

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, September 5, 2024

1 PARTICIPANTS:

2 Patent Public Advisory Committee (PPAC) Members:

3 LOLETTA DARDEN, Chair

4 CHARLES DUAN, Vice Chair

5 EARL BRIGHT

6 HENRY HADAD

7 SUZANNE HARRISON

8 LATEEF MTIMA

9 HEIDI S. NEBEL

10 MARVIN J. SLEPIAN

11 OLIVIA TSAI

12 USPTO:

13 DERRICK BRENT
14 Deputy Under Secretary of Commerce for
15 Intellectual Property and Deputy
16 Director of the United States Patent and
17 Trademark Office

18 VAISHALI UDUPA
19 Commissioner for Patents

20 ROBIN EVANS

21 JERRY LORENZO

22 CHARLES KIM

DAN RYMAN

NICOLAS OETTINGER

MICHAEL TIERNEY

1 PARTICIPANTS (CONT'D):

2 BRIAN HANLON

3 Union Representatives:

4 KATHLEEN DUDA

5 CATHERINE FAINT

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1 P R O C E E D I N G S

2 (11:00 a.m.)

3 CHAIR DARDEN: Good morning, everyone.
4 We're going to begin. It is 11 o'clock, so we
5 want to be mindful of your time. I'm Loletta
6 Darden, Chair of the Patent Public Advisory
7 Committee, also known as PPAC. I would like to
8 thank all of you that have joined us in person and
9 online for attending our first public meeting of
10 this year.

11 We expect to hold a second public
12 meeting in November, to which you're also invited.
13 The exact date for that meeting will be published
14 on the PPAC website. And you can access that
15 website by typing Patent Public Advisory Committee
16 into the search bar on the uspto.gov homepage.

17 Before I present today's agenda, I want
18 to introduce the current members of PPAC, and I'll
19 start with Charles Duan, who is Vice Chair.

20 VICE CHAIR DUAN: Hi there. I'm Charles
21 Duan. I am a law professor at the American
22 University, Washington College of Law, and this is

1 my third year being on PPAC.

2 CHAIR DARDEN: Suzanne Harrison.

3 MS. HARRISON: Hi. Suzanne Harrison. I
4 have my own consulting firm, Percipience, and this
5 is my third year on PPAC.

6 CHAIR DARDEN: Henry.

7 MR. HADAD: Hello. Is it on? Hi. My
8 name is Henry Haddad. I am serving in my second
9 year at PPAC, and I'm currently chief counsel of
10 Bristol-Myers Squibb.

11 MS. TSAI: Hi. I'm Olivia Tsai. I am
12 IP and chief counsel at Cruise, a self driving car
13 company. And this is my second year on PPAC.

14 MR. BRIGHT: Hi. I'm Eb Bright. I'm an
15 inventor and also run a medical device company,
16 Incubator, in Silicone Valley. This is my first
17 year.

18 MR. MTIMA: I'm Lateef Mtima. I'm a
19 professor of law at the Howard University School
20 of Law. I'm also the director of the Institute
21 for Intellectual Property and Social Justice, and
22 this is also my first year on PPAC.

1 MR. SLEPIAN: Good morning. I'm Dr.
2 Marvin Slepian. I'm a Regents Professor at the
3 University of Arizona. I am an inventor and a
4 clinical cardiologist. I am a professor of
5 medicine and surgery. And I am the director of
6 the Innovation Center for the University of
7 Arizona. This is my first year on PPAC.

8 MS. DUDA: Hi, I'm Kathy Duda. I'm
9 President of the Patent Office Professional
10 Association, which is the union which covers our
11 professionals, including our patent examiners.

12 CHAIR DARDEN: We also have a couple of
13 members who are attending online. Heidi Nebel,
14 who is a patent attorney in private practice. And
15 we also have Catherine Faint, who is a member of
16 the USPTO and a liaison with one of the unions.

17 I'd like to thank all of you for your
18 valuable service. And now turning to today's
19 meeting. In today's meeting, we will cover topics
20 relating to initiatives for reducing the patent
21 pendency backlog at the office.

22 And we will also cover some information

1 on requests for comments. In recent months or
2 over the last year or so, the public has received
3 quite a few requests for comments, and had
4 questions about what we actually do, or what the
5 office does with those comments. So, the Office
6 of Legal Counsel will present an overview of how
7 those comments are handled at the office.

8 And then finally, we are pleased to
9 announce that this is the 25th anniversary of the
10 PPAC. So, the third part of our agenda will be a
11 recognition and celebration of PPAC contributions.

12 To begin today's agenda, we will start
13 with previous quoted remarks from Director Vidal,
14 who unfortunately could not be with us today.
15 Director Vidal's remarks will be followed by
16 remarks from Deputy Director Brent, who we thank
17 you so much for being able to join us in person
18 today. So if we're ready, let's please roll
19 Director Vidal's comments.

20 DIRECTOR DUVAL: This year marks the
21 25th anniversary of the Patent Public Advisory
22 Committee's work with the USPTO. It is my honor

1 as director to thank you as members of the PPAC
2 for your dedication to improving the operations of
3 the USPTO, for advocating on our behalf, and for
4 advancing the innovative capacity of our country
5 and the world.

6 I can tell you from my personal
7 experience over the past two and a half years, I
8 have found this council to be invaluable. It is
9 always my priority to provide you advance notice
10 of the policy proposals, rulemakings, or guidance
11 that we are considering. I do this because I know
12 you will provide us with a unique perspective on
13 our proposals. And it is that unique perspective
14 that I have come to rely on, so that our agency's
15 actions are rightly informed by your diverse
16 views.

17 I have especially appreciated your
18 willingness to participate in on expanding the
19 innovative capacity of our nation and
20 substantially broadening participation in the
21 innovation economy. Given the competitive
22 situation we face as a country, and the

1 technological challenges we face as a global
2 society, it is imperative that we institutionalize
3 this outreach and advocacy.

4 We truly appreciate your willingness to
5 help us solve the demands we face as an
6 organization. And PPAC rulemakings, and
7 [inaudible] settings, and responding to the many
8 Court decisions that change our examination
9 practices, and how we approach IT initiatives from
10 other federal agencies and congressional
11 legislation.

12 We know that innovation is the greatest
13 solution to many of our generational challenges.
14 And that in order for our society to succeed, we
15 must involve many more people in the innovation
16 economy from all walks of life.

17 So thank you for leaning in, making a
18 difference, and advocating on our behalf as we
19 work together to accomplish our mission. Cheers
20 to the next quarter century of service.

21 CHAIR DARDEN: Mr. Brent.

22 MR. BRENT: Thank you. Thank you very

1 much. Thank you, Lolita, and welcome to all
2 members of PPAC, and to all of you joining us
3 online for this public session of the Patent
4 Public Advisory Committee. I will note just a
5 couple of personal things at the front, which are
6 one, I'm wearing my tie in honor of the University
7 of Texas. You will be cheering for our friends
8 this weekend, as we go forward.

9 Also, it is fitting that we have a
10 member of Howard Law School here today, because
11 last week we celebrated the confirmation of
12 Thurgood Marshall to the Superior Court on August
13 30th. So it is very fitting that we have you here
14 today, Professor Mtima.

15 We truly appreciate everyone's interest
16 in our agency and in the imperative that we
17 protect our nation's most vital assets, our
18 intellectual property. And I concur with Director
19 Vidal about the 25 years of value that PPAC has
20 added to our operations.

21 I know she would love to be a part of
22 the 25th anniversary celebration that will take

1 place a little later today, a little later today
2 in today's meeting. But the director is in Brunei
3 attending a meeting of the Member Nations of
4 ASEAN, the Association of Southeast Asian Nations.
5 And specifically a working group on intellectual
6 property cooperation.

7 ASEAN is a huge and fast growing region
8 of the world with 673 million people. It has
9 fully embraced the importance of IP to the
10 economic advancement. Director Vidal is
11 celebrating the 20th anniversary of the USPTO's
12 commitment to providing ASEAN economic community
13 with training programs to provide them as the
14 world's premier IP agency.

15 This custom training is aimed at helping
16 ASEAN member countries expand their capacity for
17 IP protection and enforcement. With the
18 globalization of technology and markets, it is
19 extremely important for the USPTO to play a role
20 in establishing IP norms for nations such as those
21 that belong to ASEAN.

22 And with 56 percent of our applicant --

1 patent applications originating from outside of
2 the U.S., it is equally important that we promote
3 our services to those who are seeking IP
4 protection here in the United States. As the
5 director mentioned in her video, today we are
6 marking the 25th anniversary of PPAC.

7 Since PPAC's founding in 1999 with the
8 signing of the Patent and Trademark Office
9 Efficiency Act, a lot has happened, and a lot has
10 changed. PPAC was instrumental in the major shift
11 of our operations that took place as a result of
12 the American Invents Act in 2011.

13 And over the years, PPAC has provided
14 our agency with hundreds of recommendations on how
15 to improve operations, charge for our services,
16 and expand the universe of innovators and
17 entrepreneurs. From all of us here at USPTO, we
18 extend to you who are serving on PPAC today, and
19 to the 63 other fields served on the PPAC over the
20 past 25 years, a hardy thanks for your dedication
21 to the IP engine that drives the U.S. and global
22 economy.

