a little bit about -- and I know we've talked about this this morning, Joe mentioned this as well -- I did want to highlight with respect to the multiple petitions it's been a focus at the Board particularly with respect to precedential and informative decisions. The General Plastic v. Canon case, this is a case

underneath 314A and this was made originally -- we expanded the panel, made it press informative, and the Board voted and it is now precedential and binding on the Board.

There are seven factors. I think these are important because, again, what we did is we looked at all of our previous case law and we said in which situations under 314A were we denying going forward and what were the positions of the Board members? This is a compilation of those factors.

I'm not going to say there is one factor more than another, that's not true, but I will point out number 5 which is at the bottom of this screen here. Whether the petitioner provides adequate explanation for the time elapsed between the filings of multiple petitions directing to the same claim or the same patent. Please tell us why you're filing multiple petitions. That's going to go a long way toward determining whether we're going to be moving forward with it or not. If you don't tell us I'm filing this new petition because patent owner added claims 19 through

33 and I didn't know I was at risk for those, that's an important piece of information that we want to know. So, please put that in your petitions as to if there was additional information.

Also, I believe Joe mentioned this earlier, we have new informative decisions on the other part of multiple petitions, that the 325D. That's where there's the same or substantially the same prior art or arguments that were decided by the Office that are now pending in a petition before the Board. Again, in each of these cases I recommend you look at them from the most recent juris prudence; they provide great examples of when we deny and when we do not deny motions for subsequent multiple petitions.

By the way, these are all in the situation of deference to the examiner. So, what happened at the examination phase, essentially the same or similar prior art was raised to us, and in many situations we will deny going forward on the petition. So, it behooves you to put as much art as you can in

front of the examiner during the examination. Our most recent juris prudence is showing that we're moving in a direction where we will be denying those petitions.

That was much longer than I had expected but I think it's an important --

MR. LANG: David, can I just add one little point? Going back to your slide where the 125 petitions were filed in one case, I believe you weren't in this meeting so you wouldn't know this but we had a meeting earlier in the year with an IP professional association where one of the lawyers said, yeah, I was on that case, let me tell you what happened. And it was a case that I think he said was in the district of Massachusetts, and he said the reason you have what seems like an extraordinary number of petitions, 125, is the district judge refused to limit the number of claims that are asserted. Most judges who are experienced with patent litigation recognize that you need to make the parties focus on which claims they intend to litigate. This judge just allowed everything to go forward in

order to bring a challenge to each of the claims in the ten different patents from the same family that were allowed to go forward, you just had to file 125 petitions. So, that extraordinary outcome in that case is not a flaw in our proceedings, it's a flaw in a district judge's refusal to manage a case.

MR. RUSCHKE: I think that's a great add. Also, just to let you know, I think the panel on those series of cases did a nice job by the Board. They tried to limit the issues and really narrow it down so that the patent owner and the petitioners were limited in the number -- there weren't 125 trials that went forward and there weren't 125 hearings. In fact, I think it was less than 30, around 30 total. So, it was really limited. We tried to really limit it for the parties.

MR. WALKER: Now, David, before you go on to Aqua Products there is a question from the audience. Any data on percentage of serial petitions filed after denial of institution decision?

MR. RUSCHKE: After denial of

institution decisions. We should have that. I'm not sure -- go ahead, Scott.

MR. BOALICK: We don't have that now. What we had, as David explained, is that slice is after a decision on institution whether it's a grant or a denial, so that's a further study we could do, to slice that by grant and then by denial. But we don't have that right now.

CHAIRWOMAN JENKINS: One topic I want to direct to Finance, PTAB, and IT, Mark, is I keep hearing you say you're doing this manually. So, this is something I think PPAC should really focus on for the coming year, that you should be able to generate this information not manually. (Laughter) You should be able to do it quickly, you should have computer systems in place.

MS. MAR-SPINOLA: In fact, Marylee, we have in the report in the PTAB section where we acknowledge that a lot of this data is being done by hand at PTAB which the fact that you're doing the analyses we appreciate, but what we do say and highly recommend in our

report is that the PTAB, and the PTO more broadly, but in particularly PTAB, to have the tools it needs to do this automated. So, we will defiantly be loud about supporting that part.

