UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, August 14, 2014

PARTICIPANTS:

PPAC Members:

LOUIS FOREMAN, PPAC Chair

CLINTON HALLMAN

PAUL JACOBS

MARYLEE JENKINS

VALERIE MCDEVITT

CHRISTAL SHEPPARD

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PETER THURLOW

USPTO:

DANA COLARULLI, Director, Office of Government Affairs

PEGGY FOCARINO, Commissioner for Patents

DREW HIRSHFELD, Deputy Commissioner for Patent Examination Policy

BRUCE KISLIUK, Deputy Commissioner for Patent Examination

MICHELLE LEE, Deputy Under Secretary and Deputy Director of the USPTO

MIKE NEAS, Deputy Director, International Patent Legal Administration .

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P R O C E E D I N G S

(9:02 a.m.)

CHAIRMAN FOREMAN: Good morning. And welcome to the quarterly meeting the Patent Public Advisory Committee. This is our fourth and final meeting of the 2014 fiscal year, and we convene this morning to engage in a collaborate discussion on matters related to the U.S. Patent and Trademark Office and the Patent and IP community.

Today, we plan to address a broad range of topics from patent quality initiatives and operations to recent Supreme Court decisions, international updates, legislation, and more.

I want to thank my esteemed colleagues on PPAC for traveling today to be with us, and also to the members of the public who are either here in person in Alexandria or are on the web-X watching this deliberation.

I also want to thank the members of the USPTO management and stuff who have been very collaborative in their approach with us providing us the information and putting together their presentation for today's discussion.

Over the years, I've been able to be involved in PPAC. I'm just continually impressed by not only the professionalism but the real passion that this office exerts to the patent-holding community, and we are fortunate today to have the deputy undersecretary and deputy secretary of the USPTO, Michelle Lee with us to make her opening remarks.

But before we get started, what I'd like to do is allow everyone to introduce themselves starting to my left.

MS. FOCARINO: Good morning. I'm Peggy Focarino from USPTO.

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

MS. JENKINS: Hi, Marylee Jenkins, PPAC.

MR. HALLMAN: Clinton Hallman, PPAC.

MS. MCDEVITT: Hi, Valerie McDevitt, PPAC.

MR. BUDENS: Robert Budens, PPAC.

MR. FRIEDMAN: Howard Friedman, NTEU 245, PTO, PPAC.

MR. COLARULLI: Dana Colarulli, USPTO.

MR. HIRSHFELD: Drew Hirshfeld, USPTO.

MR. KISLIUK: Bruce Kisliuk, USPTO.

MR. JACOBS: Paul Jacobs, PPAC.

MS. SHEPPARD: Christal Sheppard, PPAC.

MR. SOBON: Wayne Sobon, PPAC.

MR. FAILE: Andrew Faile, USPTO.

MS. LEE: And Michelle Lee, PTO.

CHAIRMAN FOREMAN: Great. Thank you. And again, welcome to everyone who is here today.

And at this point I'd like to turn the floor over to our deputy undersecretary and deputy director of the USPTO Michelle Lee.

MS. LEE: Thank you, Louis, and good morning, everyone. It's a pleasure to be here for the last Patent Public Advisory Committee meeting of the year.

I'd like to extend a warm summer welcome to all the committee members, and many of you are former colleagues of mine, having served on PPAC. Thank you very much for your service. And let me thank Louis Foreman for his stellar leadership of the PPAC Committee.

I have a natural fondness for PPAC

having served on the committee before joining the USPTO. And the partnership between PPAC and the USPTO is, in my opinion, like no other partnership in the government. From the efforts that led to the America Invents Act, to the process by which the agency exercised its fee setting authority for the first time, we've stood together to advance the interests of this agency and our stakeholders. And that's why on any and all subjects I'll be discussing, and any and all subjects that my colleagues will be discussing following my conversation, what is most valuable to us is the direct and constructive feedback and guidance that you share with us. Tell us what we're doing right. Tell us what we can do better.

There will be a lot of opportunities for you to provide this input and feedback to us today. As you can see, the agenda is a pretty packed one and many members of the PTO leadership will be updating you on the important programs and initiatives that we have underway here.

This has been a very exciting time at the USPTO. As you'll see, there's a lot of good work being done at the agency, and there is much

good news to share. And I think it's very important to keep that in mind, both the good work and the good news in light of other things that are being written about the agency.

As I'm sure you've heard, there have been some recent reports questioning certain aspects of the agency's operations. All of us here together, from senior USPTO leadership to PPAC leadership and to those watching from afar who are all in this together, we all take great pride in how well things at the agency are running and what has and what will be accomplished together. And I know you all take very seriously any suggestion that we are not meeting the high standards this agency sets for us and that you rightly expect of us. And I certainly do as well.

With that in mind, I'd like to take a moment to address the recent questions that have been raised in the press about patent examiners and their supervision. Here are the facts. Two years ago, the USPTO received a request from the Commerce Department's Office of Inspector General to look into the operations between the patent examiners and their supervisors. And we

provided the OIG a final report in July of last year, complete with the entirety of all internal interview transcripts and supporting exhibits gathered to support the conclusions in that report, as well as used in the drafts that preceded the final report.

While we found isolated problems in the telework and timekeeping systems, the evidence did not support a finding of widespread or systemic abuse. In fact, there are extensive accountability systems applied to patent examiners. They are closely bound by production requirements and supervisors closely review their work as well as the quality of the work product.

And here's another fact. Our telework program remains a proven success story. The Office of Inspector General, in a 2012 audit and report, in fact, praised our telework program across the board saying it is succeeding as a business strategy. The audit identified good management controls over the program that saved the agency money while increasing productivity and employee retention. That OIG report said

teleworking and hoteling USPTO employees reviewed more patent applications than do examiners working at the headquarters.

Hotelers spend more time examining applications in part because they have less use of sick and administrative leave times. In fact, on average, and to put a number on it, the average hoteler spends 66.3 more hours a year examining patents than does the average in-house examiner. This translates into reviewing 3.5 more patent applications per year per hoteling or teleworking examiner.

The OIG further quantified how the program is helping us reduce our backlog of unexamined patent applications. It found teleworking and hoteling examiners remove on average 2.5 more new applications from the backlog each year than an examiner working in-house.

But as you know well, the USPTO is always looking to improve the efficiency and the effectiveness of our operations, and that is why in our report to the OIG in July 2013 we identified several areas of possible improvement. We have

been hard at work putting those in place with most being completed and the remainder in progress.

Following the 2013 report, we instituted new guidance to supervisors to ensure proper accounting of hours worked. We launched an education campaign for supervisors and employees on telework policies. We established a director-led working group to examine how we count examinations and the impact of examinations done near the end of an evaluation period. And we've been reopening performance plans for examiners each year since 2010 predating our report to ensure that performance is accurately rated.

We have our patents leadership here today, and they can talk in greater detail about our hardworking patent examiners and how they are effectively being supervised. And as I said before, we very much value your feedback as our partners on what we are doing right and what we can do better. So we welcome your thoughts and your comments, and we are continually striving to improve our patent examination process and, in fact, every aspect of this agency.

On a related note, you know how focused I am and how focused this entire agency is on patent quality. I spoke at length on the topic recently at Stanford Law School where I announced our new enhanced patent quality initiative, what we call "Building a World-Class Patent System."

In a few minutes, Commissioner Peggy Focarino will provide more details to you, and we are very excited about.

This system is supported by three pillars. One, providing the best work products and services at every stage of the patent examination process. Two, improving the customer experience with an emphasis on excellent customer service. And three, engaging in a partnership with the public and with our PPAC numbers to both seek input and to educate you on what we're doing on all these fronts.

I should note that I have shared some of this last month when I testified before the House Judiciary Committee on courts, intellectual property, and the Internet. I also discussed with them how pleased we are that the Fiscal Year 2015 appropriations bill gave us the

authority to spend anticipated fee collections. This sustainable funding source gives us the flexibility to continue to reduce the new patent application and RCE backlogs, shorten pendency, and to improve patent quality. In this fiscal year, we received nearly 600,000 patent applications, an increase of more than 5 percent over fiscal year 2013. Our backlog of unexamined patent applications now stands at fewer than 620,000, a decrease of more than 17 percent since 2009 despite about a 5 percent increase over the previous year.

We are also continuing our efforts to enhance the patent administrative appeal and post-grant process to update our IT infrastructure and to expand the work of our examiners internationally through initiatives such as CPC and global dossier.

And now let me relate another good story. I mentioned that I was at Stanford in late June to discuss patent initiatives. A few days later after the speech, on June 30th, Commissioner Focarino and I, with deputy secretary of Commerce Bruce Andrews, and Trial

and Patent Appeal Chief Board Judge James Smith officially opened our new satellite office in Denver, Colorado. Also present were a number of elected officials, inventors, IP practitioners, and other luminaries. I can tell you from my conversations in Denver, that our office there has created a lot of excitement, and for good reason. Mayor Michael Hancock expects the office to generate more than $400 million in economic activity over the next five years.

I actually heard the mayor say on the train that took me from baggage claim at Denver Airport to the main terminal, and I wasn't actually speaking to him but I heard his voice over the railway train that basically said that the USPTO was welcomed and will be generating this amount of revenue, and it was for all of the train passengers to hear. So we were very excited about that very warm welcome.

In other Denver news, we recently hired an experienced and highly accomplished patent attorney named Russ Schleifer to serve as the new director of the Denver office. I have every confidence that Russ will do an outstanding job,

and I think you all will enjoy working with him.

We've also moved quickly to hire new local patent examiners and administrative patent judges on the ground in Denver with over 21 examiners on the ground and eight judges already there working in that office. More examiners means bright minds examine patent applications. We have drawn a great team of professionals at the USPTO dedicated to issuing the highest quality patents possible.

So back to our meeting today. Following Peggy's presentation, we will have Deputy Commissioner for Patent Examination Policy Drew Hirshfeld sharing with you some of the key points in the recent court decisions and subsequent guidance and training that we're providing to our examiners in light of those decisions. I should also add that Drew recently shared, and I participated in, a very well attended and very well received public software partnership meeting here in the agency to cover just those subjects, and it proved to be yet another valuable step in our larger efforts to build a better patent system with our

stakeholders and to do so transparently.

After Drew speaks, Deputy Commissioner for Patent Operations, Andy Faile, will provide an update on our efforts to reduce the RCE backlog. Later in the morning, you'll get an update from Mike Neas from our Office of International Patent Legal Administration on our international efforts.

The Patent Examiner Technical Training Program (PETTP) lead from the Office of Patent Training, Alexa Neckel, will provide an update on the technical training we're providing to our patent examiners, and Chief Judge James Smith will close out the morning agenda by providing an update on the important work of the Patent Trial and Appeals Board.

Continuing our program this afternoon, Chief Financial Officer Tony Scardino will update you on the finance aspects of the agency and budget, and Dana Colarulli, our director of Governmental Affairs, will provide a legislative update as well.

And finally, before we wrap things up this afternoon, Chief Information Officer John

and Patents End- to-End Portfolio Manager Kate Wyrozebski will update you on the latest with the PEEP initiative.

So on that point, I'd like to hand things back to Louis. I know you've got a lot to cover in your agenda today, and I'll just conclude by saying how pleased I am that you're all here and that we are all working together under the many important initiatives before the PTO and so important to our stakeholder community.

Louis?

CHAIRMAN FOREMAN: Great. Thank you, Michelle, and we appreciate the good news. And we also appreciate the transparency that the office had provided during these issues.

I was wondering, is it possible to take a few questions before you leave?

MS. LEE: Absolutely.

CHAIRMAN FOREMAN: Okay. Do we have any questions from members of PPAC?

MR. THURLOW: Just the hot topic has been the teleworking issue. I think all of us have learned more about the teleworking than we ever expected to learn.

So one of the things I read here, the written statement that you submitted to the House Judiciary Committee, and one of the things that I appreciate that many practitioners didn't appreciate as well, is that the hotel program started years ago and only had, say, 500 employees, and now it seems like it's really exploded. There's, according to the statement, 4,800 employees working four or five days a week and 9,300 employees working at least one day a week from home.