1 Thank you for helping guide the
2 operations of the USPTO, our nation's oldest
3 federal agency. Thank you. We'll celebrate that
4 milestone after we have presentations from the
5 senior members of the patent committee.

6 As I mentioned, a lot of changed since
7 1999 when PPAC first met. The size and scale of
8 our agency has more than doubled as we've
9 experienced a massive influx of utility, design,
10 and plant patent applications. In just 25 years,
11 patent applications have increased from 289,000 in
12 1999, when PPAC was created, to almost 650,000 in
13 2023.

14 And it looks like we're going to break
15 those records again in the current fiscal year.
16 It goes without saying, the USPTO is a very busy
17 agency with a tremendously intense workload.
18 Everything is in a constant state of change, with
19 increasingly complex technologies and legal
20 requirements, and with the growing diversity of
21 stakeholders.

22 Since the creation of PPAC, our mission

1 has also expanded. We are now focused on
2 broadening the universe of innovators for the
3 benefit of our families, our communities, our
4 nation, and our world. With the launch of our new
5 offices and public engagement, our outreach
6 efforts are moving into the highest year.

7 Let me give you a snapshot of what I
8 mean. Two weeks ago, we celebrated the 10th
9 anniversary of our Rocky Mountain Regional
10 Outreach Office in Colorado. U.S. Senator John
11 Hickenlooper joined the celebration. He was
12 instrumental in the passage of the CHIPS and
13 Science Act that is leading for a rebirth in our
14 semiconductor industry.

15 The 10 year anniversary of the Denver
16 office showcased how deeply the USPTO is embedded
17 in the innovation community, in a fast growing
18 region of the country. While in Denver, there
19 were meetings with the new Elevate Quantum
20 Technology Hub, one of the 12 major new hubs that
21 are being funded with a total of \$500 million as
22 part of the CHIPS and Science Act.

1 Director Vidal sat down with the hub CEO
2 and a number of quantum technology start ups. We
3 know how important patents are to the success of
4 these new regional tech hubs, funded by the
5 Economic Development Administration. Also, while
6 in Colorado we visited with Buckley Space Force
7 Base. Space Force Base, that was, that's a
8 good_Buckley Space Force Base in Aurora,
9 highlighting how patents can accelerate the
10 deployment of new technologies in the booming
11 space industry.

12 We met with members of the Colorado Bar
13 Association. Had a town hall session with our
14 local employees. The result, a [inaudible] during
15 which successful business owners shared key
16 moments from their careers and recommended
17 resources that can help others follow in their
18 footsteps.

19 So you can see that we are accomplishing
20 the mission of the regional offices and the
21 agency, because we are meeting people where they
22 are and we cover a lot of ground in a quick, a

1 quick moment of recognition to our Rocky Mountain
2 Regional Office, which covers a very
3 geographically difficult area, just because of the
4 sparseness of the population centers. But they do
5 it well, they cover it well, and they have grown
6 IP in that region immensely.

7 Beyond the success of our regional
8 offices here, are also experiencing great success
9 with our patent and trademark resource centers
10 program. Partnering with libraries throughout the
11 country. The PTRC's play a valuable role in
12 fostering our interactions with aspiring
13 inventors, creators, and students.

14 We are planning a major campaign this
15 fall the "Create and Innovate Tour," to highlight
16 their unique services and their importance to our
17 country. The first stop will be in Salt Lake City
18 in mid-September, where Director Vidal and our
19 team will celebrate the 40th anniversary of the
20 Patent and Trademark Resource Center located at
21 the University of Utah.

22 This event will be combined with a

1 Chinese IP roadshow meeting, highlighting the
2 importance of IP protection for local companies
3 considering selling their products in China. It
4 will include meetings with the local Small
5 Business Development Center, local inventors, the
6 University's Vice President for Research, and
7 workshops for students and the public.

8 After that, we will be traveling to the
9 new Patent and Trademark Resource Center at the
10 University of Maryland at Eastern Shore on October
11 2nd, followed by a visit to the new PTRC's at
12 Arizona State University in Tempe on October 10th,
13 and Northern Arizona University in Flagstaff on
14 October 11th for their grand openings.

15 Finally as part of the Create and
16 Innovate Tour, we will head to Mississippi State
17 University on November 19th to celebrate the
18 opening of their new PTRC. We're also working to
19 broaden participation in the PTRC at tribal
20 institutions, since so much of their economic
21 output is associated with the creative arts that
22 need IP protection.

1 The USPTO began our partnership with
2 PTRC libraries way back in 1871. For more than a
3 century, they were called Patent Depository
4 Libraries. By disseminating the latest patent
5 information through the country, they helped the
6 inventors who were driving the industrial
7 revolution.

8 Their name changed to Patent and
9 Trademark Research Centers, or PTRC's in 2011,
10 coinciding with the passage of the AIA. The
11 centers have experts on staff who know how to use
12 our search tool. To help innovators understand
13 the application process, we direct them to
14 identify patent attorneys who are licensed to
15 practice before our agency. And information for
16 pro bono assistance.

17 They host classes on IP. They do
18 historical research. They introduce students to
19 the virtues of invention and innovation. They
20 work with their local economic development
21 offices. They're incredible resources that we are
22 expanding nationally.

1 And most importantly, locally so that
2 folks do not feel that they can only receive
3 resources from here at headquarters. We are
4 extremely pleased that during Director Vidal's
5 tenure, we have added 16 new PTRC's. We are now
6 up to 94 PTRC's throughout the country, and we are
7 making steady progress towards reaching our goal
8 of 100 or more.

9 We currently anticipate three new PTRC's
10 will be designated in September. We have also
11 gone from having only one Historically Black
12 College and University hosting a PTRC, to having
13 five. There are now 8 PTRC's at Howard, Southern
14 University, and A&M College, Prairie View A&M
15 University, South Carolina State, and the
16 University of Maryland, Eastern Shore.

17 This is such a great achievement that we
18 hope that these centers helps spur a new era of
19 invention and innovation throughout the nation.
20 This is only one aspect of the work that we are
21 doing to expand the innovation capacity of our
22 country.

1 We are always on the look out for new
2 ideas on how to engage with aspiring innovators,
3 and to motivate them to use our IP systems to
4 achieve their dreams. It is imperative that we
5 attract many thousands more Americans into the
6 innovation ecosystem.

7 Thank you PPAC for all that you do to
8 help us in that mission and thank you to all of
9 you who are tuning into this meeting to helping us
10 [inaudible], also. With that, I will now hand you
11 back over to our leader. Thank you very much.

12 CHAIR DARDEN: Thank you, Director
13 Brent, for that overview of current USPTO
14 initiatives and engagements. And thank you for
15 also being such a strong supporter of PPAC. And
16 I'm sure we'll talk more about that later on in
17 this meeting. So to begin the substantive portion
18 of the meeting, I would like to turn the meeting
19 over to the Commissioner of Patents, the Vaishali
20 Udupa, who will talk a little bit about the
21 initiatives the office is undertaking to address
22 the patent pendency backlog at the office.

1 Vaishali.

2 MS. UDUPA: Thank you so much for
3 allowing me to speak today, and I'm excited to
4 join. And thanks to the members of PPAC for all
5 the work that you do. Thank you, Lolita, for the
6 introduction. And I also want to take a second to
7 thank Jennifer Lowe.

8 Jennifer Lowe is a_she's done so much
9 hard work, and she took a lot of effort in making
10 sure everything went smoothly with our PPAC
11 meetings. And before I get, and before I get
12 started, I also want to express my appreciation
13 for the important collaboration during our PPAC
14 quarterly meeting. So thank you so much for that.

15 Last month I had the opportunity to have
16 a meeting with the European Patent Office and the
17 German Patent and Trademark Office during my trip
18 to Munich. And additionally, I participated in a
19 fireside chat with Commission of Patents for IP
20 Australia. These exchanges were invaluable and
21 included engaging discussions regarding
22 collaboration between our offices.

1 Topics had dependencies, quality and
2 retention, where areas of interest and discussions
3 with each of these patent offices. I see that
4 collaboration with the IP community that includes
5 other international patent offices, the PPAC
6 members, and our stakeholders, but also includes
7 the public. It's a driving factor and identifying
8 new initiatives aligned with our agency's mission
9 to drive U.S. innovation, inclusive capitalism,
10 and global competitiveness.

11 With over 8,500 patent examiners across
12 the country, the USPTO is tirelessly working to
13 protect the public interest by ensuring that
14 patent grant meets all the rules and laws to issue
15 as a U.S. patent. The average examiner has been
16 with the agency for nearly 13 years. That's
17 right, 13 years.

18 People say it's because they love the
19 agency, the people they work with, and the work
20 that they get to do. So going a little bit on a
21 personal story, I attended the USPTO in 1996,
22 while I was a student at the University of

1 Virginia in the engineering department. I was
2 lucky enough to receive an interview for the
3 examiner position. This experience opened my eyes
4 to the amazing opportunities at the USPTO.