MR. RUSCHKE: Thank you. We really appreciate that. One thing I will mention is that we have actually been working very closely with CIO on these issues and realize that things obviously don't move as quickly as you'd like. But one very important thing that we've actually done, not necessarily with respect to the multiple petition studies, is that our monthly data used to have to go through a number of hand manipulations. It did not get out until two or sometimes three weeks after the end of each month. We are now able to get that data out to you, the public, in about two days after the close of the month. That is thanks to the CIO group which has done a nice job of hearing those concerns and helping us out as much as they can.

I'll spend just a little bit of time on motions to amend and Aqua Products.

MR. LANG: Can I just comment on the data?

MR. RUSCHKE: Yes, sure.

MR. LANG: I think this has been a great presentation. I also saw similar data when I was at the Berkeley Georgetown conference last Friday. It does paint a picture of a procedure that's I think fundamentally working as it was designed, looking at the real story behind the multiple petitions, the waterfall statistics, looking at other things like affirmance rates. It paints a fact-based picture that I believe contradicts a lot of overwrought criticism of the procedure that you see in the press. I think anybody who wants to advocate sweeping changes in IPR or even its abolition needs to reckon with us.

MR. RUSCHKE: Thanks for those comments.

MS. MAR-SPINOLA: I'm going to steal a minute. I'm not going to rebut or contradict what Dan has said, but I do think it's a matter of perspective. Coming from

being a middle child I see both sides. Here for small companies -- it has such an impact on smaller entities, and even putting aside the size of the company 65 percent is still a large number if you're part of that 65 percent, right?

MR. RUSCHKE: Exactly.

MS. MAR-SPINOLA: So, I think there needs to be a more balanced discussion, and I agree with Dan that it can't be an extreme. Data helps drive the conversation. So, that satisfies me on that front.

MR. RUSCHKE: I think that's a really good point, Julie, because part of the data is to provide a platform so that you can have an objective discussion about reality and not just vitriol and anecdotes. What's actually happening? Because when you have discussions with the stakeholders and they want to fix something we want to know what we're trying to fix and whether we need a little tap or we need a big bang on it. That's, I think, the value of the study.

If there is nothing else I will get

through motions to amend in about a minute. Obviously, I think this was discussed a lot as to the decision that came out by the Fed Circuit. I'll just move through these slides fairly quickly.

This is where we are right now, PTAB's application of Aqua Products. When the decision came down we made a Board policy that we were going to contact all of the parties with pending motions to amend and inform that they would like to have a request for a conference call with the Board should be appropriate, and that if they requested briefing we would be liberally granting briefing given the scope of the decision, trying to parse through the decision and the multiple opinions and what it all means. We have been reaching out to all of the parties and we have been moving forward on briefing in case they would like to move forward on this.

As Joe mentioned, at AIPLA we are also finalizing as an agency written guidance for the parties and that is hopefully going to be out fairly soon. I think that will also

help.

In this situation I did want to mention one thing that did occur. Aqua came down to days before a final written decision was going out in which there was a pending motion to amend. I decided in the discretion that was delegated to me by the Director that this was a perfect situation where we did not want to issue our final written decision without knowing how Aqua was going to be applied. So, this was the very first time that we extended the one-year statutory deadline for trials into the sixth month period for good cause. I will say, just to be very clear, our goal of doing this is not to take the full six months, it is to move as quickly as we can. Once we finalize the guidance and we can apply it in these cases we will be moving forward in those situations.

I want to talk a little bit about expanded panel since that has gotten a fair amount of discussion out there in the public. I think a number of stakeholders are unaware that we have a large number of SOPs, standard

operating procedures, that are on our website. SOP1 is not just expanded panels, it's how we panel cases generally. But there is a large section there on expanded panel practice within the PTAB.

The Chief Judge, myself, has discretion to expand a panel, but there are four specific reasons at the present time as to why we would expand a panel. One is that it's an issue of exceptional importance. The second one is that it's to maintain uniformity of Board decisions. The last two are essentially written requests from the Commissioner who have an issue of first impression or where it seems as if in the public interest we should not be following a prior Board decision.

So, it's really these first two categories that I think are important to look at: issue of exceptional importance, uniformity of Board decisions. One thing that we're doing right now that we haven't necessarily done previously is that when we do expand the panel we are expanding it and

providing the reasons for it. I think that is something that you'll see in every single one of our expanded panel decisions.

Again, it's a suggestion for panel expansion. It can frankly be done by anyone, the judge, the Merits Panel, an interlocutory panel, applicant or patent owner, and a party and interparties reexamined interference for trial.