So I guess the main thing we want is that the office has in place the management structure to kind of handle this increase, the explosion, I guess, of the employees who work from home and so on. That was the main thrust of the feedback I received before this meeting.

MS. LEE: Yes. So thank you very much for the question, Peter.

You are right. I mean, the telework program has been core I think to the success of the agency. I mean, over the time period during which telework was implemented, you're going to see concrete deliverables and results by the

agency during the same time period. So clearly, something there is working right. And if you think about it, for an agency in need of highly skilled and highly technical talent, right, who candidly could go elsewhere for more money, remaining focused on how we recruit them and retain them and work with them to meet their needs but yet also to meet the agency's needs is critical. And we're a leader in this and this, I mean, per the OIG report published in 2012 after a very thorough analysis about every aspect of our telework program, including comparing how much extra we have to pay to provide equipment to them at home versus how much benefit the agency gets, I mean, they looked at everything and they concluded that the PTO's telework program is a business strategy success.

So there's more that we're working on. Don't get me wrong; we're always working to further improve, but it is a program that has been very successful and that has worked for this agency.

CHAIRMAN FOREMAN: Clinton?

MR. HALLMAN: Thank you for your

comments, Michelle. And I just wanted to start my question by saying that I've always appreciated the way that the staff here has been very receptive because sometimes frankly we've pushed, and sometimes pushed a lot to ask, I think, some very tough questions about -- just to make sure that the public is getting the value that it should for, you know, for what we pay for services in the patent office.

And I understand, I guess, that there are two more IT investigations that may be underway, and I was wondering if you could speak to those a little bit.

MS. LEE: Yes. So thank you, Clinton, for always asking the hard questions, and I think you should absolutely ask them. So I would encourage them.

Let me just say that all of my actions here at the PTO are guided by the number one leadership of the agency providing strategic direction to the agency and to the 12,000 hardworking men and women who work here every day. And also to provide transparency and engagement with our stakeholders, whether that be in our

operations, whether that be in our performance, our backlog, and our pendency, whether it be in our rulemaking or the issuance of our new guidelines.

And finally, last but not least, and importantly, is doing right by our customers. So in terms of doing right by our customers, we work very hard to make sure that every dollar of user fee that we receive and that is appropriated to us by Congress, we strive to make sure that that delivers value, the best possible products and services to our customers. And with regards to -- I mean, that's every dollar, whether it's subject to OIG investigation or not, whether it's in the IT space, whether it's a training and STEM in the community or what have you, we work very hard on that.

But going to your question on the OIG investigations, there are two of them that are pending. One in the trademark and hiring area and another in the patent trial appeal board area. And we owe responses to the OIG, and we intend to provide a formal response within 60 days of receipt of their report.

So I believe one is due on September 8th, and one is due, I think, on September 26. And in those reports we will absolutely address each and every one of the recommendations made and the actions that we've taken as to each of those recommendations. And I have to say that even before the due date of that report, and quite frankly, in some cases even before we got the report, we knew of these issues and we were already implementing many of the changes. So I think you will see when you get the OIG report that the PTO, you know, has already executed on a number of those, most of those, but you know, is finishing up the last few of them.

MS. JENKINS: I also echo your comments. We appreciate the information and the clarity that you try to provide to us. And being on this committee, I feel it's a wonderful opportunity to learn so much more about the office. The problem in this day and age though, as I know you can appreciate, is the attention that people have is very small. So when you have a client calling you and they just see an article in the newspaper, they don't tend to take the full

story and actually even take the time to listen to the full story.

So one of the things that I highly encourage because we often get so much information and I try to share it, and it's all publicly accessible and it's all on the website as we all know, is it really get the message out, to let the user community know the efforts the office is making and just put it up front so people can read that and view that and take and assess in their own way the efforts that you're making. And also to, I think you also should let them know, that you do this continual -- I like to say audit -- of the process and why are we doing it and how can we do it better? It just -- sometimes a headline gets far more attention than the actual work that's done.

MS. LEE: Yes. And sometimes bad news gets more attention than good news. So I completely hear your points, Marylee. Thank you very much for your suggestions. And I would say for all the stakeholders in this room, you can help us with that. I mean, we're always open. We're always happy to share with you information.

We're to be transparent about the many good initiatives under way, and the areas where we need improvement. But I think we can all work together to help on that front.

MR. MCDEVITT: I know after seeing the article that came out, when I went back and looked at the reports, I was surprised that the incidents happened over two years ago, or about two years ago. And you kind of briefly outlined for us some of the steps you've taken to address them.

Do you have any concerns that those will address all the issues going forward?

MS. LEE: So -- what was the question?

MR. MCDEVITT: Do you feel the steps you've taken will address any issues of concerns going forward?

MS. LEE: The issues that we are addressing now in terms of implementing the recommendations I think will address many of the issues. I mean, will we ever have a system that is absolutely perfect, airtight, you know, 100 percent compliant? I don't know that any business or any organization can promise that, but even -- I mean, you can do a lot. I mean, it's

really where is the bulk of the compliance? Are people complying? Are they being respective of the telework program? Is the agency getting value of it? Don't get me wrong. We're absolutely looking for 100 percent compliance, but could I sit here and promise you that it would be 100 percent complaint? I can't.

MR. MCDEVITT: I don't think any industry could promise that.

MS. LEE: Right. No, I don't think so either. But yes.

CHAIRMAN FOREMAN: How about one final question?

MS. SHEPPARD: I want to echo what everyone has said, that the cooperation between PPAC and the USPTO has been very productive and I think very helpful to the user community whether they're aware of it or not, and we wanted to thank you for being responsive to our questions.

I did have one other thing to say about widespread information that may be misinformation and wanted to see if you would clarify this. There's been a lot of conversations about how hiring additional

examiners has not actually helped with the backlog because it's being pushed over into the RCE category. Do you want to address that? Because what I find a lot of times is the PTO is being reactive to comments and as Marylee said, you don't spend enough time because you're working to be out front to stop these rumors before they start getting around the world.

MS. LEE: So I'm going to make two brief comments and then I know Andy Faile has a lot of information that he would be happy to share with you on our RCE backlog. But generally speaking, let me just say that, I mean, our RCE backlog has decreased by -- and Andy will correct me because he's sitting right next to me -- I think 45 percent in the last 18 months. So, and that's due to -- we had a roundtable, we got input from our stakeholders, we implemented new processes and procedures and account incentive programs. So you'll hear much more from Andy, but I think you'll like what you hear.

And secondly, we're also investing in the transitioning from our classification system from the U.S. Classification system to the CPC

classification system. And in order to make that transition, we projected and we budgeted an investment of 1.1 million examiner hours in order to invest in that transition, and we are about at I think 840,000 hours through. So we only have a little bit more to go, and that is a huge advantage both for the long- term efficiency of the agency and the quality because it means that we can better work share with our foreign counterparts. It means that when our examiners are looking for prior references it's in a robust classification system where they can find the relevant prior art. So that's an absolutely necessary investment and a very prudent investment going forward.

So hopefully that provides some information for you and for our stakeholders.

CHAIRMAN FOREMAN: Thank you, Michelle. And again, this was completely unscheduled, which has got us behind schedule.

MS. LEE: I'm sorry.

CHAIRMAN FOREMAN: But we appreciate -- sincerely appreciate the transparency and your availability to address

these questions. I think it really goes to show just how collaborative this relationship is between PPAC and the USPTO. And you can be assured that we will address this in our annual report that we'll be providing to the agency, to Congress, and the president later this year. So thank you again.

MS. LEE: Thank you, and we'll look forward to it.

CHAIRMAN FOREMAN: So picking back up, I now have the honor and privilege to introduce our commissioner for Patents, Peggy Focarino.

MS. FOCARINO: Okay. Thank you, Louis. And good morning.

So I'm going to do a high level overview of what Michelle introduced to you as our focus on looking at patent quality in a more holistic way I would characterize it. And I would really like to have some time for you to comment and to give input once you have the presentation, are we on the right track, what are we missing, what would you advise, and of course, we'll be doing extensive outreach to our stakeholders through a series of roadshows also and Federal Register

notices.

So we have several members on this team. This is not an exhaustive list. This is just exemplary. But as you can see, it's a cross-agency effort, and I like to refer to my colleagues on the team as our internal consultants because they have practices in their own areas, whether it's customer service, or in trademarks, the quality of an office action that we can really use the benefit of what they've experienced and how they've worked towards improving these particular areas.

So we would like to say and think of this effort as every interaction counts, no matter what it is. So everything that we do in our day-to-day jobs counts.

Why are we here now? We've always had quality as our strategic goal. As a matter of fact, it's been the number one strategic goal for years, so it's not new that we are focusing on quality, but there's a series of events that really give us the opportunity to think more holistically about quality and think more long-term about quality. One of those is the AIA

and allowing us to build the fee reserve fund that we can have more certainty about the funds that are available to us and certainly provide more sustainability to the programs and initiatives, whether it's hiring or other things that in the past we had to stop and then start again and stop. So that's one key piece of it.

The other one is as our pendency goes down and our backlog and we begin reaching our target, we're able to look at investments into the system that perhaps are not focused so much on reducing backlog. So that's a key part of it.

We've reached out to stakeholders and we'll continue to do this, so this isn't a final statement here, but what we've heard so far is that users want their fees that they're paying to go into investment in the system. They want the fees that they pay to be invested and we agree with that.

And then certainly, no one can argue with the increased visibility of intellectual property, so it's in the forefront and so these conditions make it very ripe for us to be thinking in ways really that we couldn't before in terms

of long-term programs, infrastructure that we can have maybe additional resources focused on some of these things.

So when we started the discussion about this world-class quality system, we really identified what I would call three themes. So the first theme would go to products and services at every stage throughout the patent examination process or patent application filing process.

The big one is number two, the customer experience. So that's really important to us, and we want to focus on excellent customer service.

And then the third one, although we've been doing much of engaging the public and we have several partnerships, we need to do more. And we particularly realized that we need to do more education to the public on the programs that we are doing or how we measure quality because what we've been finding is that a lot of people don't understand or aren't aware of a lot of the things that we're doing. So we want to get out there in these roadshows and tell people, "Here's the things we're doing, here's how we measure

quality. You tell us. What are we missing, what do we need to look at, how do we need to measure things and have that dialogue?

And so if we focus on just each of the few things, the work products and services, again, this list of things is not exhaustive. It's just exemplary of some of the things that we currently are doing or have plans to do. We've got to focus on training, guidance, search, maybe more search resources and expertise. Certainly, Michelle mentioned CPC and leveraging international searches, and that will improve quality. We want to look at how we measure quality. We are committed to refining our quality metric with your input and everyone in the public. We have a lot of data that we measure and we analyze. But certainly, people are getting more and more sophisticated about how they use big data we'll call it to drive business decisions, so we want to explore that more. And then we hope to get ideas from the public.

For the customer experience piece, we want to deliver training to everyone in the organization, not just those people that perhaps

answer the phone at a hotline or something, but every single person in the agency because they will have an interaction with the public, with the client, with the stakeholder, with the fee payer, and we want also to explore whether it's with private industry or rather government agencies, who are those that have really great customer service so we can see what the best practices are and perhaps adopt some of those.

The other thing we know, I think we can all say that we need to do better is how we handle complaints and concerns and work products that perhaps get off track for one reason or another, so really focusing on that. And then again, with all the other initiatives added as we get input from our public.

And then this education and outreach piece. So I mentioned the roadshows, and there will be a series of ongoing ones initially and then probably repeating after that. First, educate the public on what our programs are, what our initiatives are, what are some of the plans we have, and ask them what should we be doing? What do you see is missing and how can we do things

better? We want to expand partnerships. We have several of them. They're great opportunities for us and our examiners and our managers to hear directly from the people that they deal with every day in a certain technology area. What are their pain points? And it really helps us have a better understanding of that.

We can also do better at how our website is structured in terms of our users being able to find information. It's difficult for me sometimes to find certain pieces of information. And that's a key part of it because we all, even in our personal lives, rely on websites and everything else to be able to guide our decisions, whether we're buying something or anything else. And if our users had better access and the material was well organized and easily understood, I think then the input that we would get, whether it's an application, a patent application, would be of higher quality.