5 But you have to be a U.S. citizen to
6 work at the USPTO. And at that time I was
7 ineligible because I was a Canadian citizen, and
8 still had not obtained my U.S. citizenship. After
9 that meeting, I ran to the U.S. Immigration Office
10 and got my U.S. Citizenship.

11 I then worked, finished law school,
12 worked in patent law, and then at Hewlett Packard
13 Enterprise. I have now received the great
14 opportunity to join a USPTO as a Commissioner for
15 Patents, and I'm honored to be here leading the
16 patent organization.

17 We are the innovation agency and the
18 bridge to technology's patented examiners work on,
19 while strengthening the global economy, create
20 jobs, and encourage investment, and innovation.
21 Inventors, creators, and entrepreneurs, rely upon
22 the work of our employees to change the world. An

1 invention is like a chain reaction. One person's
2 inspiration will spur another innovation, and
3 another, and so on.

4 Some innovations we see here at the
5 USPTO are breakthrough or cutting edge
6 discoveries, but many innovations we see are
7 improvements to existing technologies. For
8 example, more fuel efficient car engines, or
9 faster processes for a computer. These
10 improvements built upon the innovations that came
11 before them.

12 Patent examiners have the honor of being
13 the first to see these innovations and exercise
14 that responsibility to critically evaluate each
15 patent application, and make sure it meets the
16 standards set forth for getting a patent. Our
17 patent examiners are an impressive group of
18 engineers, scientists, and designers.

19 Our strong workforce that not only
20 includes our examiners, but also our support
21 personnel, are all key components to ensure that
22 we reduce the patent pending fee and make sure

1 that we issue reliable patents.

2 So as we continue to focus strengthening
3 our intellectual property system, I'd also like to
4 walk you briefly to our key priorities, which are,
5 and can you get the next slide, which are key
6 priorities: A policy, qualities, and tendencies.
7 Each of these are a critical pillar to issuing
8 robust and reliable patents, but we also have to
9 make sure that we maintain impactful employee and
10 customer experiences.

11 The USPTO has long been focused on
12 quality of patents we grant, and this is rightly
13 so. And we continue to maintain a strong focus on
14 quality, training, and consistently improving our
15 quality metrics. We set compliance targets,
16 compliance rates for quality in 101, 102, 103,
17 and 112. And at the end of the third quarter, we
18 are on task to meet all of those quality targets.

19 Our critical policy work includes
20 issuing guidance, engaging in rulemaking,
21 participating in international measures and
22 treaties, providing technical assistance to

1 Congress, and working in the courts. In addition
2 to our policy work and our focus on quality, we
3 have to also be laser focused on our operations,
4 including, and importantly, pendency.

5 We know our important, robust, and
6 reliable IP protection insures stakeholders and
7 the country. However, unpredictable macro
8 effects, including the pandemic, created a backlog
9 of patent applications. In 2018, the USPTO made a
10 number of decisions to improve patent quality,
11 including increasing the time allotted to examine
12 each patent application, and increasing examiner
13 hiring goals to accommodate that additional time.

14 In 2020 and '21, the USPTO and other IP
15 offices around the world predicted a slowdown in
16 filings and adjusted their hiring targets
17 accordingly. However, a slowdown in filing was
18 more modestly short lived than expected. That
19 limited effect combined with increased time
20 allotted per application, as well as the
21 competitive late for market for those with
22 technical degrees and backgrounds, mainly for

1 patent examination, resulted in an increased
2 backlog of applications.

3 In the fiscal year of 2023, the USPTO
4 received over 462,000 new patent applications,
5 which is up 1 percent from the previous fiscal
6 year. So reducing patent pendency is a top
7 priority for our agency. It is part of our goal
8 to promote the efficient delivery of reliable IP
9 rights. We are aiming to decrease the time period
10 for patent applications awaiting action by the
11 USPTO, without compromising the robustness and
12 reliability of patents, or the quality of patent
13 examination.

14 An efficient and reliable intellectual
15 property system is critical to innovating, brand
16 building, creating jobs, and solving problems,
17 both here in the United States and around the
18 world. That's why we are focused on reducing
19 pendency.

20 As of July 2024, the average number of
21 months from a patent application filing date to
22 the date of the first action, the date that the

1 first action is mailed by the USPTO is over 19.7
2 months. Now this does reflect a decrease from the
3 end of fiscal year 2023, when the first office
4 pendency was 20.5 months.

5 The unexamined patent inventory is
6 currently at 796,555 applications. And a total
7 pendency from filing to final disposition is 26.1
8 months. You can see these numbers in our online
9 patent dashboard. Additionally, the USPTO
10 complies with applicable patents from adjustment
11 timeframes. And right now we're 79 percent for
12 mailed actions and 80 percent for remaining
13 inventory.

14 Complying with PCA, which extends the
15 life of the U.S. patent to compensate for delays
16 caused by the USPTO during constitution of a
17 patent application, not only decreases pendency,
18 but also avoids extending the 20 terms of issued
19 patents, so the covered inventions enter the
20 public domain when intended.

21 If you can go to our next slide, please.
22 So if you think about our priorities, we will be

1 thinking about these priorities through the lens
2 of pendency. So to conclude to that, to chip away
3 at the pendency backlog, we need to have more
4 patent examiners working on applications every
5 day. And that means that we need to increase our
6 hiring and decrease our_increase your hiring and
7 decrease our [inaudible].

8 In order to address the growing number
9 of unexamined applications, increased hiring of
10 new patent examiners is so critical to this
11 effort. In the fiscal year 2023, we hired 644
12 patent examiners. At the end of this fiscal year,
13 we've onboarded 853 hires as of August 30th.

14 Next fiscal year, we're looking to hire
15 an even larger number of patent examiners. We
16 will likely double the number that we hired this
17 past year. To show we successfully achieve our
18 hiring initiatives, we stood up a cost cutting
19 team to undertake a whole agency approach to
20 reimagining our hiring process. This team
21 includes people from our office of human
22 resources, the Chief Financial Officers Office,

1 and the office of the CIO.

2 Tied to our hiring efforts, is the need
3 to incentivize examiners at all levels of
4 experience in order to retain our workforce. The
5 hiring team addresses the entire life cycle of
6 examiners from the initial year for jobs
7 application, to be a senior primary examiner.
8 Patent job announcements have been updated based
9 on three principles to address applicant feedback
10 from previous announcements that were difficult to
11 understand.

12 Vacancy announcements are now tied to
13 technical fields, and they also refer to possible
14 STEM backgrounds for better accessibility to
15 everyone in STEM. We've also had recruitment
16 bonuses of \$20,000. That's also possible for new
17 employees in highly competitive backgrounds such
18 as computer engineering.

19 You can see these update announcements
20 on USA Jobs website, and if you or someone you
21 know is interested in joining or rejoining our
22 great team, please visit the site and apply. Once

1 applicants have accepted an offer from the USPTO,
2 we are establishing multiple test points prior to
3 the official hiring date. One such example is
4 accepted dates that we recently implemented.

5 And it's one of our first engagement
6 initiatives to develop, to Foster initial
7 connections to patents and potential peers, who
8 will be starting on the same day. To set our new
9 examiners up for success, the USPTO has delivered
10 approximately 423,000 hours of onboarding
11 education in fiscal year 2023.

12 We are also addressing that education,
13 and reimagining the way our patent training
14 academy works with the goal of keeping more
15 examiners engaged, more connected to the mission,
16 and ultimately more likely to stay in their jobs
17 for the years to come. Once employees are
18 onboarded, a key incentive to retention at the
19 start of the career is engagement and building a
20 connection to the agency.

21 In the first four months, new examiners
22 are changing labs where they work together and

1 build a sense of belonging with their peers and
2 trainers. So with these new hired examiners, we
3 are looking to improve our learning concepts for
4 our initial training program, the Patent Training
5 Academy, and introducing different learning
6 techniques, and also exploring a hybrid training
7 model.

8 Upon completion of our 4 month residency
9 in the Patent Training Academy, examiners
10 transition to their permanent division where they
11 receive continued and individualized on the job
12 training from their supervisor and other senior
13 examiners who serve as mentors. Examiners will
14 also work with their supervisors and senior
15 examiners in the art unit to gain expertise in the
16 examination practice.

17 Additionally, technical training is
18 available through multiple options, such as the
19 TTOD, technical training on demand program, and
20 the PETT-2, Patent Examiners Technical Training
21 Program. PETT-2 is aimed at encouraging
22 innovation and strengthening quality and improving

1 accessibility of the patent system by giving
2 technological experts the opportunity to provide
3 relevant technical training and expertise to
4 patent examiners.

5 We will also provide more in person
6 training opportunities and additional support
7 throughout the first year and beyond to enhance
8 the examiner experience and improve retention.
9 And as they transition to a PC, one-on-one
10 training from supervisors or primary examiners,
11 which is so critical and key for proper
12 integration to their technology centers.

13 And we're not forgetting about our more
14 serious examiners, and there are opportunities for
15 them too. For example, we have the Sight,
16 Experience Education Program, we call this
17 [inaudible]. And this is enhancing the technical
18 expertise and engaging the employees through
19 technical conferences, on site visits, and
20 interfacing with industry leaders.