I think this is an interesting slide. This is actually done rarely and it actually says rare in the SOP. I expanded the panels in only four cases in 2017, and in those situations the vote remained unanimous. So, the reason that I expanded the panel -- and you can see here, I point to the second bullet down, General Plastic, that's the one that ultimately went into a precedential designation -- the reason we expanded which is mainly adding the Chief Judge and Scott, the Deputy Chief Judge, into the situation is to emphasize this is an important case. This is where the juris prudence of the Board is going. In the case

of General Plastic we expanded the panel, we made it informative, and we made it precedential. That could be a trend, I'm just saying. So, if you see that happening this is what we're doing and we will explain it into the opinion as to why we expanded the panel.

MR. WALKER: David, sorry, more questions from the audience.

MR. RUSCHKE: Sure.

MR. WALKER: On panel expansion a three-part question. One is when and how would parties be informed that the panel will be expanded? When and how? Two, how are the additional judges assigned and by whom? And three, who decides the size of the expanded panel?

MR. RUSCHKE: So, right now the SOP1 for expanded panels does not require prior notice to the parties for expansion. So, typically when the panel has been expanded the parties will find out in the decision when it issues, at that point.

In terms of the number, I think that was the third part --

MR. WALKER: How are the additional judges assigned and by whom?

MR. RUSCHKE: So, those are all decided by the discretion of the Chief Judge. It's actually sort of laid out in the SOP as well. Again, we have in the past, not since I've been Chief, we have expanded it with other judges. Sometimes it has been expanded with the leadership of the Board. As you saw there I've only expanded it in situations where I've added Scott and myself to emphasize the unanimous decision below. But it is within my discretion.

As to the numbers, it's recommended to be an odd number but that also is in the discretion of the Chief Judge. As you can see there, we have gone from 3-0 to 5-0, and sometimes from 5-0 to 7-0.

As I mentioned earlier at the beginning of the hour, we are officially releasing on our website today SOP9 on remands. This has been awhile coming and I wanted to thank a number of the judges who have worked relentlessly on this. The thing

that we wanted to do primarily was to provide guidance to the judges as well as provide guidance to the public on how to talk to your clients about what you can expect if there is a remand from the Federal Circuit back to the Board.

The key, which we've kind of been saying all along but now it's officially in the SOP which is posted on our website as of today, the goal of course is issuing a remand decision in a timely manner that's within six months from the mandate, not from the decision of the Fed Circuit, from the mandate. I've seen some external data showing that we're doing quite well with respect to the six-month goal with a few significant exceptions, but primarily that seems to be working quite well.

What we're doing right now is anytime we get a remand from the Fed Circuit we want to make sure that we are as religious as possible making sure that it's not going to go back up and have it come down again. As a result of that, we find that we're meeting with the panels, the Chief and the Deputy

Chief, or our delegates meet with them, and many times there really isn't an issue going out there. But if there are significant issues we want to know about it and this provides a very nice mechanism for the panels letting us know that there are some issues that could potentially be valuable and be interesting out there.

Probably the best guidance that we have are we've established default procedures for trial and appeal -- this isn't just AIA trial, this is also for appeal remand scenarios. So, essentially what we did is we looked at all the remand cases and saw are there essentially similar scenarios where we would allow briefing, additional evidence, or oral arguments.

And you can see it summarized in this table. This is taken directly out of the SOP. This is for AIA trial work. You see that there are essentially six categories of remands coming back from the Federal Circuit: claimant (inaudible), we got that wrong, we failed to consider evidence, we didn't provide

an adequate explanation, we applied the law inappropriately. Number five is very important. That of course is due process, denial of the Administrative Procedure Act rights. And improper consideration of the arguments.

You'll see here generally that other than in number 5, the APA, where that situation is an opportunity where we may allow additional evidence and even oral argument. In all of the other situations you always get briefing, that's almost a certainty, but it's going to be an uphill battle for you to get additional evidence and an oral argument in. We just don't see those situations happening. This, again, is based on the remand decisions that we have to date.

There is also default appeal guidance, which is on this slide. And, again, there are these six scenarios that we're looking at. Focusing on the fifth row there where, again, there is involving APA or denial of due process. In that situation we will go back in the form of a new ground of rejection

where we reopen prosecution and reexamination.

So, I commend everybody to the website. Those are the primary highlights of our SOP 9 that I wanted to make sure everybody was aware of today.