So what do we hope to get out of this? We really want to build confidence in our patent system. We want to improve the perception of patent quality. At times there's poor

perception of patent quality, so we want to focus on that. And we want our users to feel that they're treated fairly. They're treated promptly, fairly. That they're treated consistently no matter what tech center they may be filing their application, what technology, and professionally. So the idea is that not every user of our system will be successful, meaning not everyone will get their patent grant. But we want them to be able to say I understand why I didn't and it was a fair process.

So transparency is something we've been very focused on over the last several years, but we really want to increase stakeholder understanding and understanding the system as a whole. And I think there's a lot of misunderstanding out there.

A good example is recently the Redskin trademark issue, and it seemed people were confused between trademarks, patents, and it was fascinating to me because I didn't even understand that there was that level of disconnect, but there is, and I think it's on us to do a better job to educate people on the

importance of this system. And then provide access to the system. Remove some of the barriers that particularly the people that aren't experienced with the system are struggling with when they try to file an application and just to get information. So that's another key piece of it.

What are some of the, I guess, issues to solve? Right? So we can imagine this is a huge effort. It'll be an ongoing effort, but it won't end. It doesn't have a start and end. It's going to be a continuing effort. And I think going to the second one, just widening the perspective of what we mean by quality. We have a quality composite metric. We've done a presentation for you before. But what do you think quality is? And can we come to some agreed upon metrics where everyone can say yes, that's a good way to measure at least a portion of quality. Unfortunately, when you ask 10 different people what patent quality is, you may get 10 different answers. So if we can come to some meeting of the minds about what quality is, at least on some level, I think you'll be doing

a really great thing.

And then our resources. So many of you know the USPTO has not had certainty in its budget and that has caused us to really internally say, okay, how can we do the best job we can do with perhaps not the resources that we think we need to do it? Well, now we have the opportunity to think totally differently and that's a great thing, too.

So what's next? So right now we're in the step two. So we're doing a big outreach messaging, roadshows, Federal Register notices, bags, other kinds of things. And throughout that process we'll be identifying other initiatives that we need to add to those that we've already either been working on or we have a really good idea of what we should be doing but we need your input.

We need to gather -- so when we gather stakeholder input we'll analyze it. We'll see what's in there that we hadn't thought of. Is it doable? Is it practical? Is it realistic for us to do certainly? But I'm really looking forward to getting the view of our stakeholders in this

because everybody comes at it from a different angle, and I think our job is to have a balanced approach, and I think doing that and involving everyone will give us a balanced approach.

And then as we implement this initiative, again, going out there and engaging people and doing a better job of being proactive and talking to people on a regular basis and telling the people what we're doing and what we have planned to do. And again, what should we be doing? And constantly doing that.

So I'll stop there, and I'd like to hear feedback, input, ideas, anything.

Wayne?

MR. SOBON: Commissioner Focarino, I think this is a very exciting initiative, so I think I speak for most of PPAC but I'm excited that you're doing this as an agency, and I think it can combine a lot of the various things I think people have been concerned about over the years. And I certainly stand ready to help you, and I think the rest of PPAC does as well, to assist you as we have in the past on those kinds of initiatives.

I have a question I was going to maybe

ask Deputy Secretary Lee, but I ask you. In looking at this, I mean, in the last few years we've -- we're as concerned as you as an agency for getting adequate funding and then the massive implementation of AIA. What do you -- looking forward, maybe not even with respect to this initiative, but overall, what do you see as the one or two main big concerns or challenges you see for the agency, either to initiate this or overall looking out the next year or two?

MS. FOCARINO: Okay, thanks, Wayne. I think that's a very valid question. And this year will be the first time that we will have tested our fee reserve fund. Right? So we hope that any excess collections will go in that and will be available to us at some future point. So I think some of the concerns I may have had in the past would be alleviated by that ability to do that because we can sustain initiatives and programs if we have that certainty and we can plan ahead, much further ahead than we've been able to in the past. So I don't have as many concerns as I did. I think attrition is always a concern, and we're really focused on that. And we enjoy a

fairly low attrition rate right now, but a concern would be if that suddenly increases and we've had some high attrition rates in the past. That could have a very negative impact.

The other thing we're watching closely, and we haven't reached a steady state yet really is the income is related to the filing. So Michelle Lee mentioned that we were experiencing a filing rate over last year of a little over 5 percent. Well, at one point this year it was closer to 6, 6.5 percent. And so now the filings are coming back down a little and we're not sure next year will it be 6 percent filing, 7 percent, 5 percent? And so even one percentage increase has a significant impact on what happens to the backlog and what happens to the pendency. And so we have to carefully look at all these things all the time and make sure that we're revalidating our model in real time and shifting whether it's resources, or as Michelle mentioned, the CPC effort is a huge effort. And I think that's probably -- it's no insignificant change. I should stress that this is a huge change for our examiners to be searching in this new system, but

it has tremendous benefits. But it's a big investment, and I think the impact is different frankly for different technologies. And so we're going to have to work through that and make sure that we're doing the right thing. And investing the time that the examiners need to transition into the system. And that has a negative -- I'll say temporary negative impact on the backlog because examining resources are being devoted to learning a new system and getting trained on it.

MS. SHEPPARD: I thank you for that. I wanted to go back to slide three. You mentioned that the agency is approaching optimal study state pendency, and the question is what is optimal study state pendency? In fact, it's sort of a moving target right now. In July of this year, there was a request for comments in partnership with the public, of what should optimal pendency be? So I don't know if you want to speak to what you think it is now and where do you think it may be going. It's too early because the request for comments aren't due back until September 8th, and we absolutely encourage the

public to submit comments. And I don't know how many comments you have received, but do you want to talk a little bit about that?

MS. FOCARINO: Okay, sure. Thanks, Christal. Great question.

The comment period, as you said, remains open, and we hope to receive many comments. I'll look to Drew Hirshfeld, who can tell me if he knows if we received --

MR. HIRSHFELD: No.

MS. FOCARINO: No. And in any comment period, we all tend to wait more towards the end of that period to comment. So when we say optimal study state pendency in this context, we're talking about what has been in our strategic plan, the 10 months to first action, the 21 total pendency. But we also realize that we need to refine and revalidate that by asking our stakeholders what do you think optimal pendency is? What works for you? And it's directly related to our fees. Right? So that's what we hope to get out of this effort, is are those 10 month and 20 month goals the goals we should still continue to shoot for? Because that's the path

that we're on now, or is there some other goal? Maybe it's not 10 months; maybe it's 14 months, so that we avoid getting patent term adjustment. Maybe that's the guiding principle, but we need you to tell us what it is. What is it? So that's really what it means. We are on track to meet the 10 and 20 by 2019, I think. So, yeah.

MR. HALLMAN: Peggy, I wanted to ask you a question, and I sometimes think it's sometimes more metaphysical than it should be. Has the office landed on a definition of what it considers to be a "quality patent"? Every time I ask somebody that question I usually get, at least for a couple seconds, a blank stare at least. But have you thought about that?

MS. FOCARINO: Right. Right. So we've thought about it, and I know Drew who has the obligation of having the Office of Patent Quality Assurance, who does our objective look at quality using a set of seven metrics, has thought about it. And that fees into what we are trying to get from our stakeholder input and what we know internally is what metrics should we be looking at when we say a quality patent. What does that

mean?

So we don't really have -- I can't tell you, well, should it include A, B, and C? I think it depends frankly on what stage you're looking at. So we have metrics that look at applications in process and then once the patent is granted there are other things perhaps that happened downstream outside of the agency that would be factored in. But that's what we hope to arrive at is some, at least an agreed upon, metric.

MR. THURLOW: Can I --

MS. FOCARINO: Or set of metrics.

MR. HALLMAN: They try briefly to define it and then people can -- so I'll just throw it out there -- thorough search, competent review throughout the process. So that's how we often -- just give us a search and a competent review and work with us, interviews and so on. That's really what we're looking for, at least from my perspective.

Back to you presentation. We had an hour-long subcommittee meeting yesterday. Drew, Bruce, and Andy over there with their team. Very healthy discussion of all the issues. Very

helpful. And as far as the outreach and the roundtables, we've all by now participated in many. I think PPAC is ready, willing, and able to help. We've done, obviously earlier this year we helped with the PTAB and last year we did it with the REC roundtables. And to an extent we can use those as certain models. I think those were successful. To the extent we can use those as models, we'd be happy to help.

Some other thoughts just on slide 5, in just different programs. I may be looking at this as a stretch, but one of the things Joe and I spoke about yesterday, examining training and guidance, I know the office has focused a lot on the section 112 functional claiming issues. That information may not be appreciated by the stakeholder community. All that training information is available on the website, and I think video presentations -- Drew informed me it's up there as well -- that's helpful.

I also look at the AIA programs as part of patent quality pre-issuance submissions. That's not on here. To the extent it can't be just the office doing patent quality. If the

stakeholder communities are that interested, look and submit what you consider as prior art.

The other thing, and now I'm going to stretch this, but I look at out of, what was it, 160,000 patents issued each year, we like to think every one is going to be a high quality patent -- 200,000?

MS. SHEPPARD: 320.

MR. THURLOW: 320, but 160 times 2. So 320, out of all of those submissions, we like to think all of them are going to be high quality patents. To the extent they're not, I look at the PTAB as part of the patent quality process because in the past you'd have to go to litigation and now you don't. You can go through the less expensive procedure. So I look at it as the whole process having procedures in place to address what they consider is a poor quality patent.

So that's my speech.

MS. FOCARINO: Thank you, Peter. Very helpful comments.

CHAIRMAN FOREMAN: Great. Thank you, Commissioner Focarino.

At this point I'd like to turn the floor

over to Deputy Commissioner for Patent Examination Policy, Drew Hirshfeld.

MR. HIRSHFELD: Thank you, Louis. So today I'm going to talk about some next steps with the -- thank you -- with the CLS Bank instructions and the Mayo and Myriad guidance that we gave out. And I broke the mold, so I do not have any slides to discuss today. We are two weeks out from our comment period, which closed on July 31st for both of those topics, so subject matter eligibility for both of those cases. And quite frankly, when we got together and discussed that this would be a topic on PPAC and the slides were due, I did not know at that point what I would say because we are still going through the extensive comments that we received.

So I do think it's great to give everybody an update so everybody know where we are, so what I plan on doing today is go over at a high level the comments we received, how many numbers, et cetera, and talk about some of the themes that we can tell are emerging from the comments, but I'll reiterate that we are going through them still. Again, they were extensive

comments. And talk about some next steps. So that's what I have limited it to, so I will do it without slides.

So looking at the comments, as I mentioned, the comment period ended on July 31st. For the Mayo Myriad comment period, that was a period that was extended once, so it was originally due at the end of June, extended to July, and then for Alice, we set that comment period at the end of July to coincide with the Mayo Myriad. We recognized that the comment period and the length of the period was about five weeks for that which was significantly less than the Mayo Myriad space. I want to say upfront that we knew that was short and really appreciate that people gave us a number of comments, a lot of comments in that short period of time. I do know that I've heard from people that that was difficult to get them in and I am very appreciative that people did so.

So for the Mayo Myriad, we received 84 comments, which I think everyone could recognize is a very healthy number. Compared to what we have received in the past on other guidance, et

cetera, that is a very high number. On Alice, also, we received 46 comments. So you can see that together there's a great deal of feedback that we've received at PTO, and again, we're very appreciative. I think that people will see as we are moving forward we're very serious about paying attention and heeding what is in the comments and using that to make the best decisions as we go forward.

So I'll turn to some of the themes that are prevalent through the comments. I'll start with the Mayo Myriad. I don't think that there's too much that was shocking here. People, you know, I think it's fair to say, were not happy. There was a lot of negativity about the Mayo Myriad guidelines. After they came out we had a forum on it and received a lot of public input from the forum. So the comments that we received in writing are very similar to those that we received verbally at the forum.

And so at a high level, those comments had a few themes. One of those themes centers around the way we evaluate markedly different and the guidelines from the PTO, we did have a

significant weight on structural differences and a requirement of structurally differences. And certainly we heard at the forum and in the written comments that it's really markedly differently characteristics, which was a broader way to look at markedly different than what we had in our guidelines. Certainly, people brought up the role of functional differences, particularly with combination claims, but not limited to combination claims, and urged the office to make more of a look at the functional differences and the importance that that plays in a markedly different evaluation.