21 And then they also have, they have the
22 ability to do the TTOD technical training, and

1 also the patent examiner technical training
2 program, the PETT-2. Beyond increasing the number
3 of examiners to reduce pendency, we're
4 implementing other efforts, such as improving the
5 routing of patent applications and the
6 classification process.

7 In 2022, we updated our processes for
8 routing patent applications, which has increased
9 the likelihood of matching a patent application to
10 examiners with the right technical background in
11 the first instance. We are looking further at the
12 best match of an application to the technical
13 background of examiners, and the ability to
14 quickly reroute applications that do not align
15 with examiners.

16 Patent examiners could spend more
17 quality time efficiently examining the
18 applications in their dockets if they get them,
19 get them the right applications from the
20 beginning. We also extended working hours where
21 examiners can work when most efficient and can
22 have the hours they want on a given day at their

1 discretion. The examiners could have more
2 flexibility and could increase productivity.

3 Concurrently, we have worked on longer
4 term cost analysis to identify future actions,
5 bring them [inaudible]time, without producing
6 unintended impact on quality for our nationwide
7 workforce. We are also working with our employees
8 on additional measures to provide a more
9 efficient, thorough, and well [inaudible] review
10 of each application, while enabling the USPTO to
11 deliver IP rights more efficiently over time.

12 Now to discuss a little bit about our IP
13 and tools. In addition to our working processes,
14 we've updated our system's reliability to improve
15 the patent examiners experience through a
16 streamlined and effective working environment.
17 And we're using cutting edge AI search tools that
18 enables examiners to be more efficient across a
19 vast range of databases, domestically and abroad.

20 We are working to improve the
21 reliability and resiliency of our IP systems to
22 upgrade retirement and migration to the cloud.

1 The USPTO successfully retired in 2023 a patent
2 related system, ESS Lab, in private care with
3 roughly 90 percent of patent filings now using the
4 modernized patient center.

5 The patent center provides a one stop
6 shop for our patent customers for filing and
7 managing their applications. And in January of
8 this year, we also took the next step to
9 transition to docx filings. Additionally, more
10 than 10 critical systems throughout our agencies
11 now run in the cloud, which ensure they run more
12 smoothly and securely.

13 On the note of AI, the USPTO is also
14 bringing more tools to examiners, including the
15 use of artificial intelligence to streamline their
16 processes. The [inaudible] document released in
17 October 2021, lets examiners sign documents during
18 patent examinations that are similar to those
19 they previously found useful.

20 And a similarity search release in
21 September of 2022, provides examiners a list of
22 domestic and foreign patent documents similar to

1 the patent application being searched, which is
2 significant speed up on the examination process.
3 Examiners have conducted over 1.3 million searches
4 using AI search tools, searching patent documents
5 from over 60 different countries.

6 We are assessing approaches to making
7 these AI search tools publicly available and
8 extending these capabilities for design patents.
9 In addition, we established the Research and
10 Development Art Unit to test various new processes
11 before launching them across the entire examining
12 core.

13 Moving forward, we will have real data
14 to understand how these processes change and
15 impact quality, as well as examining time and
16 pendency. We will also continue to meet with our
17 patent office, other patent offices, to see how
18 they use AI in their search and how they can
19 enhance other areas, such as classifications.

20 Finally, as the compensation
21 [inaudible], this is a top 8 priority for our
22 agency. Better pay and strong rewards incentives

1 for our patent examiners allows the USPTO take
2 attract and retain the best talent. For the first
3 time since 2007, the Office of Personnel
4 Management approved the USPTO's request to
5 increase pay under the special rate table for
6 patent professionals. This increase in pay covers
7 approximately 10,000 employees, allowing the USPTO
8 to pay our patent professionals at a higher, more
9 competitive rate amongst STEM fields, than the
10 general federal pay tables did.

11 The new SR2 became effective on June
12 16th, 2024. The new SR2 allows the USPTO to
13 attract and retain highly productive STEM talent.
14 And the USPTO is also exploring updated
15 compensation models and award programs for patent
16 professionals in order to be more competitive with
17 the private sector.

18 Moreover, we have made adjustments in
19 our award structures to better [inaudible] reward
20 employees for making meaningful contributions to
21 our pendency and quality goals. We're also
22 working on incentive programs to leverage an all

1 agency approach in support of our examining,
2 hiring, and retention efforts.

3 Along with increased patent examining
4 hiring targets, the USPTO is pursuing multiple
5 ways to enhance the patent examiner's experience
6 and reduce attrition. We're exploring concepts to
7 engage with remotely hired examiners early in
8 their tenure and connect them to the culture and
9 mission of the agency, for our newly hired
10 examiners who are looking to improve our learning
11 concepts in a virtual environment and exploring a
12 hybrid training model.

13 And we are exploring various ways to
14 engage employees who have completed their
15 probationary period. As an additional retention
16 improvement, the USPTO's standard agency pipeline
17 access for executive leadership preparedness by a
18 senior executive service boot camp, 5 part lunch
19 and learn series. Approximately 880 attendees
20 participated in one or more of the sessions,
21 including a newly targeted audience,
22 non-supervisory, GS-13 rising star employees.

1 Finally, we have our voluntary employee
2 organizations, our VEO's, with 31 officially
3 recognized employee groups and 17 additional
4 informal employee led groups. And those numbers
5 continue to grow each year. [Inaudible] the
6 principle of EEI&A by creating opportunities for
7 information sharing, learning, cultural and
8 intellectual exchange, and open dialogue.

9 These agency-recognize employee led
10 voluntary peer organizations are open to all
11 employees and are formed around a shared interests
12 or common goals. And as we discuss our hiring and
13 retention initiative, we are also focusing on
14 making sure you receive feedback from the outside
15 stakeholders on pendency.

16 Thus far we received great feedback from
17 our entrepreneurs and others who replied to
18 [inaudible] consideration and patent applications,
19 to attempt obtaining a patent grant within one
20 year. We also provide free preapplication
21 assessments and free expedited configurations for
22 our first time filers.

1 We also offer expedited processing and
2 no additional fees in priority areas such as
3 semiconductors, green technologies, and cancer
4 treatments, and prevention. And we also expedited
5 examination outside of those areas for a fee.

6 In addition to the IP specific advances
7 mentioned above, we are working to improve the
8 reliability and the resiliency of our IP systems
9 to upgrade, retirement, and migrations to the
10 cloud. We made critical improvements and upgrades
11 across our priorities, but there's still more work
12 for us to do.

13 As we look to the future, I'm excited to
14 work with all of you to reduce pendency, expand
15 and retain our examining workforce, and continue
16 our quality initiative, and our great policy work.
17 I thank you once again for the opportunity to
18 speak with you today about the important work we
19 do to protect intellectual property rights, and
20 support inventors across the country. Thanks so
21 much.

22 CHAIR DARDEN: Thank you, Vaishali.

1 That was very, very informative. I did have one
2 question for you. I'm sure the audience is
3 interested, the public. Because pendency is such
4 a huge issue and concern, when do you expect to
5 see some impacts from the hiring initiative? I
6 don't want people to think that we hired all of
7 these examiners and then, boom, tomorrow, pendency
8 would be gone, it would disappear. So what might
9 be some timelines on expectations?

10 MS. UDUPA: So I think that's a great
11 question, so thank you so much for that. As you
12 know, with hiring and bringing examiners into our
13 workforce, it takes about 2 years, 2 to 3 years.
14 It's a lagging indicator on what we see an effect
15 on pendency. So we know that the work we're doing
16 now is going to be, it's going to have a great
17 impact on pendency.

18 But we need to make sure that we
19 understand that it's not going to happen
20 immediately. It's going to happen, we're going to
21 see more of the results probably in about two to
22 three years.

1 CHAIR DARDEN: Thank you. So you're
2 taking steps now that we can look down the road to
3 see some potential impacts in 2 to 3 years.

4 MS. UDUPA: Exactly.

5 CHAIR DARDEN: Thank you.

6 MS. UDUPA: We were hoping sooner but we
7 have to know that it's a lagging indicator. It's
8 not going to happen immediately, as soon as we get
9 these people in. You have to get these people
10 integrated, and getting up to speed.

11 CHAIR DARDEN: Right. And in terms of
12 the treatment of potential patent examiners, where
13 are you looking in terms of the treatment and how
14 can the public maybe provide some input on some
15 demographics that maybe we haven't reached out to?

16 MS. UDUPA: Thank you so much. That's
17 another great, you know, point that needs to be
18 made. We are doing a lot to expand where we are
19 recruiting. We have increased the number of
20 schools that we're going through. We are
21 increasing the number of, sort of, we're also
22 using our regional offices to make sure that we

1 expand the reach so that people know about the job
2 as a patent examiner.

3 There's many people that don't
4 understand like there's an amazing opportunity to
5 come here to the USPTO and be a patent examiner,
6 and to really have an impact on innovation. And
7 you know, the economy and things like that. So we
8 want to make sure that people know about it. So
9 expanding our reach to more colleges by using more
10 regional offices.