Last but not least, this is a slide that's somewhat loaded. There are a lot of things here. These are obviously things that are on our minds. I know they were addressed earlier today so perhaps I don't need to necessarily go into that as well. But obviously Oil States and SAS being argued on the 27th is something that's very important to us. As I've said multiple times before, never thought in a million years that a year after taking this job I would have to try to come up with operational parameters for a situation where in Oil States a third of our jurisdiction might be taken away, or SAS it could be doubled in terms of workload. (Laughter) Who knows.

So, we're coming up with a lot of scenarios and plans, again, trying to figure out how we're going to operationally keep the

Board moving. The decisions are obviously of great interest to us. We also cannot forget that WIFI 1 is still pending at the Fed Circuit in a non-block decision.

I want to spend a little bit of time on the other case, on the last bullet there, that's still pending before PTAB. Of course I can't say too much about it. This is the one that's gotten a lot of press where Allergan entered into an arrangement with the St. Regis Mohawk Tribe. That has been ongoing briefing. It raises the issue of tribal immunity. If you've been following Board cases about six or seven months ago we entered the arena of sovereign immunity via state sovereign immunity under the 11th Amendment with a case involving the University of Florida. We've had a few cases since then and our juris prudence surrounding the state sovereign immunity doctrines are evolving.

This is a different case now involving tribal immunity. As I said, we are involved with the briefing on whether the effect of the assignment of Allergan, the

patent owner, to the tribe and its affect on tribal immunity and essentially moving forward with the trial proceedings from the beginning.

The important thing that I think is out there that everybody has seen, it's gotten a fair amount of press as well, is that in an order within this case we authorized briefing for amicus briefs by particular folks requesting it. In addition, we authorized briefing for any interested amicus out there. So, the briefing period has been opened. We are allowed briefing through December 1st, essentially a four-week period. Briefs are limited to about 15 pages, after which the petitioner and the tribe will have an opportunity to file a response in two weeks to those amicus briefs that are filed.

We encourage amici to please try to coordinate and if there is a way that you can file joint briefs please do. I know that there are a lot of policy issues out there. There might be some repetition. If there is a lot of repetition you might not have your brief read as in depthly as you might like, so

coordination is key.

I personally would like to see one thing -- again, this is an issue of first impression for the Board, so one thing it is a friend of the Board briefs that we're asking for so any help on case law, interpretation of statutes, contrast and comparison to state sovereign immunity would be welcomed by the Board. So, please feel free to use this time period effectively. We welcome your input.

One thing that we have to deal with is that this is actually the very first time that the Board has authorized the filing of amicus briefs in any of our cases. We actually do not have an IT system that can accommodate that at the present time. So, what you need to do is to send an email directly to trials@uspto.gov. It's that simple. If you have an issue please call our general number, that's on the website. But it's trials@uspto.gov. That's where to send the amicus briefs. And you have until December 1st.

CHAIRWOMAN JENKINS: David, I have a

question from the audience too. Why is PTAB allowing amicus briefs regarding the motion to dismiss filed by the St. Regis Mohawk tribe based on sovereign immunity but not for any of the 17 motions to dismissed based on sovereign immunity filed by state universities? Can you answer that?

MR. RUSCHKE: I'm not aware that in the States cases there were a lot of amicus briefs requests. So, I would have to go back, Marylee, and check and see what happened. But, again, if that did occur, I'm not saying that they didn't occur, I'm just not aware that we had a need for the amicus briefs in those situations.

CHAIRWOMAN JENKINS: I'm just reading the question.

(Laughter)

MR. RUSCHKE: No, it's good. I actually think that's interesting. I would have to go back and see if there were a lot of requests in those. Sometimes I think amicus requests are denied if the parties can't agree or if the parties feel that there's going to

be some sort of delay in the proceedings. So, I would imagine that panels might say no to amicus briefs if the parties can't agree to it. But I don't know if that's the case in those situations.

MS. MAR-SPINOLA: David, can you give a little more guidance on the issues that you'd like to have addressed in the amicus briefs?

MR. RUSCHKE: I actually commend everybody to the order itself which is in this case. Let me see if I can pull it up here. I'm not sure we provide specific guidance in the order. We actually don't provide additional guidance in terms of the specific issues, Julie, that we'd like to see. But I think, again, in this situation there is a large number of issues out there.