So another theme that was throughout was in the guidelines as we are evaluating subject matter eligibility under 101, we said that any claims that recite or involve -- and used those words -- a judicial exception should be evaluated for 101. Certainly, we did receive feedback that that should be changed to "directed to" and that was too maybe broad of a net capturing too much, and so people wanted us to focus on a different word, "directed to," which was in the Alice case. And certainly, people pointed to Alice as support

for that change.

Another theme we heard was about the phrase "significantly different." Ad again, we heard this also in the public forum that we had. We did use that term and coin that term in the guidelines as a way to capture for examiners. It was a teaching tool, so to speak, to capture for examiners the big picture of what they were trying to evaluate. The feedback we've received is that people are concerned that that created a legal standard which was not in the cases, and so, of course, we are considering that. And I think I've said publicly even at the forum that certainly we are not -- that was simply a teaching tool and we are happy to move away from that language if that gave people concern.

And then there was a call for more examples. People brought up their specific areas of practice and said more examples are needed. The more you can give us and the more you can give examiners, the better.

So that's the Mayo Myriad at a very high level. I'll now switch over to the Alice comments. And again, there were 46 comments that

were received. Here I think there was much more support for the approach that PTO took than as compared to the Mayo and Myriad. The comments were at a higher level. There was much comment about office actions and what an examiner should do in an office action. And basically, practitioners stating that examiners need to really have a prima fascia case and describe what an abstract idea is. So most of the comments or a lot of them were not so much focused on changes that were needed necessarily in the guidance on that as they were here as make sure you're telling examiners to express what their thoughts are, be very clear on the record, be definitive about what you're calling an abstract idea. Look at the significantly more and go through and do a proper analysis there. So there was significant focus on that area.

And then again, more examples were asked for. And I think it's safe to say we at PTO support the more examples and want to give them the more examples the better. There was split in the comments about where those comments should come from. Should they be from cases only?

Should the PTO on the other hand try to come up with examples on our own to be able to teach examiners? And there's, I think, a split from the comments that we've been through about that approach.

I will tell you that's something we always struggle with. We, of course, would love there to be cases on point for what every examiner sees, but that is simply just not the reality. So we're always in a situation of wanting to give real case examples to our examiners that we make public, but we do recognize that there's always cases that examiners have that don't have a case on point.

So that at a very high level is the feedback we've received on both. And again, I certainly recognize that I'm not doing justice to all the comments, and there was much more that was said, but I did want to give you a high level. As I mentioned, we're about two weeks out. There were 130 comments combined and we are trying to move as quickly as reasonably possible, but also being as thoughtful as we can. We want to make sure that our next steps are done correctly.

So I'll conclude my portion with just a quick discussion about those next steps. And suffice it to say, as we're still going through, we don't know exactly what those next steps will be. So people are asking, are you going to make this change? Are you going to make that change? And quite frankly, we don't know. I feel extremely comfortable by saying that there will be changes to the Mayo Myriad that are very responsive to the comments. I think the public and examiners will see that we have taken very seriously the feedback we've received. But as far as exact decisions and timing, because we're still so new, that is all being worked out and discussed. I will say procedurally with whatever we come out with, and this is certainly the intent always, is to come out with additional guidance to our examiners. We all recognize that's needed, and as we do that, we will certainly have additional comment periods. So I've been asked many times, "Will we get a chance to comment again on what you do?" And the answer to that is absolutely yes. We will always be accepting comments. We'll be very clear in what

comes out next that will have an additional comment period so people can give us feedback. It's been described as an interactive process and that's the best way to do it. So I think as we go forward we'll continue to have the back and forth and hopefully get to the right place with all of these difficult issues.

So that's my high level. I don't know if there are any questions. I'm happy to address them.

CHAIRMAN FOREMAN: There's always plenty of questions.

Wayne?

MR. SOBON: Thanks, Drew. And again, I think I speak on behalf of PPAC, we are very pleased with the overall interaction we have about these sorts of things and stand ready to assist you in our role to help you review things as you're proposing final guidelines and in the future as well in our role of providing feedback from the user community.

I think it may be a theme from most of the comments that you've received, but what I've got in the form of a lot of concerns of the user

community on both the Alice and the Myriad guidelines is a concern and a perception that a number of observers' views of what the Supreme Court may or may not do in making decision-making. Nonetheless, they usually take pains to emphasize these are narrow judicial exceptions to a general principle that most areas of human ingenuity that have practical applications of ideas, even if those ideas are basic, if there is a practical application of it, generally speaking, if those are new and nonobvious, those should be entitled to patent protection. And concerns that the office may take individual particular decision- making by the Supreme Court in a much more broad sense, broader than was intended, and the court itself is always -- each time it does so says this is a very narrow exception. And so I think that, I would suggest probably a huge theme for a lot of the comments and it's certainly a personal concern of mine, that the office's finger should be on the side of being careful about using a blunderbuss 101 rejection for ingenuity when, in fact, you can be much more careful. And usually, if it's an obvious idea

that's been in currency for 100 years, there should be very easy ways to attack it on pure 102, 103 art and not a shotgun approach that could actually then devastates whole areas of potential ingenuity and a lot of the concern is the kind of key areas of the United States' preeminence in particular of ingenuity being shot down by arguments that is abstract ideas.

My favorite example, and I keep using it, is if I file an application today on a teeter totter, it's basically a Euclidian machine plus two seats, but it satisfies 101. It's an actual application of that idea in the real world. It would certainly die instantaneously because there's 102 art for that. But it shouldn't die because that's just a basic application of an "abstract idea."

And my final point would be that, which relates to this, is everyone -- some of the concerns also have been that there's just been a rapid increase of 101 rejections without full compact prosecution looking at 102 and 103 art as well, and I would just urge that, you know, as part of this guidance that it really be emphasized that

applicants deserve and expect full, complete prosecution and not simple 101 rejections.

MR. HIRSHFELD: So just a very quick comment on that. We also recognize that to an expansive view or shotgun approach, however you want to phrase it, is not appropriate and it is our goal to do what the cases say and not go further. So as we proceed with our back and forth with the public, that is the goal that we have to get to. Certainly the difficulty there is -- and you can see this in the comments -- is there are many, many differences about what people think those cases say. So I think it's something that we're looking forward to. I know I personally am looking forward to the opportunity to improve what we have done and move forward in the best way, taking into consideration and having that back and forth with not only PPAC but the public in general.

So again, we do not want to go further than the cases suggest. It is not our intent to go further than the cases. So anyway, I think we are on the same philosophy there. And of course, as for 102 and 103, et cetera, you will certainly

see that all of our training material will be directed to having examiners engage in compact prosecution and be looking at all the statutes and not just one of them.

MS. JENKINS: I'm just thinking how I explain the joy I have of clients being both Myriad rejections and Alice rejections. So I have it on both sides, so to speak.

One of the concerns that I've had recently, and I always have some issue, as Robert and I, we have discussed at length on other things, is that examiners are expressing to customers I guess you would say that they don't have proper guidance on how to deal with the guidelines because they do not have proper direction within their art unit. From their directors and among other examiners there is conflict. So when I hear you say -- which I do appreciate, and please appreciate your comments, I do listen -- is that you're going to spend reviewing them, looking at them, but then that sends clients' applications months and months down the pike of having nothing done on them. And then considering whether to suspend prosecution

just because we can't get a good answer out of the office, that is a large concern for clients.

And I do echo Wayne's comments about just the automatic -- I don't know whether I'd use blunderbuss, but that was the word, but my feeling is sort of a kneejerk reaction that you have a Myriad Mayo question or you have an Alice question and the examiner is just going to put that 101 in there just to cover themselves. And then we have to think about how do we really answer that, and is this going to change on us several months from now? And how do those arguments impact us later on down the road? So these are all questions that we're asking. So.

MR. HIRSHFELD: All good points and things we've heard. And certainly, we are not training, nor do we ever want examiners to take an approach if I don't know I'm just going to go ahead and make this rejection and have people respond to it. And again, I also recognize the desire for -- I said "I," but of course, that's PTO, we all recognize the desire that the public has for us to move as swiftly as possible and we recognize how important that is to people and we

are balancing that with the need to do it right and to make sure we're as measured and careful so that we have a better reaction say than we did the first time with Mayo and Myriad. So we are balancing that, trying to move as quickly as we can with the need to make sure that we're going as thoughtfully as possible.

CHAIRMAN FOREMAN: Thank you, Drew. We look forward to updates in our November PPAC meeting where you can give us some more feedback on what has transpired with this.

At this point I'd like to introduce Andrew Faile, deputy commissioner for Patent Operations, to lead us in a discussion on our CEs.

MR. FAILE: Okay, thanks, Louis. I'm going to have Director Dan Sullivan join me and we'll do a co-presentation.

So what we thought we would do today is kind of walk you guys through where we are in our whole RCE effort. We'll give you a little bit of background of how we got to the point we're at, and we're basically looking at two different facts of RCEs. And I'll do the first part and Dan will cover the second part. And the first part

is actually looking at the RCE backlog and some of the actions that we've taken. And a lot of it with you guys, counsel, we very much appreciate the input we've had both from PPAC and from the public through our RCE outreach roundtable efforts. And then we'll show you some results of where we are now, some of the things we've put in place to achieve some backlog reduction there. And then there's a few things we still need to work on as always, and we'll be looking to your guidance for that.

Dan is going to cover basically the front end of some things that we've done to try to prevent RCE filings in the first place. So we've kind of broken the RCE issue up into two big parts. One is how are we going to handle the backlog that was mounting, number one. Number two, what are things we can do to prevent RCE filings on the front end? So that's kind of the way the presentation will go today.

Just for a little bit of background, as everyone knows, we had a series of roundtables and focus sessions across the country where PPAC -- we had a PPAC member, and I do thank you guys again

for participating in each one of those. We heard a lot of good feedback from the public. We gathered some 1,100 or so different comments as part of that process and as part of our Federal Register notice process.

One of the interesting things that we heard, and the PPAC members that were there can probably add into this as well, is we heard a lot more than just RCEs. We heard a lot about prosecution, compact prosecution. We learned a lot about the knowledge of the office and the knowledge of the different programs that we had available to applicants to prosecute their applications through. We also learned that there's kind of a delta between what we're doing here and what the public knows we're doing. There's a number of different programs available, track one FAI, et cetera, and there was not a lot of knowledge base we thought from the input received at the roundtables. So we've taken a couple steps on the education front, which Dan will go into.

So again, for kind of a methodology review, we came -- we brought the issue back to

our TC directors. We have about 30 TC directors and the TCs where at the office, and we kind of broke those directors up into a couple different teams. One along the backlog -- reducing the backlog issue and one along the preventing RCEs on the front end.

So I'm going to go through a little bit about the backlog reduction, the things that we did and then show you some results of where we are.

So one of the things that we did in looking at the RCE backlog was to kind of take a two-phased approach. We wanted to get to a steady state solution as quickly as we can but the backlog was continuing to rise, so we needed to do something really quickly to try to get a handle on the backlog, turn it around, at the same time while we were devising our steady state approach in partnership with POPA, our examiners union, trying to come up with some ways we can have an approach that will take us into the future.

So what we did in the very first part of the plan of the two-phased approach was we had a temporary increase in the production credit for RCEs, basically for the second half of last year.

So what we did there was the previous count values -- not to get too weedy here, but the previous count values were 1.75 for first RCE, 1.5 for those after. We temporarily moved that up to 2.0 to put an incentive in there for examiners to move RCEs and try to get a handle on the backlog. That was kind of our first phase quick approach, let's put this in place basically from midyear to the end of the fiscal year, about a six month timeframe. Let's start to move that backlog. In the meantime, let's work on what a steady state approach would be.

So for kind of the second phase we did a couple of different things after the first phase ended, and we'll get to some results of the whole thing in just a second. One of the things we did is we not only looked at the work credit part of RCEs but we also looked at the docketing and the movement of those through our workflow systems and we made some changes there that we think will be helpful. So let me go through those.