11 And any of you that hear this, if you
12 know of people, please have them consider
13 applying. Tell them how great of an agency the
14 USPTO is. And ideas of how we can get the word
15 across that we have jobs here, we want people to
16 come here.

17 CHAIR DARDEN: Thank you again,
18 Vaishali, for that overview and the public will be
19 engaged because we're all concerned about pendency
20 and working with the office to reduce that
21 backlog. Thank you. We look forward to updates
22 over the coming years.

1 At this time, we'd like to transition to
2 the next part of our program, which is hearing
3 from the Office of General Counsel with regards to
4 how requests for comments are handled by the
5 office.

6 MR. OETTINGER: Good morning.

7 CHAIR DARDEN: Good morning, how are
8 you?

9 MR. OETTINGER: Good. I'm Nick
10 Oettinger, I'm senior counsel for regulatory and
11 legislative affairs in the Office of General
12 Counsel here at PTO. And I'm here talk you all a
13 little bit about the rulemaking process and how
14 public comments work, and sort of our procedures
15 internally for handling that.

16 And I'll be joined by some colleagues in
17 some of the business units who write the rules,
18 but I'll tell you a little about what I do. So I
19 lead a team in the Office of General Counsel that
20 supports agency clients in the rulemaking process.

21 So we work under OMB guidance and the
22 Administrative Procedure Act, and the statutes

1 regulations that relate to agency rulemaking, and
2 support the clients who are issuing proposed rules
3 and final rules to address agency regulations, as
4 a part of 37 C.F.R. that governs how the office
5 operates. And all of us are not technical experts
6 in patent and trademark policy, but we are experts
7 in the kind of procedural requirements. So what
8 an agency must do to propose to the public,
9 changes to the regulations, new regulations, and
10 how we work through that. Work through the
11 external clearance processes, and then end up with
12 something new in the Federal Register that allows
13 the public to make use of the services the agency
14 offers.

15 So generally, for the PTO what that
16 involves is a notice of proposed rulemaking to the
17 public and the Federal Register for the public to
18 see. Something that proposes new regulations,
19 amendments to existing PTO regulations. Everyone
20 here, I'm sure, will be familiar with those.
21 Those are things like setting and adjusting fee
22 levels, creating new processing options.

1 Those proposed rules seek public
2 comment. This is a basic requirement under the
3 Administrative Procedure Act. And the office has
4 a practice of doing this even for some immaterial
5 procedural rules where public comment is not
6 specifically required by the ACA. Generally, the
7 practice to hear from the public and so we do
8 that.

9 Our rules are open for a period of
10 public comment, 30, 60, 90 days. Sort of depends
11 on the topic and what's involved. Anyone who has
12 sort of undertaken this process would have seen
13 that public comments are submitted through
14 regulation dot gov. This is a government wide
15 website that is used for rulemaking, so all of our
16 rules direct people to that website with a
17 particular document number for the rule.

18 Tells you how you can submit a comment,
19 this is done electronically. You can type it in,
20 and the file gets uploaded. Historically, in the
21 past, people may be familiar with that the office
22 would have an email address set up and comments

1 can just be sent directly to the office.

2 Everyone uses regulations dot gov now.
3 Our rules include instructions on how one might
4 give comment to us if you have some problem
5 accessing the site. But generally for the office,
6 public comments are submitted there.

7 The process on regulations dot gov is
8 when a comment is submitted, it's not [inaudible]
9 made live on the website. But it is made
10 available to the staff who are working on the
11 rules at PTO, who then get it processed and loaded
12 into the public docket. And the office generally
13 does that as quickly as we can. They vary in
14 process among agencies, but we try and look
15 through the comments and get them up on the public
16 website so they're in the comments here, and the
17 public can see the benefit of what other people
18 have used to weigh in on the rule.

19 And so they see, oh, there's been
20 comments like this, let me get my comment in to
21 amplify something or offer a counterpoint. The
22 comment period for rules as a general matter will

1 be open for the period of time we've outlined in
2 the notice of proposed rulemaking.

3 And one thing sort of important for
4 people to be aware of if they're interested in
5 leaving comments is the comment deadlines are very
6 important. We cannot receive comments from the
7 public after the deadline is closed. And this is,
8 you know, sort of a requirement for the ACA, but
9 this is a general matter of fairness. Everyone
10 has been told how long they will be able to offer
11 public comments. Everyone has an opportunity, if
12 we took someone's comment after it closed, it
13 would not be fair to others who maybe ran out of
14 time.

15 It is not uncommon that the office will
16 hear from people asking if additional time can be
17 provided. Sometimes that is possible, given our
18 timing, and what's happening with the rule, but
19 that's done through publishing a new notice in the
20 Federal Registry that informs people that we are
21 extending the comment deadline, and there will be
22 another 30 days or whatever time to do that.

1 So for people interested in commenting,
2 it's very important to pay attention to the
3 deadline for the comment period and get that in
4 sort of in time. The office publishes rules that
5 attract different amounts of comments, depending
6 on what the topic is. Some rules attract a great
7 deal of excitement. There's a lot of comments.
8 Some rules receive less.

9 All the comments are processed by the
10 office. Sometimes for some rules, I'll know then
11 people who have seen this, if they looked at the
12 docket on regulations dot gov. Sometimes the
13 office will receive identical comments, so it may
14 be a letter writing campaign, or something outside
15 with people saying, hey, contact the office and
16 this is sort of the message that people with our
17 viewpoint would like to send.

18 And we receive all of those, and they
19 get posted. Our practice on some rules, if we
20 receive literally identical comments, might be to
21 post one as an example, and then list that it's
22 been received from all these people. But all the

1 comments sort of taken in by the office become
2 part of the rulemaking docket.

3 When a comment period closes and we've
4 received them all, then what's happening
5 internally is the program staff who are working on
6 the rule are reviewing all of those comments and
7 considering them as the office makes decisions
8 about how to proceed with a final rule.

9 And the general way the ACA works and
10 how the office is postured when we're doing
11 rulemaking is we are providing proposals to the
12 public of how regulations may be set or adjusted,
13 we're receiving feedback, and then we're making a
14 decision on the final rule about whether we will
15 continue with the things as proposed. We will
16 perhaps make adjustments based on feedback from
17 the public, based on all our additional thinking.

18 We may elect not to proceed with the
19 final rule. Sometimes the result of an MPRN is
20 you've heard from a lot of people, you've thought
21 about it further and you decide you're not going
22 to do this. We'll do something else.

1 But the public comments that we receive
2 are an important part of our process. [Inaudible]
3 but all the comments are considered, become part
4 of the process, what we are thinking about, you
5 know, what would the ultimate outcome be of a
6 final rule.

7 Thinking of what we do in final rules,
8 and anyone who looked at one will have seen this
9 for the office, we summarize what comments have
10 said. So perhaps from a single comment, there is
11 someone who said some things, we don't paste them
12 in verbatim into the final rule, but sort of
13 summarize the commenter, suggestions to the office
14 that you should not do some procedure, or you
15 should do it, or a number should be changed.

16 And then the office will provide a
17 response in the final rule saying, you know, we
18 understand the comments. They seem like a good
19 idea. We're going to make a change based on that.
20 So we're not adopting what was suggested because
21 of this reason, and we're doing some different
22 things.

1 So all the comments become part of our
2 process internally in four months, and whatever
3 we're openly going to do in the final rules. The
4 final rules that are then published include our
5 response to those comments, and then explained
6 whatever is actually happening with the regulatory
7 process, changes we're making.

8 So the final rule will include a
9 discussion of the comments received and then some
10 of the final numbers we derived at and whenever a
11 final rule is published, it would indicate some
12 effective dates, sometime after publication to
13 give the public time to sort of understand when
14 the changes will be effective and what that means
15 to you.

16 That's a very high level overview of
17 what happens. Also, I'm sorry, I go a little
18 fast. Happy to expand on any of that or if anyone
19 has questions about that sort of general process,
20 I could answer those.

21 CHAIR DARDEN: Well, I just have one
22 point that I'd like to clarify and have the public

1 hear, and that is when I heard you, if I heard you
2 correctly, when the comments come in, they are
3 considered as before final rulemaking is made. So
4 public comments are received, read, reviewed, and
5 considered.

6 MR. OETTINGER: Absolutely. All of them
7 are. And I know this from working with the
8 program, also through our reading through all of
9 them. Every comment that's received becomes part
10 of our overall thought process of thinking what to
11 do.

12 And you know, they're all valuable for
13 us. And receiving input from the public of that
14 people think. And because they are public, you
15 can see them in the dockets, so people can see
16 that we received comments of varying length, and
17 addressing, you know, all of the rule in great
18 substance. Or maybe offering a very brief
19 thought.

20 Hey PTO, this is great. I love it and
21 you can do it, or this is really bad, you know,
22 please don't do that. All comments are received

1 and considered. And part of putting them up on
2 the public website is so people are sort of aware.

3 This was what the public thought when
4 the office proposed this thing. A lot of people
5 liked it, a lot of people did not like it.
6 Whatever kind of the outcome of that is, that's
7 both, you know, during the comment period as we're
8 able to process them and upload them so people can
9 see, but also, you know, it becomes part of an
10 administrative record.