Again, one thing I think would be helpful is to compare and contrast sovereign immunity under the 11th Amendment versus tribal immunity. That would be particularly useful to us. I think the whole issue of the viability and appropriateness of the

contractual arrangement between the patent owner and the tribe and any indication of that appropriateness would be helpful to us. That has obviously gotten a lot of play two days ago on Capital Hill in an opinion written by Judge Bryson as well. So, there are a lot of those sorts of issues.

Maybe that is something I think would be helpful when you ask about the range of issues. The hearing on the Hill two days ago raised a number of issues, a lot of policy issues there to begin with. Again, not that we don't want to hear policy but please try not to be repetitive of those issues because I'm sure there's going to be a lot of overlap there. But, again, if we can try to see why it necessarily applies in this situation I think is really important.

One other issue might be waiver. In which situations is sovereign immunity waived and does it differ between Constitution 11th Amendment sovereign immunity or tribal immunity? I think that would be an important issue to be briefed as well.

MS. MAR-SPINOLA: One that I would offer is who has jurisdiction over the validity of patents once they've been assigned to a tribe.

MR. RUSCHKE: I think that's a really interesting question. I haven't seen that out there but I do think that that's something we'd like to see as well. This is an interesting issue, and I think one of the things that as with AIA for the last five years it seems like you never know what issues are going to be coming up next. So, not that this is going to be happening on a regular basis but I think the Board will be looking strongly at these sorts of issues of first impression.

CHAIRWOMAN JENKINS: Any more questions for David? Seeing none, David, thank you.

MR. RUSCHKE: You're welcome.

CHAIRWOMAN JENKINS: That was a great way -- I commend the Subcommittee of covering a lot of very specific issues that have been raised to us through PPAC and we

appreciate the depth and detail that you provided. And we also appreciate the fact that you always come back. We ask you, you know, to jump through this hoop and you jump forward and back and then through again. (Laughter) So, we appreciate your patience with us. I think the user community really values the input. We need to work on that manual part for you.

MR. RUSCHKE: Appreciate that, thank you, Marylee. We also appreciate the interactions we have with the Subcommittee. We're really excited about some of the new initiatives that we're doing in collaboration with the Subcommittee. Those are starting. Hopefully maybe next time we can spend a little time talking about those.

But I do want to compliment Scott and Jana Gengola who always attend with me. They write down scrupulous notes at the Subcommittee and here to make sure that we're responding to the questions you have.

MR. THURLOW: Just very quickly on the timing issue with that one case on

sovereign immunity. Not all of us have followed it, so when is the decision going to come down to institute, I guess?

MR. RUSCHKE: This is the tribal -- you mean the tribal immunity?

MR. THURLOW: Yes, I'm sorry.

MR. BOALICK: So, Peter, it's already in progress. In fact, this motion came a couple weeks before the oral hearing. However, it is a joined case so the panel has extended the deadline because of its power by the statute. The final decision will be out no later than April and the order that David referred to has the date. I forget exactly which date in April, but no later than April you'll see the final decision. Of course, that could include a decision on the motion combined with the final decision or a decision on the motion could come down and then proceed with the oral hearing. And the oral hearing has currently been postponed while the motion is under consideration.

MR. RUSCHKE: April 6th.

CHAIRWOMAN JENKINS: Thank you so

much. Dana?

MR. COLARULLI: Good afternoon. I was going to make some comment about jumping through hoops but I'll just start.

(Laughter) Good afternoon. I have a couple brief updates for you on the legislative and governmental affairs side, and then I'll be happy to take questions.

Since I last gave an update to PPAC the President expressed his intent to nominate and officially did nominate Andrei Iancu for the next Director of the Office. We're watching that process go through. A little bit of information about the candidate here, he's been doing a number of courtesy visits up on the Hill. I just wanted to give a sense of the process going forward. In order to be confirmed the Senate Judiciary Committee will hold a hearing. They'll then move to a vote of that Committee and then report the nomination to the floor, so the full Senate does need to act. Fairly confident that some

additional steps will be taken before the end of the year. The calendar is getting short, but we're hoping that this process will move forward pretty quickly. So, that's where that is. No controversy so far. From what I hear the meetings have gone well as well. We'll be watching that closely.

All that activity is going to happen in a context of lots of other discussions up in the Congress. Today, in fact just in the last hour or so, the House Ways and Means Committee released their draft of the tax reform bill. I imagine that's going to take up a lot of attention there. The Senate has announced that it will be taking up its package probably after Thanksgiving, so tax reform is going to continue to be on the top burner.