One of the things we did is we reorganized the new application dockets. A second thing we did was that we took a look at

examiners and their RCE distributions, and we kind of divided up our levels of RCEs into three different levels. The basic idea here was an examiner -- and this kind of goes to Christal's question kind of at the top of the hour, the balance between the movement of new cases and the movement of RCES. We looked at the RCE distribution per examiner and we thought that if we could figure a way that examiners with RCE heavy dockets were primarily concentrating on RCEs to the exclusion of those new cases, we would move more RCEs from those examiners. Those examiners that had a better balance of the two, they would have a mix of RCEs and new cases available to work on.

So largely, that was the modification that we provided kind of in the docketing system and the workflow system. Examiners that had over a certain amount of RCEs basically were working on RCEs until they moved those down to a threshold point and then they had available a mix of new cases and RCEs. Along with that in the docket management system we put some incentives for those examiners with RCEs to move those as well.

So that was kind of on the docketing and work credit angle.

Another thing we did was we looked at the temporary account system we had in place compared to the previous account system. So again, as a reminder, we were in the 1.75 previous world. We had this temporary increase of 2.0 to move RCEs, and we were trying to figure out what our long-term solution would be.

So what we figured out in partnership with the union was we probably want to be somewhere in the middle of that. So again, not to get too complicated, we ended up kind of in between a 2.0 and 1.75 world for examiners which kind of goes like this. For each quarter an examiner will work on a certain number of RCEs at the reduced 1.75 credit level. When they finish that threshold of applications, then they move into a 2.0 for RCEs after that. These are set at three for the first quarter and four for the subsequent quarters. So there's a bit of incentive there for examiners to do those RCEs and then get into the 2.0 RCEs. And you'll see the results in a minute.

So that seems to be the set of initiatives that we've come up with. We're still testing that. We're seeing some good movement there with both of those changes in place.

So let's take a look at results. As they say, a picture is worth 10,000 words. You can see here kind of a trajectory of the backlog. Starting back when we did the original changes back in 2009, you see a steady increase. You see some markers for different things that came into place. I'll get to those in a minute. And then you see right in about April or so of '13, we're kind of up at the 110,000 mark on RCEs, the backlog of RCEs.

We did the temporary increase. You start to see the line to the right of that start to move down, and then what is described as the workflow and final credit adjustment, the leveling plan part two you see in the green line to the right. You see our numbers still coming down here. Currently, today, we are at about 58,000, just under 60,000 RCEs, so we've gone from a high of 110,000 down to that level of about 58,000 currently. So we've had some good

progress with the two-phased approach that we've used to kind of work on the backlog.

MR. THURLOW: Andy?

MR. FAILE: Yes.

MR. THURLOW: Can I just make sure I understand that graph again?

MR. FAILE: Sure.

MR. THURLOW: So going to the right, I guess the second line, vertical line from the right, that's where you increased the -- in March of 2013, the two production credits?

MR. FAILE: Correct.

MR. THURLOW: And then over on the green vertical line is where you went to, in essence, roughly 1.75?

MR. FAILE: The halfway point.

MR. THURLOW: Until they made up a few and then you put it up to two after that?

MR. FAILE: Correct.

MR. THURLOW: Okay.

MR. FAILE: Correct. Okay. So again, we've gone up from a high of 110 to about 60, actually 58 now. So we think that as far as a first look at what we consider to be a more

long-term steady state solution, we think this has some merit and we think we're on the right path here.

Looking at a couple of other cuts of data just to give you a flavor of how these things sit, this is the distribution of RCE backlog by age, and there's kind of a compare and contrast here between August 6, 2014, very recently, and then looking back to the beginning of this fiscal year, October 1, 2013.

So you'll see October 1, 2013 is in the blue, and then in the red is kind of our current status. A couple key points here. You'll see that the cases are being worked to the left there. This is very similar to our COPA distribution that we talked about earlier with unexamined applications. When we have a tail, we want to move that tail to the right. We want to move that mass -- to the left, I'm sorry. Move that mass to the left and work those cases off in a shorter time. So this gives us an indication that at least a current progress from the beginning of the fiscal year to August 6th seems to be working. We seem to be moving the cases. They seem to be

moving to the left.

Another thing we took a look at is looking at the RCE backlog per examiner by TC. So on the bottom you'll see the TC starting with 1,600 on the left, all the way to 3,700. The green line represents the backlog at the beginning of the fiscal year, backlog per examiner, and then the dotted blue line is the current backlog as of October 6th.

A couple key points here. You'll see the delta between the two, and that's a good thing. We're reducing the average number of cases per examiner, and also you'll see a beginning of a flattening out of the blue line. That's where we're hoping to achieve with the current set of solutions in play more of a leveling out of the average number of RCEs per examiner. So we have a little bit more of a consistent treatment across the TCs.

Another thing we've taken a look at is the actual filings by TCs. We're always looking at this. So in the green bars, starting with 1,600 on the left and 3,700 all the way on the right, shows you kind of the filings per TCs. The

red bar is kind of the overlay of RCE filings per examiner in those particular dockets. So you can kind of see there's a little bit of anomaly. 1,600, 2,100 are a little low. Some of the other TCs are kind of in line. But you see somewhat of an even distribution of filings -- RCE filings per TC.

Now I'm going to turn it over to Dan Sullivan, and this again was our first part looking at the backlog reduction piece of it, and we've also spent a good amount of time looking at ways to reduce RCEs on the front end. So Dan is going to kind of take everyone through that part.

Dan?

MR. SULLIVAN: Okay, thanks, Andy. So to address the other side of the equation, reducing filings, we're relying heavily on the feedback that we got from the outreach effort to develop initiatives that we hope will make prosecution more efficient and get us to final disposals with the least -- the fewest number of actions possible. This slide lists the general areas where we're developing these initiatives.

So one thing that we learned, that

became apparent in the outreach effort was that we could do a better job of educating the public about the various programs that we have available in the office to speed along prosecution. And I'll show you what we've done to help with that.

We also got feedback that there were some areas where examiners could be more proactive in moving prosecution forward, and so we're using that feedback to develop training for both examiners and SPEs. We also learned that constraints on IDS filings after the close of prosecution is viewed as a driver for RCE filings, and so we're looking into ways that we might be able to avoid some of those RCEs by relaxing some of the rules for submission of IDSs. And finally, we're looking into ways to get more out after final practice.

So as we were traveling around asking stakeholders what they thought we could do to reduce RCE filings, one thing that we noted that was a lot of suggestions or a certain number of the suggestions were similar to aspects of programs that we already had in place. So from those comments it was clear that we needed a

resource or our stakeholders needed a resource where they could go to stay up-to-date on what's available in the office. And so we created this website, the patent application initiatives website.

The PAI website is structured to provide just in time information to applicants and patent examiners with regard to what programs are available, and the website provides a high-level overview of these initiatives arranged in a timeline view to help applicants know what's available at any given point in prosecution. And then there's also a more detailed matrix view that allows stakeholders to see what are the features, the important features of each program so that they can quickly assess whether that's the right program for them.

Since the website was launched last September, we've had 35,000 visitors, and as awareness grows, we're hoping that checking the PAI website will become a regular habit for our stakeholders.

In addition, we also released an internal version of the PAI website recently for

examiners to keep them up- to-date on these initiatives as well, and also to make sure that they have the information that they need to treat these applications properly when one of them arrives on their docket.

For those that haven't seen or haven't had a chance to visit the PAI website yet, this is the timeline view. You can see here that each of the initiatives that's available is arranged under the point in prosecution where that initiative would be requested. Most, of course, of these initiatives are available before the start of prosecution, but you can see we have options available to help move applications forward even after payment of the issue fee.

Each of the initiative boxes is hyperlinked to a webpage that has detailed information about the initiative and everything that an applicant would need to use the initiative. And then at the top you have the timeline arrows, and those are also hyperlinked to the matrix view. And this is an example of the matrix view for initiatives available at the start of prosecution. What you see is that you

have the critical features listed for each of the initiatives, including a brief description of the initiative and important things like whether a petition is required, if there's any fee involved. And as you scroll down, you get lots more information to compare and contrast the various programs and see if it's right for you. The PAI is now fully implemented, both the internal and external versions, and we're encouraging applicants to take advantage of it.

One initiative that's directed to reducing RCEs that's ongoing is our Quick Path IDS pilot, affectionately known as Cupids. As you're probably aware, Cupids allows for filing of an IDS after payment of the issue fee, so long as the IDS is accompanied by a provisional RCE. The RCE is only entered if it's found that prosecution has to be reopened. Otherwise, the application remains in the allowance stream and is allowed to issue and the IDS is considered.

Since its inception, about 3,400 applications have been processed through Cupids, and nearly 3,000 of those remained in the allowance stream. Where the IDS was considered,

the application remained in the allowance stream, so the RCE was avoided in those nearly 3,000 applications.

One thing that we learned in the outreach effort was that certification under Rule 97(e), which is still a requirement for submitting an IDS under Cupids, it might be preventing a significant number of applicants from using this option, so we are looking into ways that we can relax those requirements so that more applicants can take advantage of this.

Another ongoing initiative that was modified somewhat in light of the comments that we got in the outreach efforts was the after final consideration pilot. This pilot allows for additional time for examiners to review submissions filed after final, and the feedback we got was that many applicants felt that there wasn't much value in after final practice or submitting amendments after final because examiners weren't considering those amendments even when they seemed to resolve a lot of the issues in the case.

So the AFCP initiative was modified to

be focused on claim amendment submissions and also to include an interview. And the reason for the interview was so that the examiner could communicate the findings of the additional search and consideration to the applicant. So even if a RCE was required in that case, at least the applicant could take advantage of the additional consideration in preparing their RCE filing.

So version 2.0 was implemented in May of last year and we've been gathering data to evaluate the pilot. One positive trend that we found correlates with implementation of AFCP 2.0 is a reduction in the number of RCE filings that did not have any 116 submission, so there was no after final submission before the filing of the RCE. So we're seeing that applicants are less likely to file an RCE without first at least attempting to advance prosecution with an after final submission.

We also have seen that AFCP 2, or applicants that have an AFCP 2 submission in them are less likely to be appealed, so only about 1.5 percent of those applicants have an appeal brief filed as opposed to nearly 5 percent of other

applicants.

And we've also polled applicants on their impressions of AFCP 2.0 and the data I have here comes from about 1,000 responses which was a statistically significant population. And what we found was that about 62 percent of respondents felt that AFCP 2.0 reduced the likelihood of a RCE submission in that application, and a larger percentage, near three-quarters felt that AFCP 2.0 was at least somewhat effective in advancing prosecution. So a large majority of stakeholders feel that AFCP 2.0 adds value to after final practice. In addition, respondents were three times more likely to recommend that we continue the pilot as opposed to ending it.

One concern that was expressed in the survey was the level of awareness of examiners of the program and we have had follow-on training for examiners to make sure that they know everything, that they're aware of the program and they know what they need to know. In addition, we've launched the PAI, the internal PAI website, which will help examiners keep track of both AFCP 2.0

as well as other programs that are available.

Some of the other initiatives that we're working on based on the feedback that we've received include emphasizing compact prosecution in our ongoing examiner and supervisor training. Particularly, we're emphasizing compact prosecution in after final practice. We're also continuing to emphasize the identification of allowable subject matter and communicating that to applicants as early as possible in prosecution of an application. And we're also working on training for supervisors on how to effectively review office actions to make sure that they're thorough and complete. We've got a lot of new examiners in the office and we think it would be helpful to get all of the supervisors as well versed in reviewing cases as possible.

And finally, we're continuing to have supervisors work one-on-one with examiners that have unusually large numbers of RCE filings.

And finally, something that came up a lot in our feedback was that misunderstandings over claim construction was a frequent impediment to moving prosecution forward. So in addition to

working with examiners to make sure that they are effectively communicating how they're construing the claims to applicants during prosecution, we thought it would also be helpful to develop a training for stakeholders for applicants on how examiners construe claims, what goes into their claim construction so that applicants can better understand where the examiners are coming from.

And then finally going forward we plan to continue to investigate avenues to provide relief for IDS submissions after allowance. As I said, we'll be continuing to evaluate the AFCP pilot. We're gathering data on that still, and we will, of course, be updating the PAI website to make sure that it is always an up-to-date resource for applicants, and we will be, of course, administering the training that we currently have in development, and continue to monitor the RCE metrics to see -- to measure the effectiveness of these initiatives.