11 So beyond what is regs dot gov for any
12 agency in doing rulemaking, there's administrative
13 records that involves all the materials. All the
14 comments are part of that. So it's absolutely the
15 case that all of the comments are received by us,
16 reviewed by people who are involved substantively
17 in determining how will our final rule go forward.

18 What will we choose to do or not to do
19 here based on things we have heard from the public
20 when we opened up for public comments.

21 CHAIR DARDEN: Excellent. Thank you for
22 that. And since this is such a hot topic, we're

1 going to open it up for other comments. I know
2 Charles is anxious to get in here.

3 VICE CHAIR DUAN: So number one, I just
4 want to echo Lolita points out, you know, it's a
5 really great opportunity that the public has to
6 weigh in with the office and potentially affect
7 policy and provide this sort of additional input.
8 I really appreciate that opportunity over the
9 years. I filed many comments with the agency.
10 It's great to hear that you got all of them.

11 And I'm sure it's really good for the
12 rest of the public to be hearing, to be hearing
13 that same message. Two questions. Number one,
14 you mentioned that every once in a while the
15 agency will extend the deadline. That has
16 historically been very useful to you. If I run
17 into a situation where it would be useful to ask
18 if an extension would be possible, who's the right
19 person to contact for that?

20 MR. OETTINGER: So any rule that we
21 publish has a person, at least one person
22 identified like an actual, you know, living human

1 being. Not kind of in a box somewhere, right.
2 Who is the person to reach out to for additional
3 information, and so that would be the good person
4 to start with. Of if there's, you know, multiple
5 people. And an email address or a phone number is
6 given.

7 It's been these gentleman sometimes.
8 I'm looking at them. Rarely me personally. But
9 that would be the person to reach out to, and I
10 would just note that, you know, as I'm describing
11 the process for extending, it takes some work
12 because we publish a new notice, letting the whole
13 public know about the new time period. Earlier is
14 better.

15 And I know, you know, with the time
16 period running and I realize you need more time
17 but if you feel that may benefit from more time,
18 asking earlier is always better so that there's
19 time to plan ahead. So yes, we'll get that in the
20 works. We will publish a new notice telling the
21 public they have an extra 30 days.

22 But those people who are listed in the

1 rule, and there will always be at least one actual
2 person. That's who you want to reach out to.

3 VICE CHAIR DUAN: All right, that's
4 perfect. And that's really helpful. That's
5 really helpful for me to know and hopefully for a
6 lot of other people. And second question, and I
7 guess this is for all of you, given that you've
8 probably done some of the same comments. What, in
9 your opinion, makes for a good comment? What's
10 useful to you? What sorts of things are helpful
11 to you when you read these comments?

12 UNIDENTIFIED MALE: Typically what we
13 have is we have a very wide range of rulemaking.
14 It can be a very broad package, or a very narrow
15 package. But either way when we get comments
16 back, comments that are just you do not like it,
17 period, or we do not like the system as it is,
18 those we take into account, but they don't give a
19 whole lot of added value.

20 So we say there's not a whole lot for us
21 to consider. It's, you know, you're saying you do
22 not like it, or if you said that you like it, and

1 those comments are appreciated. We always like it
2 when people tell us they like the direction we're
3 going. But it's better to tell us why. Give us a
4 little bit more meat on the bones there.

5 For example, if you say we don't think
6 [inaudible] period, explain it. If you think this
7 is great, we like the direction you're going,
8 explain how the impact is for you as a
9 stakeholder, or how you think the system is going
10 to be impacted.

11 If you think, and some of the best
12 comments have had are they say they like it, and
13 they think that it may be improved and here's how.
14 And we'll get actually, we've seen it from those
15 association's individuals, they'll tell us here's
16 your rule language. If you look at the rule
17 language and you see this sentence here, or not
18 sentence, but this portion here, we think it can
19 be tightened up.

20 And so we'll take that into account.
21 We'll bring that to not only the business meeting
22 that we're in. We'll talk about it on our own,

1 we'll then talk to other BU's and say could the
2 rule be tightened up this way, or we thing that's
3 going in a different direction.

4 But at least give us something to have
5 that discussion rather than we love it, which is
6 great. We always like doing that. We don't like
7 it. Well, okay. Tell us why. But if you also,
8 if you have an opinion on how to improve what
9 we're trying to do, please tell us. And we've
10 seen a lot of people do that in the past, and we
11 see that we have changed rules to reflect comments
12 we've received, where they give a specific rule
13 language that we can adopt.

14 MR. HANLON: So I'll echo what Mike
15 said, and also ask that when comments re sent in,
16 please keep them on topic. Because sometimes we
17 have comments that come in, and while it might be
18 helpful for a different issue, we're spending the
19 time going through, as we said, reviewing every
20 comment, considering every comment, and we're
21 going to have to put that aside and deal with it
22 later and look into it later.

1 But it'd be better to have the topic
2 that we're dealing with, that the rule package is
3 about being the thing that the comment is for.
4 There are plenty of avenues to submit comments to
5 the office. We always appreciate comments,
6 changes that need to be made, things that could
7 help the process.

8 But if you're commenting on a rule
9 package, please comment on the issues in the rule
10 package. And I can tell you because of 19 years
11 of doing this, we do read every comment and
12 consider every comment.

13 So even, as you said, about reading your
14 comments, we consider them fully as well. Put
15 them in the mix and try and figure them out, as
16 Mike said, about where we can go and how we can
17 improve everything. Taking everything
18 collectively together. Thank you.

19 VICE CHAIR DUAN: I have a very general
20 question. And I ask this purely from a sort of
21 public perspective, and not to cause any issue.
22 But I'm going to ask about, from a rulemaking

1 perspective, how do you see any changes going
2 forward in light of local [inaudible] and
3 relentless.

4 In terms of the ability to be narrow or
5 broad, use of those Supreme Court rulings that
6 have recently gone on. And again, I'm asking this
7 in a friendly way, just so that the public can
8 understand the ability of the agency to continue
9 to make rules that are useful while having that
10 kind of overhand from a judicial point of view.

11 MR. OETTINGER: Yeah. No, I think
12 that's a good question. It's one that all
13 executive branch agencies are thinking about.
14 Obviously has a lot of attention [inaudible].

15 And so you know it's something we're
16 aware of, we discuss it internally, you know, in
17 our interactions with the entities who are
18 involved in review and clearance of the rules.
19 The public commenters, office of management and
20 budget. We talk to them about these things as
21 well.

22 You know, just offering my personal

1 view, I'm not sure that we see it significantly
2 changing the way that the agency approaches
3 rulemaking, because I don't think the agency is
4 relying on, you know, solely the existence of
5 chevron deference to undertake our rulemaking.

6 The agency is generally, in our
7 rulemaking, we are proceeding, you know,
8 procedural matters that affect the processes for
9 the office, and how people interact, and obtain
10 services, and we are not issuing rules that are
11 altering, you know, some of the fundamental, you
12 know, substantive criteria for receiving
13 protection for intellectual property.

14 And so you know, if you have, if you
15 look at any [inaudible] rule, where in the
16 administrative procedure session, we'll sort of
17 describe and supplement any information, you know,
18 the authority for undertaking the rule. So 35
19 U.S.C. too, provides for the office for
20 regulations pursuant to the APA that governs
21 proceedings before the office.

22 We're relying on that authority, and in

1 the APA section, we describe a little more some of
2 the nature of procedural rulemaking, whatever
3 we're doing, you know, we're not citing chevron
4 and so now we must change sort of how that is
5 written.

6 You know, so clearly, we're aware of
7 this. Right. We think about it. We follow
8 really kind of any significant changes in law
9 about procedures and rulemaking, how to handle
10 things. But I don't think you'd say that, you
11 know, making really substantive changes.

12 I mean, you know, seeing how everything
13 goes. But I don't we see that as actually
14 altering [inaudible].

15 VICE CHAIR DUAN: I think that's
16 reassuring for the public to hear. So that's why
17 I was asking. Thank you.

18 CHAIR DARDEN: Any other questions for
19 Nick? I'm going to ask then from Michael and
20 Brian, from your perspective in terms of
21 addressing comments, and I understand that you all
22 are engaged in writing rules and reviewing

1 comments. So what's your approach to the whole
2 concept of comment review and how to use them as
3 part of your balances when you're preparing the
4 rules?

5 UNIDENTIFIED MALE: So we have a lot of
6 different categories. We have the request for
7 comments, which is very broad based. We have our
8 NPRM. Comments, for example, on a RFC are very,
9 they're much more broader because at that point,
10 what we're telling the public is we have an idea
11 we want to do something in this field, this area.
12 But we don't have enough information yet to write
13 a very specific rule.

14 We want to capture more information to
15 inform us of what the best direction is and to be
16 very specific. If we want to write a rule, then
17 you've created a very specific target. So think
18 of RFC as a very broad-brush kind of as a high
19 level category. And we're looking for comments
20 that are a little bit more high level.