In terms of budget -- and I know Michelle Picard spoke a little bit about this -- we're currently operating under a CR that goes through December 8th. It's a high likelihood that there might be some type of additional CR that's passed to continue. It

doesn't look like they're in a position to pass a full-year appropriations. But, again, watching that process going forward, lots of discussion over the budget and the appropriations bills.

I included NAFTA renegotiation. No particular tasks right now for the Congress, although they're watching it very closely. Once something is renegotiated Congress will need to step in for their approval and potentially even implementing legislation depending on what's agreed to. So, certainly that's an issue that they're interested in.

Immigration is still on the table and DACA as well which will need to be addressed either by the executive branch or Congress sometime before the end of this year. A lot of interest from Congress, certainly a lot of interest from companies as well. There are a number of tech companies that have weighed in on how important that issue is.

So, lots of activity, not necessarily related to our issues in IP, but certainly just to give you context of what

Congress is looking at.

While Congress is looking at those other issues a lot of interest -- David referred to it -- oh, sure.

MR. SEARS: Question for you, or it might be a question for Bob Bahr. In the highly unlikely event that the government goes into a shutdown and thereafter the Patent Office exhausts its reserve and the Patent Office shuts down what should an applicant do to preserve rights? File by express mail? Assuming that the deadline fell in that highly unlikely period.

MR. BAHR: First of all, the scenario you're playing out, while it is always possible it's never happened before. If it would, if we did shut down, then it would be considered a day that we're closed within the meaning of §21 A, which means anything that's due is considered timely if done the next day after we open up again. So, that problem we would have addressed.

(Laughter)

MR. COLARULLI: I'll only add that

thankfully it's never happened, and should it happen there are a lot of hypotheticals there. The question is would we be able to stay open and then how long, and that's a numbers issue. But it doesn't appear as if we're close to that at this point. It does appear that Congress would at least consider another short-term CR, but we will see.

Meanwhile, as I mentioned, David referred to this in terms of the attention given to the impending PTAB case and now that we're accepting amicus -- we were up on the Hill just two days ago, the House Judicial Subcommittee held a hearing as well which I can talk a bit about. And then there has been a lot of interest from senators as well, letters to the Senate Judiciary Committee. There was a letter to the House Oversight and Government Reform Committee on these issues particularly concerned about drug priced. And there was even a letter yesterday from members of the Senate directly to Allergan that we saw in the press. So, certainly a lot of congressional interest in this.

There has been one piece of legislation introduce that's just in the Senate. A very targeted bill that would (inaudible) the immunity defense for tribes who raise it in IPRs. So, very, very narrow and that bill hasn't moved forward. I think since that bill was introduced it was clear that the business model here that was presented has also been considered not just through tribes but also potentially universities. So, I think the issue is still developing in terms of if there's a problem what the problem is. That was squarely discussed at the House Judiciary Committee hearing on Tuesday.

My take from the testimony provided, the witnesses were unclear whether legislation would be needed. They certainly were looking to see what the result of the PTAB decision

would be. But I think it's clear that there probably will unlikely be any congressional action before that PTAB decision, that that would advise whether legislation is needed and the scope.

So, something certainly to continue to watch and we're watching it very closely as well. And as David said, the ability to file amicus briefs, we encourage folks to weigh in in that process and help the Board tackle this issue for the first time. So, I expect there will continue to be a lot of interest and we'll watch it closely.

Good news on the TEAPP front. The House Oversight and Government Reform Committee is the committee PTO has worked with quite a bit in the last few years both on talking about time and attendance but then also talking about telework. It's the committee along with the its center counterpart that enacted the 2010 act that provided us with the authority to start the TEAPP program.

Two members of that Committee,

representative Gianforte from Montana who sits on the Committee, a freshman member, and the ranking member, the Subcommittee Representative Connelly here from Virginia cosponsored a bill that would extend TEAPP for an additional three years, actually three years and a few weeks, to December 31st, which would give PTO that flexibility to continue the program as is which has been very, very successful. In conversations we've had with the Hill I've emphasized the fact that TEAPP allowed PTO to significantly increase its workforce to the extent that we now have employees in almost every state. I was quick to point out to Gianforte that there are four TEAPPers in Montana, so they were supportive of our extension to allow us to keep doing this and continue the program.

CHAIRWOMAN JENKINS: Dana, why only three years and a couple of days? Why not longer?