And with that I'll open it for questions.

MR. THURLOW: Just a very quick comment. I know we're coming up on the break

here.

So the production system, if I'm an examiner and I get two credits for reviewing a new application or continuation of the divisional and I have an RCE next to me and I get 1.75 and then after reviewing three or four, whatever it is RCEs, then I get two. To me I don't see the incentive to pick up the RCEs. So I have a similar comment to what Marylee said that this is all good, the presentation is good. I think overall the numbers -- this is a shining example of like a great program where the numbers have come down. But when we go back to the examiners who are actually working on this case, it still comes back to the basics is that where are the production credits? What are they going to do? And I think in some instances, I guess my overall concern is make sure this gets down to the examiners and training and so on and that we see it because there are some cases extreme where it's more than say 40 or 50 where you have to work on them, and that line shows that it's leveling off. That's good. So those examiners with 10 or 20 that are not in a trouble area, there's still a

concern that they're getting misinformation and that they're going to pick it up. What I've been told from examiners, and we discussed this yesterday, is that there's no incentive for me to pick up the case as there was in the past, and I'm going back to the old rule of picking up one to two RCEs a month.

So a question and then comment to my comments is that -- the question is are they required to -- put the production credits to the side -- are they required to examine one or two RCEs a month?

MR. SULLIVAN: Yes. There's a basic requirement that they have to do one every other bi-week. So that would be a couple a month. Or that would be one a month.

There's a lot that goes into the examiner's decision to pick up a case and work on it, and the production credit is just one aspect. And so we also have the docket management credit, and there are -- there's the basic requirement and then there is the -- there are awards that are available for going above and beyond. And so -- and you've got the production credit where

you've got certain things driving them to do the first few RCEs in the quarter, and then you're at the two count. And so all of that plays together I think to incentivize the examiners to do their RCEs.

MR. THURLOW: Yes. So again, the presentation shows everything is headed in the right direction. But if you have a client with a particular case and they say, "I'll talk to you in a year and a half," then the concern is whether this is getting down. But again, overall, the program seems very successful, so credit to the Patent Office, but if you have that one or two cases it's just a concern. So I say that for you to use as you deem appropriate.

MR. FAILE: I appreciate that, Peter. Just to add on something to what Dan said. So if you're in a very high RCE type docket, one of the things, again per the presentation we've done, we've kind of cordoned off the new cases. You only have RCEs. So an examiner needs to get production on a biweekly basis. So the only place they have to go to is the RCE pile for those cases to move. So there's kind of an underlying

basic incentive, so to speak, to move those out. Since the plan has been in operation, we're seeing a bit of a flattening, and we'll continue to see that, but you are correct, you are going to see some numbers where we haven't gotten that flattening yet and you're going to see some RCEs that have been there a while that are a little older and we do need to work through those. It'll take some time to settle that. Number one.

Number two, as those older RCEs are worked off they turn into pendency numbers, and our pendency for RCEs still is higher than we want it to be. It's coming down, but we still need to bring that pendency down. As we work through the old ones and move those and flatten and level out, we'll see how pendency and RCEs also start to come down.

MR. THURLOW: So I have a very quick follow up. So for those -- and any adjuster knows we're at more than 50 or there's a lot of the RCEs in one group art unit, but to the extent that there's -- did you say for those that are older RCEs that that's also part of the plan to address those that have been sitting there or is that not

part of the --

MR. FAILE: No, that's part of the overall -- the highest threshold part. They all get lumped together in there and they're working those off.

MR. THURLOW: Okay. Thank you.

CHAIRMAN FOREMAN: Well, thank you, Andrew and Daniel, for that presentation.

We're up on the break time and I'm sure everyone would appreciate just a quick stretch break. If we can do a 10-minute break and reconvene at 10:55. So it gives you about 12-13 minutes, and we will pick back up at 10:55 with Michael Neas, Deputy Director of International Patent Legal Administration.

Thank you.

(Recess)

CHAIRMAN FOREMAN: I'd like to welcome everyone back from our break. And it is now time for an international update and discussion, so I welcome Michael Neas, Deputy Director of International Patent Legal Administration.

MR. NEAS: Thanks, Louis. And good morning, everybody.

Let's see if we have slide here. So to cover a few topics quickly. The first is the results of the IP5 Deputy and Heads meeting that occurred in June of this year in Busan, Korea. The Patent Harmonization Expert Panel (PHEP) agreed to take up a few areas of work. Those three areas are unity intervention, citation of prior art, and written description and sufficiency of disclosure. You can see on the slide the office that are taking the lead on those three items.

A quick review of the issues are obviously with regard to unity intervention, the U.S. is the only office whose restriction standard is not unity. So that's one issue there. The other issue is for the offices that have unity as their restriction standard, it's applied very inconsistently. There's not a lot of universal international guidelines to govern its application, so that's something the PHEP is going to look into.

As far as citation of prior art, there's some differing practices around the world. In the U.S. we have this duty of disclosure and

therefore, we have applicants submitting prior art via information disclosure statements. In other offices, you know, pre-grant you're required to insert into the application itself what's deemed to be at that time the closest relevant prior art. So we're going to look at the differing practices amongst the five IP offices, the five biggest IP offices and see what we can do with respect to harmonization on that front.

With regard to written description and sufficiency of disclosure, it's more of a fact-finding mission really. Today, there's this thing called the catalogue of differing practices, and this is an area where IP5 industry felt that that catalogue was lacking. And so the first part of that will be the IP5 offices will really do some real fact- finding and examine, you know, how we differ in these areas.

So there was a bit of dissention at the meeting as to how are we going to take all of these up? Will we address all three at once or does it make sense to tackle them one at a time? And the result is that we would essentially tackle them one at a time and unity will be the first one to

be addressed. And that'll be addressed at the next PHEP meeting which should be in conjunction with an IP5 workgroup 3 meeting in October in Beijing.

Some additional results from that June meeting in Busan. There was some agreement by the offices to pursue some improvements under the Patent Cooperation Treaty. Those are work sharing, standards for improved access to PCT documents, enhanced quality of international search and exams, and promotion of utilization of the PCT by SMEs and independent inventors.

Just to walk through those quickly, the work sharing we're talking about really is between national applications and the international applications such that if in fact there has been search and examination on a family member that's a national application at the time the international authority picks the case up for search, that this sharing of this information would be automatic. Today there's a provision in the PCT where the applicant can initiate this. In the U.S. it's underused for a number of reasons. One reason is in the United States we

often start our filings with provisional applications. So pre- international search there is no search and examination product for the ISA to rely on.

The other thing is even in the instance where you start the filing with a nonprovisional, do you have a first office action, you know, by 12 months or by the time the searching authority picks up the case? And today the answer is generally no. As we approach this 10-month first action pendency, the answer will increasingly be yes. And so the idea is to look at a way that as all offices approach shorter of first action pendency, that the sharing of these search and examination results becomes really automatic and not necessarily applicant driven.

With regard to the second item, this really has to do with access to prior art cited in international search reports. And from the U.S. perspective, as an office that works solely in English, it's not such an issue. It becomes an issue for offices that work in dual languages. Korea is an example of that. They work in both Korean and English. And when they cite nonpatent

literature in international search reports that they produce in the English language, they're bound to essentially cite them in English when, in fact, the original document is in the Korean language. To then try and locate that document downstream is very difficult when it's not cited in its native language. So we're going to look at issues with regard to that. And that goes to WIPO Standard 14 which is the standard we use for a citation of prior art documents.

With regard to enhanced quality in search and exam, the biggest item here really is to further pursue pilots on collaborative international search and examination. You may be aware that the Korean office, the USPTO and EPO, have concluded two pilots on collaborative international search and exam that have been quite successful. We're going to look at a framework for a third pilot this fall. The EPO is taking the lead on that. KIPO is very motivated to put this into production. I think some of the other offices, our office included, are a bit more resistant. We really need to test the feasibility more. We need to see what are the

concrete benefits that can be gained and will users be willing to pay for this enhanced service because it will cost more if two or more offices are collaborating to do the international search.

And again, the last item is promotion of the PCT for small and medium-sized enterprises and independent vendors. You know, the USPTO has done this to some extent. We've used our section 10 fee setting authority to adjust the PCTs fees that we set, most notably our international search fee at now three levels from January 1 this year and we've been encouraging other offices to do that same thing. Discussions at WIPO about adjusting or creating differing levels of the international filing fee, which is often the biggest cost in filing an international application, really have stagnated on the issue of how do you define a small entity on a global scale? A 500-employee company here in the U.S. qualifies as a small entity and in other countries that's a multinational company that probably shouldn't be entitled to a discount. So we're looking at ways to do that, and we have taken a bit of a lead on that and we're asking other

offices to unilaterally do something. So again, we can provide access to these types of inventors.

The last thing from the meeting was the establishment of an IP5 quality management meeting, and that group and that meeting will be held on the margins of the next workgroup 3 meeting. That will be October in Beijing. This is very similar to a group that exists today within the PCT. In the international authorities or the meeting of the international authorities under the PCT there is today what's called a quality subgroup, and that group looks at quality management systems at international authorities. The international authorities are required every year to produce a quality management report, and we look at ways to enhance our quality management by exploring what the other offices do. This will be very similar to that but will be more directed to domestic work products as opposed to international work products.

So since I'm really a PCT guy, we'll talk a little bit about PCT initiatives at the USPTO. So we've talked about the IP5 heads have

said, "Yes, we'll pursue these areas of improvement under the PCT but there's many more. Over recent years, many offices have put forth PCT improvements plans, the USPTO being one of them. We have this plan that we jointly developed with the UK IPO called PCT 2020, so it's our intention before the next IP5 workgroup 3 meeting to look back at all these plans going all the way back to WIPO's PCT roadmap from about seven or eight years ago and say, "Well, the landscape has changed. Maybe there were some things of value that we didn't adopt then that we today think are valuable. And so it's our intention to look back and see what those things could be.

So in-house there are some other things happening. We, today, if you follow your international application through the USPTO's receiving office, we offer more searching authority choices than almost anybody. Today we offer five. The United States, Europe, Australia, Korea, and Russia. And on October 1, we will add another, and that will be the Israeli Patent Office will come as a choice of international searching authority for you at a

very competitive price that's around $1,000 USD. Additionally, we do have a PCT taskforce in-house. When the PCT taskforce was formed, it operated at a very high level. Today it operates at more of a working level, and we're looking back at things we have thought of years ago but didn't have the resources to implement. So many of those things are IT related. And as we talk about, you know, again, the landscape changing and more budget certainty and the needed IT enhancements under AIA and PLT and Hague we'll talk about later today or the CIO will talk about, we have this opportunity to create some efficiencies that we didn't have before. And that's going to be getting rid of the little paper processes that still exist, consolidating our processes by using WIPO to help us, leveraging their E- search copy system which means we don't have to deliver search copies all over the world on different media. WIPO will do that for us. Those types of things. Happy to talk more in detail with anybody about those.

Before entertaining questions, just a few other updates. One is on the CPC. Michelle

Lee mentioned it earlier today, and remarkably was able to spout out exactly the number of non-examining hours we had predicted to use, and she correctly said that we've used up about 79 percent of those. And I want to report that 96 percent of our examiners are in their second CPC learning period now. You'll notice that pre-grant pubs and patents now have CPC. CPC classified searching is available in east, west, and on USPTO.gov. So those are some brief updates on CPC.

Internationally, with regard to CPC, we're seeing an expansion of its use. Korea and China are classifying using CPC in certain technical areas. That's expanding. There are several EPO member states that are using CPC. The result is that over 25,000 examiners in about 40 patent offices are using CPC in some way to some extent. So it's certainly expanding.

The last one I want to touch on is one portal dossier. So One Portal Dossier. So One Portal Dossier briefly is a system where you can access the files of patent file members that exist in the IP5 offices. So the CIO will talk later

today about USPTO deliverables in this regard. He's going to have some good information there. I'll talk about what's happening in the other offices.