21 You can give us a direct rule if you
22 think that's best, but we don't require at that

1 point, specific language in a rule. But at least
2 what the idea is. What we're looking for there is
3 more concept, how this would impact you as a
4 whole, which direction it goes, do we go left or
5 do we go right.

6 Once you get to an MPRM, though, we've
7 already decided, at least put out a proposal to go
8 that left direction or go the right direction,
9 whichever way it may be. And we have more of a
10 defined target. Now, with that defined target, we
11 have specific language there. And so when we get
12 the comments back, again, it's helpful to have the
13 high level comment that we like it, we don't like
14 it, but we're looking for a little bit more detail
15 at that point.

16 For example, how would this rule impact
17 you as the stakeholder, or impact the society as a
18 whole, if we were to go forward with it. So
19 provide a little bit more commentary on that, and
20 that's why I say also now that we've defined it a
21 little bit, you have specific rule language, so
22 tell us this language doesn't work at all for us,

1 and give us, you can give us some sort of
2 horrible, or you can give us the this is the best
3 thing ever.

4 But be specific. For example, if
5 there's a portion of the rule that really causes
6 you angst, give us some language that you think
7 may improve it, or why that should not be part of
8 the rule packing going forward at all.

9 So therefore, what I'm saying is, when
10 we start with an RFC, what we're looking for is a
11 very broad brush, we get some MPRM comments out,
12 we're looking for a very much more refined, more
13 [inaudible]information. That's how I take it.

14 Now, what we do with these comments, and
15 again, we receive every comment, we look at it in
16 detail. If we get a package that has maybe 10
17 comments, and it's sort of like a little bit
18 easier, although it could be a very lengthy
19 comment, but at least at that point, we can pretty
20 much summarize it for someone like [inaudible]
21 there and be able to explain it to them in a very
22 simple fashion.

1 So we can give you a high level, here's
2 what the people want in 10 comments, and we go
3 through each of the comments. And we start
4 getting the thousands of comments, 14,000 to
5 several thousand comments, that's when we start
6 getting a more we have to crate more internal
7 charts, like an Excel spreadsheet, and we're
8 having to have a couple versions.

9 Basically, we take all the information,
10 we put it down and get it all out there. There's
11 a ton of information to digest. Some we'll have a
12 team that's summarizing that information to a
13 level that we internally have a team [inaudible].
14 Then we as a team pass it to that one level higher
15 from that, so that we can have our meetings, and
16 it may be one, or many, many meetings with the
17 Office of the Undersecretary, and explain to them,
18 here's what we're seeing.

19 And we'll give them copies of the
20 relevant, or comments that are seen more often to
21 give them a sense of where we're going. It's a
22 lot of information to process, and we keep trying

1 to get it up the chain to the right level so that
2 they can process information in making those
3 decisions, based on what we're seeing.

4 That's kind of what we do with all the
5 comments. They are read, they are evaluated. And
6 every level, you have to get that right because
7 someone like Eric here, doesn't have the time to
8 necessarily read the 14,000 comments, and so he
9 would appreciate having the time, but I don't
10 think he has that kind of time, and he wants us to
11 kind of get it for him so he can summarize it on a
12 level that he's going to make decisions on it.

13 MR. HANLON: I would just, actually,
14 again, I'll echo what Mike said. We do a very
15 similar process. We go through and we work it
16 through so that we can have summaries of the
17 comments. We have collections of documents that
18 express that. Comments, the main thing is through
19 the comments, some of the other interesting things
20 that are on point, maybe things that we had not
21 thought about.

22 And then we work with the management

1 within the agency. In our case, we go to a
2 commissioner and then we work to the
3 undersecretary's office to bring all of those out.
4 And then discuss those, and then identify a
5 direction forward for it.

6 MR. SLEPIAN: I know in recent,
7 particularly with some comments regarding AI
8 usage, we've received thousands of comments. So
9 want to let the public hear that you are going
10 through them even though there may be 14,000,
11 10,000, you're going through those comments, and
12 they are being considered.

13 MR. HANLON: Yes.

14 CHAIR DARDEN: Now we do have one
15 question from the online audience, and they ask
16 after reviewing public comment, how long will it
17 take the agency to publish the final rule?

18 MR. OETTINGER: It takes a different
19 amount of time depending on the different rules
20 and the number of comments. So it would be hard
21 to, to give one amount of time. And it's going to
22 vary a lot of we're doing say a large fee rule,

1 that [inaudible] of all the fees and the costs on
2 the patent side, or one that's very complex and
3 dealing with board procedures, versus a minor
4 procedural update to some kind of processing
5 service.

6 When we talk internally about timelines,
7 the clients that say hey, we have a new idea for a
8 reg, what do we need to do for rulemaking. We
9 tell people to think about rulemaking taking maybe
10 a year, maybe a little less, or maybe a little
11 longer. But that's not from the final rule, you
12 know, that's the full writing and notice of
13 report, rulemaking out for public comment.

14 Because our process internally when an
15 MPRM closes, is review of all the comments, as
16 both Mike and Brian are saying, developing
17 internal drafts of the final rule. Their internal
18 review procedures, then it goes outside for
19 review.

20 So the Department of Commerce reviews
21 the rule. So it goes there. Then our department
22 would have it. All agency rulemakings are

1 reviewed by the Office of Management and Budget to
2 undertake this process of interagency review.

3 So then while we're done internally it
4 can pass, before it would be published to the
5 public, there's other's looking at it within the
6 executive branch. So they know that rule may be
7 of interest to other parts of the executive
8 branch, there's an opportunity for them to weigh
9 in.

10 Clearing by OMB allows us to proceed
11 with a final rule to publication. But again,
12 those time periods do vary depending on the
13 complexity on how busy there are with other
14 things. So you know, it would be hard to give one
15 answer. This isn't something like I could tell
16 you a general rule has a comment period of 30, 60,
17 or 90 days, and it can move very quickly.

18 A rule could be small, and it could be
19 done in a few months, but it could take much
20 longer than that for it to be a final rule if
21 we're going through a lot of comments, if we're
22 writing a very long rule. If it's complex, we'd

1 undergo an external review, with meeting and
2 explaining things to those people.

3 It's hard to say exactly, but it's not
4 sort of fast, I think, in the sense of the way
5 these things over here in your schedule, you know,
6 kind of [inaudible]. Sometimes it takes months
7 and months.

8 UNIDENTIFIED MALE: So once we receive
9 the comments, and we've already been reading the
10 comments as they come in. Once the comment period
11 closes, if it's a large amount of comments, there
12 is an amount of time that we have to process and
13 digest it and summarize it [inaudible] the team.
14 As I mentioned, working its way through to our
15 [inaudible]. And then go to the director.

16 We also work with other BU's internally.
17 There's a lot of internal processing for any rule
18 we're doing. But once, as Nick mentioned, once
19 you even get to the point where we process it for
20 10,000 comments, decisions have been made, we
21 wrote it up, response to comments.

22 We're talking some packages, 10 pages,

1 and some packages, hundreds of pages. And there
2 could be a lot of detail. And then depending on
3 detail, and you're going through the reviews, some
4 people have questions, we want to tighten down
5 everything because especially with a final rule,
6 you need it to be the best possible foot forward.

7 You cannot be making mistakes. You
8 can't say, oh, that's close enough, you want it to
9 be just right. So it takes a lot of time
10 internally. Once you go outside the agency,
11 though, we're hitting the Department of Commerce,
12 their policy group, the General Counsel.

13 And then you have question, which is
14 another level of review, another level of
15 revision, and working it out with them. We get to
16 OMB, and I know I recognize a few of you from some
17 of the [inaudible] meetings, where [inaudible]
18 meetings where members of the public can come in,
19 and they don't have a copy of the rule in front of
20 them, but they can make comments as to what they
21 think is in the rule and how that would impact
22 them, and what they like OMB to be looking at and

1 asking questions of us.

2 There's a lot of different processes
3 that are outside our control, especially once we
4 get to the Department of Commerce. It can go very
5 quick, or they can have a lot of questions.
6 Similar with OMB. It can be a quick review, or we
7 can be there for a while.

8 So in a perfect world, we get it done,
9 as you say, expeditiously, maybe get it under a
10 year if they're nice. We get it out. Other
11 times, we get a few questions. We have to work
12 things out. And again, everyone's just trying to
13 make it so they do the best they can.

14 CHAIR DARDEN: All right. Thank you.
15 Any other questions from PPAC? Eb.

16 MR. BRIGHT: Yeah, I just have a kind of
17 similar to Marvin, so on the request for comments,
18 and you guys started thinking about it, there
19 might be a topic that should be addressed or not
20 addressed.

21 Is there a mechanism in which the public
22 can provide suggestions to you all about areas to

1 think about doing? So similar to you asking, you
2 know, the public should we do something, is there
3 a mechanism for them to suggest to you maybe you
4 should do something [inaudible].

5 MR. OETTINGER: Yeah, absolutely.
6 There's a lot of ways into the office to give
7 feedback, so you know, any request for comments
8 that is seeking the public views on a topic
9 generally, is a great opportunity and sort of, you
10 know, a comment that could come into both say hey,
11 here's what I think of the topic, but you should
12 do a rule, there should be a reg that says this.