MR. COLARULLI: So, the Committee seemed comfortable with a short-term extension. I think even at the Agency as well

in our conversations both with management and unions we thought the three-year would give us that flexibility to fully account for all the costs of training, of how often we would need to bring back folks.

The situation that we have right now is we have full-time employees in some cases in the same state but in different programs, so certainly streamlining that and having everyone in the same program probably makes sense, and long- term for the Agency and for the employees. Once we figure out what that balance is, that balance between virtual training, which we do a lot of, and in-person training, particularly on the patent side when you're coming back and meeting other folks in your technology center. Figuring out that balance is challenging but I think the major business units have started to get a handle on it. We need to account for those costs. After that three years we can do that. And then we're going to ask employees to come back for training and it's suitable that we should pay the cost for that travel.

So, where the program has allowed us to build this workforce we wouldn't have otherwise been available to do it, long-term for the Agency probably best for it to lapse and for us to incorporate all these costs into our annual budgeting. So, I think that's a flavor of it. We've talked a little bit about it in front of the Committee before and I think that's the flavor of the management and union discussions that we've had.

Thankfully, I think NTU in particular sent a letter up to the Hill supporting this as well. We haven't heard any controversy from members as well. It's a net-cost savings to the Agency to allow us to continue the program which is a point we've been trying to make certainly both to the House and it was compelling and we're hoping it was just as compelling to the Senate and that they'll act quickly. It expires December 8th.

The authority may not be renewed because of the speedy pace of Congress. It may not be renewed before the 8th, but I think

that lapse will not have any significant impacts at the Agency. We're just encouraging them to move as swiftly as they can on this.

Now, this is one of two expiring authorities that my team has been very focused on. The other which has also been talked about earlier today is fee setting authority which will expire next September 16, 2018. We have started conversations with the Hill about renewing that, the importance of renewing that. We appreciated PPAC's report which also recommended extending it and the Office as well in its five-year report on the AIA also recommended the same to reduce any disruption.

Michelle Picard also noted that our fee rule is likely to come out next week. I think that will be now twice we've used the authority to adjust patent fees. Each time we've gotten significant public comment PPAC has facilitated those discussions. And the final rule has reflected changes that tried to address those concerns. I'm confident that the public will see the same in this package that's coming out soon. I think that will

help us as we go back to the Hill and say the sunset was certainly proof of concept, a proof of you can use the authority, you can manage this resetting process, and hopeful that they'll see the wisdom of not just extending it but extending it sooner so we can have some certainty that we can move forward with the new process as well. I think my team, certainly as we're getting into the beginning of next year, is going to ramp up our advocacy on that because it gives the Agency some more operational certainty.

With that I'll say that there are lots of other activities my team has been working on just on the outreach side with the regional offices. Certainly some congressional engagement to both help congressional staff understand what it is that we do. That helps when we go in there and say we really need to extend fee setting authority.

Highlighting some of the other programs particularly on the STEM side, we did a collegiate inventor showcase up on the Hill

just last week in parallel to the competition here at the Office and got some staff kind of understanding some of those activities. We helped the OPIA China team host a number of China roadshows throughout the country. Members of Congress attended a number of those as well and I think they were very, very successful. So, my team has tried to leverage our relationships as much as we could to highlight the good work that's happening around the Agency and build some new relationships further out from where our headquarters are to our regional offices and elsewhere too.

So, an endless supply of things for us to do. I'm happy to take any questions if folks have them.

MR. THURLOW: Thank you, Dana, as always. I received an alert today I guess from Politico that Bob Goodlatte has decided not to run next year so he has another year to go and that's kind of big news on the IP and the House Judiciary Committee and so on.

MR. COLARULLI: That's right.

Chairman Goodlatte is certainly term-limited as well. He announced just this morning that he wouldn't be running for reelection. He's got another year in place and he listed out a long agenda of other things he will continue to do to look at and complete before he leaves his seat. But it leaves the question open as to who is going to take over next so we'll be watching.

MR. THURLOW: Let the speculation begin.

MR. COLARULLI: If you grant me this, if you look down the hierarchy of the Committee certainly next in line would be Representative Chabot in terms of rank on the Committee. Chabot is also the Chairman of the Small Business Committee and can't hold two chairmanships at the same time, but certainly he would be in line. Interestingly though, after Chabot is Chairman Issa, the current Chairman of our Subcommittee and I'm sure he will express interest in that position to his leadership.