So the other four big offices have now stood up their examiner porters to One Portal Dossier. There is only at this point a single public access point for this. It's hosted by the EPO. It's part of their European Patent Register but it's very limited functionality at this point. It really only provides access to a limited number of Chinese applications. So there is a plan in place over the next two years. Each of the offices will be standing up their public portal. And again, the CIO is going to talk about that in a bit. And again, this is really kind of phase one of this global dossier concept. It's a passive component. There's no active components involved here. We're still on kind of a fact finding mission to determine the four corners of what the active component should be, but we think this is a great step toward a global dossier system.

Questions?

MR. THURLOW: A quick question. I do a lot of international patent prosecution work using PCT. It's a very good program. One quick question is, how do you go about adding new countries to the PCT member list? Right now you tell me it's 140. So in the example I'll give you we're prosecuting some patent applications in South America. Of the six countries, five of them are members and Argentina, as you know, is not. How do you go about adding them?

Second thing, excuse me, I guess just to realize the importance of the pendency and the quality issues around the world. They're the same issues that the PTO has. They're the same issues, I guess, in countries like Peru and Brazil where pendency, the first action can be up to 10 years. So many of our clients around the table and U.S. Companies and global companies, et cetera, all operate in the global framework. So as you have your meetings with IP5 and others, those basic requirements are very important.

MR. NEAS: Yeah, so thanks. A couple comments. Adding countries. I have some personal experience with this because I was some

years ago sent to South America to talk to Argentina and Uruguay about joining and boy, that's a tough conversation because the result is they don't want to hear from the United States, number one, because our experience is not what they think their experience will be, and it's really at the government level. It's at a political level where the resistance is, in my opinion. Really, I think it's users that have to approach, you know, those governments to say, listen, we need this.

As far as pendency and quality is concerned, you're absolutely right. We have talks all the time about what's happening in other areas. We're very concerned about -- you said Brazil. We're very concerned about Brazil. We've been approaching Brazil for years about patent prosecution highway. They are very resistant to it. We have tried over the past two years to incorporate the patent prosecution highway actually into the PCT, for the PCT itself to say forget the bilateral or multilateral agreements. Throw those aside. For the PCT itself to say if you qualify, if you meet these

qualifications, you will get acceleration in these national offices assuming they haven't taken a reservation or made a notice of incompatibility. And Brazil this year had a 30-page rebuttal at the PCT working group to tell us why this was ultra vires to the treaty, it was substantive harmonization of patent laws, and there's really, in my opinion, not much you can say to them. And the leadership at the IP office there has changed very recently. So as far as pendency, you know, we continue to engage but we continue in some places like Brazil to get resistance.

As far as quality is concerned, you know, we're very engaged in that at the international phase. So quality goes to what are the international authorities doing? The international authorities more and more are looking at each other's work. We're exploring collaboration. Additionally, we're concerned about new international authorities and the quality that they might provide or not provide potentially. And so actually, the system for approval of international authorities is

hopefully going to be changed at this year's general assembly so that there's a bit more of a technical review of the qualifications of these offices. As we stand up an organization in patents that is looking at international patent cooperation and creating efficiencies within patent family prosecution, we want to make sure that these international authorities don't dilute the quality that exists today.

MR. BUDENS: I wanted to talk for a second and see if you could give us a little bit more insight into this issue of unity of intervention. It's not going to be a secret to any of the managers in the room, and in three seconds it's not going to be a secret to the PPAC. The examiners are highly concerned any time the topic of lack of unity starts hacking up as a possible change to restriction practice in the USPTO because of the impacts on -- you know, you're going to be starting to ask us to examine more inventions, you know, and nothing has ever shown us that we were ever going to get more time for that and stuff. So I'm a little highly -- well, not a little -- I'm highly

concerned that this is, you know, the next topic of agreements of areas of future work, and I'd like to know just exactly where this is going and what the agency's position is going into these talks.

MR. NEAS: Well, I don't know that the agency has a position, per se, other than we agree to talk about it. Our office does use unity in its roles in international authority. We use unity in national phase entries under section 371 of our statute. We've looked at this many times. There's actually a pretty good paper on the USPTO website that was written some years ago that looks at all the issues. There have been in the past six years probably three teams tasked with looking at this. Those teams had POPA members on them, in fact, and you keep coming back to the same set of facts that, you know, and they are basically -- we have -- our statute says our standard is independent and distinct. It's not clear whether we can redefine that ever even if we wanted to through rulemaking. And then there's a business issue that we're all aware of, that our business model is not set up based on

unity intervention. So yeah, these are the known hurdles in my mind. And again, not going into it with any real preconceived notion of yes, we want to do this or no, we don't. If there can be more consistency in the areas where unity is applied today, that would be great. Applicants want consistency between international phase and national phase. So if that means more consistency in what the USPTO does in international authority and entry into the national phase where their restriction practice is unity, that's a big improvement for users I think.

MR. BUDENS: Okay. I appreciate the comments. You'll forgive a certain level of healthy skepticism I hope. You know, back in 2010, nobody knew that CPC was going to occur until Dave came back from a meeting one day. And when so I see this being a topic at the top of a list of things to do, I get highly concerned really fast.

CHAIRMAN FOREMAN: Thank you for that spirited discussion. Break the ice a little bit.

Michael, thank you for the

presentation, and we look forward to further updates at future PPAC meetings.

Now I'd like to turn it over to Alexa Neckel to give us an update on the Patent Examiner Technical Training Programs.

MS. NECKEL: Thank you. Thanks for having me today.

My name is Alexa Neckel. I'm with the Office of Patent Training, and I am the lead of the Patent Examiner Technical Training Program. So I'm here today to raise awareness about this program and hopefully find some volunteers as well.

So this is an overview of what PETTP is. I'll talk about what it is, who can present, the benefits, where we hold these, and then ultimately how you can participate or those you know who might be interested, how they can participate.

So the Patent Examiner Technical Training Program is one of the executive actions. So its goal is to raise quality as well as accessibility to the patent system. It's a voluntary program, so experts from outside of the

office come and give technical training to our examiners on their own time at their own expense, and it's (inaudible).

Who can be a presenter? So as I mentioned, our presenters are a scientists, they're experts in industry, they're from all areas of technology. We would love to give every examiner the opportunity to attend at least one training like this, so there's no limit to what areas can participate. And it's also people who are willing to volunteer their time and the expense to be in a program.

So we have just examples of some past participants. You can see they're from university level as well as private organizations and individuals. They tend to come, they bring models, they give presentations, they show videos. We had -- Toyota came and brought their hydrogen- powered car and some examiners were able to drive it, including me, which was pretty exciting. In addition to actually getting to see things hands on, some of the benefits are that it gives the examiners the opportunity to learn more about the technology. So many of our examiners

came straight from academia and they haven't had a chance to work in industry and think about all the things that industry thinks about.

So time and time again when we ask our examiners for feedback on how the program works, they love learning about the history of industry and the technology, the challenges that are faced, and why these inventions are having the breakthroughs that they are. So what people are overcoming in order to make advances, as well as learning about where industry is going or various technologies. What the future holds. So examiners get a wider view of what their examining and not just what the application itself has.

Overall, this strengthens the quality of patent examination. So when examiners get this bigger view and they understand the technology better it's really going to help their search and how they're applying art in each application.

Events are held here on campus generally, at our headquarters, as well as our satellite offices. So right now Detroit and Denver are hosting these programs as well, and as

our future satellite offices open we'll make them available there as well.

We also can do webinars so applicants don't -- or sorry, applicants -- presenters don't actually have to travel to the office of one of our satellites to come in and present. They can present from their location to examiners throughout the PTO and that seems to work really well.

So ultimately, it sounds like an exciting program and if you want to participate or you know people in your association or in your firm or inventors that would like to participate, we have our website. Right now you'll see this microphone. It'll pop up on the PTO homepage as well. You can also email that or contact myself directly. So feel free to give out my phone number and my email address, and I'd be happy to help coordinate any efforts if people are interested.

Any questions?

MS. SHEPPARD: Well, thank you, Alexa, for that. I think it's an excellent program and it really helps for the examiners to be exposed

to expertise, particularly in the business world.

This question is for you only because it most well first in the proportion of the program than any other. I'm glad that Commissioner of Patents, Peggy Focarino is here.

You mentioned that it's encouraging innovation and strengthening the quality and accessibility of the patent system. One of the things that also does that is the law school clinic certification pilot program, which I don't think has come up today, which is a great program also. My concern and what popped in my head just now is that although you have 45 or 47 school participating, I believe they're concentrated in four or five states. And this is something I've mentioned privately to other people. I'd really like to see more encouraging innovation and strengthening the quality and accessibility of the patent system countrywide as opposed to the usual suspects on the coast. The coast, Chicago, and Texas are pretty much where things are located.

And that goes for this program, too. You've done an excellent job here of

incorporating the Detroit office and I think the Denver office and future locations. I just want to make sure that you're encouraging people to participate live in every state in the country and not just telling them to go to the web.

MS. FOCARINO: I can address the law school. We recently expanded, right, and the goal is to keep adding more and more because I agree with you. If we can have students in law school be part of the process and really learn the prosecution side of it, that will bring quality in and make it certainly more conducive for our examiners for the ultimate product to be a higher quality product. So definitely that is the goal.

If Alexa wants to speak to the PETTP as far as visibility across the country.

MS. NECKEL: This program, I guess, as far as -- this program doesn't send examiners out across country but we are interested in people across the country participating. Since this is at the participants' expense and not the USPTO's, the webinar is a nice way to make that a little more affordable for various industries.

We do have -- it's not in this

presentation, but we do have our examiners site experience education program where we send examiners across the country to actually visit industry and get to see it hands-on that way. So we try to spread that out across the country as well and that focuses, as you mentioned, on some of the more sunnier locations.

MR. JACOBS: Yeah, just a couple of quick questions.

Sounds great. First of all, how would you -- I'm kind of assuming that we don't have like an overflowing number of applicants right now, but if you did, how would you select from potential presenters? And then the related question is are there particular technology areas where you'd like to have more right now?

MS. NECKEL: Great. Yeah, right now we're really trying to get this program up and running, and so right now we're not tending to discourage any special areas. We have been analyzing to see which art units, which TCs don't have as much participation so we can focus our efforts on the areas that have been less represented. Specifically, at this point our

1600 and 1700 tend to be the harder ones for some reason to get applicants in. So chemical materials, biotechnology are a little bit where we're focusing our efforts right now.

MR. THURLOW: So maybe a year and a half ago I attended a Medical Device Subcommittee meeting at the Patent Office where the morning sessions was presentations from the PTO about recent programs and developments, and then the afternoon and late morning sessions were presentations by experts at different medical companies, and that seemed to be a nice combination for the stakeholder community to meet the examining corps, and then for the examiners to get technical presentations and so on. And from the feedback that I saw, it was really well received.

Separately, as far as I think your job, and the reason or your presentation today is marketing what's going on?

MS. NECKEL: Yes.

MR. THURLOW: So if you reach out to bio and you reach out to -- you know, we're all involved, heavily involved in different bar

associations, we can probably help you get the word out. I'm sure there's a lot of people that would like to do presentations. I see it's on the front page of the website, information about what you're doing, but we can help if we need to.

MS. NECKEL: Great. Thank you. I'll take it.

MR. HALLMAN: Alexa, I had a quick question. To the extent that there is a significant number of examiners who work remotely, how do you handle marrying up people who want to participate and examiners who work remotely? It seems like there might be an opportunity to do some of these in places other than here in Alexandria.

MS. NECKEL: Other than, well, we do most of them -- our webcasts are examiners that are teleworking and participate online and they're able to -- they have the same kind of setup we have in here where they can see everything that's happening and ask questions and be very interactive.

We haven't explored anything beyond the satellite offices at this time but that is

something we're considering if there's other locations as well. Thank you.

MR. HALLMAN: You know, to the extent that there are trade organizations that have shows or that there are technical organizations that have annual meetings every year, that might also be a fertile ground for you to -- because I think this is a very good idea but I also think it's something that the office ought to consider investing a little bit in to maybe go to a technical meeting and you'll have a critical mass of the kinds of people I think you want to expose examiners to and, you know, chemical associations, electrical associations, biotech associations, all those guys get together periodically and, you know, noodle around a little bit, and that would be a great place for you to very efficiently, I think, get the kind of participation that you're looking for.