13 So you should adjust your regs because
14 this should do something else. The office also
15 has on the public website, and I don't remember
16 the URL off the top of my head, but inboxes that
17 are sort of subject matter related.

18 And maybe if you [inaudible] USPTO
19 inboxes, but there is a page that sort of says
20 hey, if you wish to reach the PTO and offer some
21 thoughts on patent policy, this is the email
22 address.

1 There's one that's for [inaudible]. So
2 there are some really good markets which are not
3 tied to us having a rule or an RFC out, a comment
4 there is not instantly going to become part of the
5 administrative record of the rule. But it would
6 be a way to just reach the office and offer
7 feedback and say hey, you can think about
8 rulemaking in this area. It would kind of help.

9 So those are reviewed, and I think the
10 review process for those is a little different
11 from what we talked about with rulemaking. But
12 those are seen. I mean, I would say very broadly,
13 I've been here 14 years. The office is very
14 focused on feedback from the public. I think I'm
15 very open to hear, I mean, it's living evidence,
16 you know, in the public advisory committee.

17 So there are a lot of ways in, and I
18 think raising rulemaking and having some specifics
19 thoughts of regs, and you know, [inaudible] and do
20 this. People would understand, that's oh, we
21 could think about that [inaudible].

22 VICE CHAIR DUAN: And just sort of

1 picking up on that, who should submit comments? I
2 mean, should it only be IP corporations? IP trade
3 associations, highbrow law professions, who would
4 you like to see comment?

5 MR. OETTINGER: Let me offer a brief
6 answer from the APA perspective, but then I'll
7 turn to the subject matter who's here, but
8 everyone should feel free to offer comments.
9 Right. And if you look at the rules we have put
10 out that have gotten a lot of comments, with some
11 board rules or fee rules, all kinds of people send
12 in comments.

13 And I think it is valuable to me also to
14 hear from all perspectives. Right. Because the
15 issues we are dealing with, you know, whether
16 you're sort of directly a customer, or also
17 seeking our services for the issuance of your
18 patent and trademark, or your impacted by the
19 system in some other way as a customer.

20 There's impact broadly across the
21 country. And so we would like to hear from
22 everybody on that. People should not refrain from

1 giving comments. I think worried that oh, I'm
2 just a person and not a trade association or
3 running a big firm. You know, my comment will not
4 matter.

5 I'm mean the comments are all read, and
6 I think there's value, you know, in every comment
7 we receive. And there's a holistic process of
8 looking at all of them. Right. It's not a
9 circular file of the ones that came from John or
10 Jane Doe. There's the one from, you know, someone
11 in academia or something.

12 MR. HANLON: Yeah. Basically, if
13 someone has something to say, say it. File a
14 comment. I would encourage everyone because
15 there's different perspectives. Everybody has a
16 different perspective. And how do you know that
17 we don't need that perspective. So please give us
18 your perspective, give us your comments, so that
19 we can review them and consider them. Because
20 what you say may not be covered by anyone else,
21 and it might be the thing we needed.

22 CHAIR DARDEN: Okay.

1 VICE CHAIR DUAN: I think I know the
2 answer to this based on your earlier comments, but
3 I'll just throw it out there anyway from a public
4 perspective. Quality versus quantity, now, I
5 think to some degree, when people put comments and
6 they think having an extraordinary large number of
7 comments of one, one position may be helpful in
8 terms of steering with this course.

9 But if they're relatively duplicative
10 comments, is that really meaningfully shifting the
11 dialog or would you prefer folks sort of --
12 because you said they're working together
13 consolidating comments into a single set of
14 comments, rather than sort of independent
15 submissions. Or does it really matter?

16 MR. OETTINGER: I mean, I think both
17 things are valuable. One thing for folks, I
18 guess, should be aware of. If they're talking
19 about the process of all comments being reviewed
20 and I mean, it's not a voting system. Right.
21 It's not for the 50 percent plus one, and we give
22 away how many, and those that we're not

1 [inaudible].

2 But it's obviously relevant, that many
3 people felt it was important enough to write in
4 and say, you know, even the same thing. I mean,
5 that's a data point for us. Right. And what
6 people think. But as Mike described any
7 substantive comments saying hey, you know, look at
8 your language, and if it was this way, and there's
9 a lot of thoughts on the impact on users, that's
10 very valuable too.

11 But I don't think it's without value for
12 people to write in and say I want to echo what
13 many other's have said. It's real important for
14 the office to recognize, you know, A, B, and C.
15 If a lot of people are telling us that, I think
16 that's also of relevance for us to know.

17 UNIDENTIFIED MALE: And just keep in
18 mind, this is not a storing system where 1,000
19 comments wins you on the rule package. I mean,
20 you have some people that comment and say well,
21 there are 5,000 comments or whatever number, that
22 are supporting my position. And that's great, but

1 it could be one really good comment pointing out
2 we went the wrong way, that could outweigh the
3 5,000, depending upon how good the comment is.

4 Like you [inaudible] at the statute
5 would be and they tell us why, that could
6 outweigh, even if it's a good idea from 5,000
7 people, they don't have statutory authority, one
8 comment could prevail. So I don't want to get
9 into the numbers game, but 5,000 comments, 100
10 comments, 10 comments, 2 comments, we take them
11 all as data points. They all get weighed. But I
12 don't want to make it seem like it's a numbers
13 game at the same time.

14 CHAIR DARDEN: I have, I have a follow
15 up from the question that was raised from the
16 online audience. It says thank you, I have a
17 follow up regarding the process for external
18 review. What other agencies review other than the
19 Department of Commerce, is there an online outline
20 of the entire process that we can review, and then
21 can you provide more information as to how we can
22 provide comments to OMB?

1 MR. OETTINGER: So let me take those in
2 order. Who reviews during the external process
3 and the OMB process with our engagement with
4 interagency review is subject matter dependent and
5 controlled by OMB who may read the rule, you know,
6 from PTO or anyone and say oh, you know, what's
7 here clearly is of interest to the Department of
8 Energy, and the Department of the Interior. Let
9 me make sure they're aware of it.

10 PTO sometimes is made aware of other
11 agencies rules on the same basis. But that's sort
12 of [inaudible] views in the system. OMB's
13 website, and I not going to be able to summon the
14 URL for this, but OMB's website has some public
15 materials that explain the rulemaking process and
16 sort of their review.

17 Mike was briefly refencing earlier,
18 there has been executive order, executive order
19 12, it's with some subsequent revisions that are
20 made that sort of governs the process by which OMB
21 with its rulemaking.

22 Among other things, that provides

1 procedures, and I believe this is on OMB's public
2 website, but informs the members of the public how
3 they may reach out to OMB and request a meeting
4 when a rule is under review. And that's something
5 that OMB schedules.

6 They bring agency representatives there,
7 and members of the public, and have time to
8 basically share with OMB their views directly on
9 something they know is under consideration by OMB.

10 I would hesitate to give people the
11 wrong address for how to find this, but OMB's
12 public website about rulemaking informs the public
13 of [inaudible]. This is not designed for, you
14 know, people who are experts in agency rulemaking.
15 It's for anybody who has input, you know, on any
16 rule on any topic at OMB if you want to weigh in.
17 If they have like I'm a stakeholder, if that's
18 advised. Whatever you got going on here, I want
19 to make sure people reviewing the rule for OMB
20 hear my thoughts that this is designed to be user
21 friendly for the public.

22 So you'd have to search for, there's a

1 public part of the OMB website that describes
2 this, and then I think also has that public
3 guidance about the administrative feedback
4 procedure and sort of how MPRM, the public
5 comment, results in final rules, results in
6 regulatory things.

7 CHAIR DARDEN: All right. Thank you.
8 Any other questions from PPAC? Well, I'd like to
9 thank you, Nick, Mike, and Brian, for providing us
10 with that overview. I know for one, I learned a
11 lot about how comments are processed and handled
12 at the office.

13 So this concludes the substantive
14 portion of the meeting. We're going to take a 5
15 minute break so that we can set up for the 25th
16 anniversary recognition and celebration. So we'll
17 be back at about 12:28.

18 (Whereupon, at 12:23 p.m., the
19 PROCEEDINGS were adjourned.)

20 * * * * *

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1 CERTIFICATE OF NOTARY PUBLIC

2 COMMONWEALTH OF VIRGINIA

3 I, Thomas Watson, notary public in and
4 for the Commonwealth of Virginia, do hereby certify
5 that the forgoing PROCEEDING was duly recorded and
6 thereafter reduced to print under my direction;
7 that the witnesses were sworn to tell the truth
8 under penalty of perjury; that said transcript is a
9 true record of the testimony given by witnesses;
10 that I am neither counsel for, related to, nor
11 employed by any of the parties to the action in
12 which this proceeding was called; and, furthermore,
13 that I am not a relative or employee of any
14 attorney or counsel employed by the parties hereto,
15 nor financially or otherwise interested in the
16 outcome of this action.

17

18 (Signature and Seal on File)

19 Notary Public, in and for the Commonwealth of
20 Virginia

21 My Commission Expires: September 30, 2025

22 Notary Public Number 256314