MR. THURLOW: Just to play out some

rough dates with Andrei Iancu, and obviously I don't think I've heard enough good things about him. Just say he has a hearing at the end of the month, beginning of December, middle of December, how does it work? He has a hearing in front of the Senate and based on your experience is it like they vote that day or is it a week?

MR. COLARULLI: The general process is as a hearing they'll schedule a vote. Even the following week that's oftentimes held over, so from the hearing there's at least a couple of weeks before the Committee generally will vote on a candidate. Then at that point once the Committee acts it gets reported to the floor and it will be taken up when there is availability on the floor. Sometimes it occurs that the nomination will be packaged with others and certainly leaving town is incentive to do that, but it really depends on how far we can get through the Committee process before that point.

MR. THURLOW: My last point is on the tax issue, you know tax attorneys and

patent attorneys that work together are pretty boring people (laughter) but for those of us --

MR. COLARULLI: I'm sorry, what are the similarities, Peter? If you could expand. (Laughter)

MR. THURLOW: For those of us who have done a certain amount of international M&A you're probably very familiar that they set up separate subsidiaries in the deals where the intellectual property resides. Obviously those are areas in Luxemburg and Ireland, low-tax areas. I think I've seen in certain provisions of the tax bill based on some summaries and stuff given to me is ways to tax the international IPs sitting in those countries because people are well aware of what goes on. I don't say that for any other reason than to make sure you're aware of that and that's an interesting thing.

MR. COLARULLI: Thank you. It is interesting. It's not something necessarily gone in. I think there are also some provisions that we want to look at a little

closer. It might not affect patent rights but may pull in copyrights, how they're treated in terms of capital gains into the tax code too. We've seen some references to that. Certainly we will keep an eye on those too. Kind of unclear what the impact will be at this point.

CHAIRWOMAN JENKINS: Any other questions for Dana? No? All right. Dana, thank you.

MR. COLARULLI: Absolutely, thanks.

CHAIRWOMAN JENKINS: Look at that, we're early. Let's just touch base. I'm thanking a lot today so just bear with me. I want to thank everyone today. I thought it was a great presentation. I'm glad we took some more time on some topics. I thought that was very helpful for us as a Committee. I hope it's helpful for the user community too.

I want to say thanks for all the questions we got from the user community. Keep them coming. I reach out to folks to also give us suggestions for next year of what you would like to see PPAC addressing. We're going to continue to try to change our format

and we're looking to do some different initiatives, trying to get a more targeted response on topics. So, please send us your suggestions. We're really trying to do some different things. So, we thank you for that.

We're going to be looking as a committee to be doing a call for our own internal strategic development for next year. As you all hear me say, I'm a planner so I want to plan and just have more of a year underway. We already calendared all of our dates for next year so I'd appreciate everyone marking on their calendar that the next public PPAC meeting is Thursday, February 1st. So, a little time between now and then.

I also want to do a big hug and thank you to Jennifer and to Patrick for all of their efforts. (Applause) They keep us on track. When I'm travelling all over the place poor Jennifer is pleading with me to get all sorts of things done. So, she's wonderful. And Patrick you keep us in the technology sphere which we also greatly appreciate. I thanked Joe already but I also want to just go

around the table and personally thank -- and for some people who aren't here too. Drew, Andy, the Union folks, Catherine, Pam, Vernon, Dana, Bob, Mark Valencia, Rick, Sarah -- I know you're listening someplace -- Tony, I hope you're in a good spot having someplace. Thank you. Thank you for all your support. You really have a great team here and it's been a real pleasure this past year being Chair and I look to great things for next year for the PTO and for the Committee as well.

I think that's it. If the PTO wants to say anything? I wasn't expecting you to come back, but great.

(Laughter)

MR. MATAL: I just wanted to thank you all for attending and thank you especially to all the staff and their hard work on putting together the presentations. I feel like this was a really good PPAC. Your reforms, Mary, are having their effect. We got to focus on a few issues, didn't have to rush when people had an issue they were interested in and wanted to ask questions

again. So, I think we're moving in a good direction.

CHAIRWOMAN JENKINS: Thanks, Joe. I appreciate it. With that I move to end the meeting. Do I have a second?

SPEAKER: Second.

CHAIRWOMAN JENKINS: We've moved. We're finished for this year. Thanks so much.

(Applause)

(Whereupon, at 2:43 p.m., the PROCEEDINGS were adjourned.)

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

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