MS. NECKEL: Thank you.

MR. BUDENS: I just wanted to make a couple comments on this. And first of all, I appreciate Alexa running this program and trying to expand it and get it going. I also want to

remind everyone that this is an example of what the agency can start doing now that we're being allowed to keep our fees and stuff. I appreciate the commissioner and the deputy commissioner being able to, you know, willing to provide the time to examiners now to participate in these kinds of programs. I think that's a direct reflection of the world that we can start creating in this agency as we continue to keep our fees and be able to expand what we do and improve the quality of examination.

And I also would take a moment -- you guys kind of stole a little of my thunder. I was going to challenge all my colleagues on the PPAC since you all work with applicants rather regularly, to see if you can help Alexa out and see if some of your applicants want to come down and participate.

Thank you.

CHAIRMAN FOREMAN: Thank you, Robert. And thank you, Alexa, for that presentation.

All right. We have one more presentation before the lunch break, so I'd like to welcome Chief Judge James Smith to join us and

give us an update on the PTAB.

CHIEF JUDGE SMITH: Good morning. Thank you for having us again to report.

Let me start out by addressing the recent report by the Office of the Inspector General. And already, Deputy Director Lee spoke to the IG report, a couple of IG reports and some other media reports about various things commented on about the agency. And I want to add my voice of appreciation for the work of the IG office in providing the report on the paralegal program at the Patent Trial and Appeal Board and assure the IG and others that the senior leadership of the agency is reviewing the IG report carefully, and certainly intends to provide the official response required within 60 days as required and to make that as full and as substantive as possible.

Addressing some of the things raised in the report, it is important to note that many of the IG's recommendations for improvement at the Patent Trial and Appeal Board are already under way and have been implemented. This actually is stated in the IG report itself. It's also

stated, although perhaps not emphasized, that as soon as the OIG first raised concerns in 2013, the USPTO conducted its own thorough investigation of the situation relating to paralegal deployment. As part of that, the agency itself commissioned an independent consulting firm to conduct a second investigation which recommended structural improvements in the paralegal program, ensuring more efficient and effective organizational structuring for the management of that part of our operation.

The recommendations in the independent report are all in process or, in fact, have been implemented fully. For example, the agency has installed a new paralegal management team and organizational structure, changed paralegal practices to eliminate underutilization and revise processes for evaluating paralegal performance.

In moving these things ahead, we've had tremendous help from our interim board executive, Mr. Richard Seidel, a long-time veteran of the Patent and Trademark Office on the patent examination side, who Commissioner Focarino and

Deputy Commissioner Faile have been kind enough to loan to us. We've had other additions to the management team on that side of our operation, which include Mr. Troy Tyler, who previously served as the senior-most Army officer in charge of 4,000 paralegals worldwide for the U.S. Army, and managed paralegals carrying out all the legal operations of the U.S. Army, including more than a couple thousand teleworking away from the Pentagon, efficiently managing not only their utilization for the tasks, but also specifically their utilization in remote telework locations, including Guantanamo, Baghdad, and Kabul.

Let me say this also about other aspects of our work utilization, touching in part on the paralegal portion. Despite the vast increase in the caseload due to our new popular post-grant proceedings created by the America Invents Act, the Patent Trial and Appeal Board has consistently produced what we believe to be high quality, legal decisions. I think we're not alone in viewing the output of the board as a jurisprudential matter to be of high quality, and we've done so within the very stringent timeline

constraints of the America Invents Act.

It's also important to note, and we'll look at this briefly in the slides in a second, that while we have met those deadlines against an inflow of cases that is three times what was predicted, we also have managed to continue to decrease the size of the ex parte appeal backlog, which now stands at about 5 percent lower than it was when it peaked and started coming down about a year and a half ago.

We will, of course, continue to improve with all the suggestions provided -- more than suggestions perhaps is a better -- recommendations and guidance of the OIG report would be a better way to put it. And we're confident that with the work of the agency and the PTAB and with the help of PPAC, quite frankly, we'll be even more strongly situated to achieve just the types of things we have been achieving for the PTAB and particularly the new AIA processes since those have been instituted.

So let me perhaps pause. If you have any questions specifically relating to that before we head to some of the more traditional

things we discuss in our written report.

MR. THURLOW: No questions, actually, but thank you for addressing the IG report. I know that was a topic of great interest by many in the stakeholder community, so I think your explanation was very helpful, and we look forward to seeing whatever information you provide to the IG in response.

CHIEF JUDGE SMITH: Wonderful. I know we are short on time, and in fact, the time is past the scheduled conclusion, so if you will permit me to do a lightning round if we have the time.

CHAIRMAN FOREMAN: Lightning round sounds perfect. And maybe if you can touch on the really important topics here.

CHIEF JUDGE SMITH: I can do that. Slide 3 -- 5, actually. The fifth slide, third substantive slide. We continue to receive many, many AIA trial petitions.

Slide 6 shows you that we reached the astronomical high of 190 new petitions in the month of June. July as not quite as bad, or good, depending on how you look at it, and we dipped below 150 in that month. You will recall that at

one time the thought was would we ever top 100. Now our prayer is to go at least a little while longer before we top 200.

Let me direct your attention further to -- let's see. The slide is not numbered. If you will advance -- well, I guess I can advance.

This is a very important slide. It addresses how many of the trial petitions actually result in instituted trials. We have said some time ago that we thought the numbers would decline in terms of the number of institutions just because of a wider or a more complete data set to provide the statistics and also some speculation that perhaps the most vulnerable patents were those that were made the subject of these proceedings initially. That, in fact, is just what has happened. You'll see that in the IPR area as between Fiscal Year 2013 and Fiscal Year 2014, there's been an 11 percent decline in the number of institutions and a 10 percent drop in the number percentage- wise of covered business method reviews which have resulted in instituted trials.

This next slide emphasizes that there

are a number of ways the proceedings are coming to an end, and again, not in every instance with the patent claims being declared unpatentable. In a number of instances, and it remains fairly large and is larger by percentage this year than last year, the parties are settling the cases. There are also a number of instances where they conclude with adverse judgments. And adverse is not necessarily -- well, it is not clear to whom it is adverse in this rendering of the number. By adverse judgment we mean specifically where the board has not made a decision but the parties themselves have requested that the board enter a final order rendering the claims unpatentable. And then, of course, when there is no settlement and no adverse judgment, we proceed to final written decisions. In October, we will see the highest number of final written decisions, and it will be a particularly challenging month for the board because we will have to deal with a full load of incoming requests as to whether or not to institute the trial, and then for the first time a full pipeline of final written decisions which have been in gestation for the required trial

period.

And I do recall it's the lightning round, so only a few more (things.) Precedential opinions. We have one more. Recently, we have discussed with the public and with PPAC over the course of the last year and a half the desirability of an increased number of precedential opinions. We will see more of them in the AIA area. Secure Buy is one we direct your attention to. Generally, the matter of moving a precedential opinion forward has become somewhat more complicated. It involves a plebiscite of the entire board. At one time that involved, say, 70 to 90 voters. Now we have 210 people voting, and there's also a process that engages the Office of the Undersecretary and the decision whether or not to veto the designation as precedential. So there's a fair amount of work involved in getting to that point.

We continue to percolate decisions that likely will become precedential as they become first representative, particularly in the AIA space where that's a matter of providing guidance to the public as to how we're handling the cases.

Then to informative opinions, which also are posted on the website and provide a bit more urging towards the board itself in terms of how to decide cases. And then precedential cases which bind the judges of the board to a particular decision. This will continue to progress over the next year and we'll see many more precedential cases.

We have a request out for comment on our various procedures. The members of the PPAC participated in the roundtables that we did in the various cities. That was very illuminating certainly to the board; hopefully to the public as well. We have since put out the request for comments. It closes on the 16th of September, which is the third anniversary of the enactment of the AIA. And we will report at that time as to what the comments have been.

Let me fast-forward very quickly then in lightning fashion to a bit more focus on the ex parte appeals. You will see that in our most recent look at the size of the inventory, and we take a snapshot every seven days going back 30 days as to how many cases have come in, how many

have been decided, and then at each of those points also measure the size of the backlog. We haven't made -- as you see, it's fairly static between April and now, which might seem like not that much progress.

Two points to note. One, at one point it was predicted that the amount would reach 35,000 ex parte appeals by the end of 2013. We averted that largely with the expansion of the board. It peaked at 27,200 cases in 2012 and has come down to where it is now. We expect it will drop more over the course of the next month or two. Again, it looks fairly static as though it's not dropping. What's not shown here is that in this same time period we had in one month, for example, 190 AIA petitions come in. That this looks anything approaching static and shows at least some slight decline, there's the result of an extraordinary amount of work by lots of people. As our new judges become more familiar with their responsibilities, particularly the ones working on the AIA matters, we think we will make much more progress with this, with reducing the size of the ex parte appeal inventory.

Judge recruitment. We continue to work at it very intentionally and in a focused way. We continue to emphasize that we want judges, but we also want judges of the highest quality. We think we have been able to maintain a high standard in the recruitment of judges. We are now up to 213 judges actually. We had one of our judges retire recently. He was actually a reactivated, previously retired person who was providing great mentorship and guidance to our operation, but distant shores and travel to lovely places has called him away finally. We hope to have the number at 230 judges by October 1. And we, of course, will continue our very diligent efforts at training our new judges. We continue to evolve the PTAB website to provide as much information as we reasonably can to our consuming public.

One of the things that happened recently, subsequent to the roundtable, is that we have activated the blast portion of the website, so one can now register to receive various kinds of blasts to one's email regarding things that have developed at the PTAB. An

example is one of our recent blasts was, once the newest precedential case became precedential, we sent a blast out to the people who had registered on the website for that. That's lightning for today.

CHAIRMAN FOREMAN: That was great. Thank you. Thank you, Chief Judge Smith. And again, this is a topic that is always of great relevance and interest to PPAC and the rest of the user community. We promise that we'll give you much more time at our next PPAC meeting to share.

Are there any last minute questions?

MR. THURLOW: One lightning fast question. To the extent that precedential decisions are helpful and a good thing, is there any wiggle room to kind of reduce the amount of -- in the extent of the approval process, to make a decision precedential?

CHIEF JUDGE SMITH: We are trying to adhere to the deadlines in the applicable standing operating -- standard operating procedure as much as possible, including, for example, the balloting time for the judges is set out in the order. And we have the liberty to

extend it to some degree, and in the past perhaps have done that. Now we are urging it much more toward midnight of the 14th day. If your vote isn't in, too bad.

MR. THURLOW: Just one more quick question. I think the numbers, the last couple of meetings, the "death squad," so-called "death squad," I think the numbers show that it's never really happened based on some statistics I've seen. If you can just confirm that.

And then just a word of what we're interested in learning about, I guess, as we've been trying to figure out how to handle these proceedings with PTAB is initially PTAB was rejecting a certain number of claims and references based on redundancy grounds. So our response to that and what many believe is the increase in number of filings is instead of filing everything in one application and one petition, to separate it, break it down by 102, 103, different references, different claims. And we're very curious of how the PTAB is going to respond to that, whether you look at each petition that we pay a separate independent fee for, you

look at that individually or you look at it in combination with six or seven potential other petitions that are submitted related to those patents. How you handle that is going to be interesting.

CHIEF JUDGE SMITH: In order. First, "death squads." As I thought about it more, maybe death squads isn't such -- maybe it isn't as pejorative as it may have been meant. First let me say, clearly the statistics show that not every claim in a patent brought forward to the board has met its death because it's been raised in a petition. As our statistics point out in great detail in the roundtable tour and available on our website, many of the claims for one are not even raised in the petitions when they're brought forward, and the board certainly isn't summarily deciding to have all claims put in the trial. It's a very careful decision. So there's a filtering process that makes only some of the claims even at risk in the proceeding anyway. And then again, as I've mentioned, clearly the number of claims that survive the proceeding have increased over time.

Let me also say this about the "death squad" comment which I think is sort of unfortunate language because it doesn't really -- it's not very probative as to what's really going on. To some extent, the purpose of these proceedings is death squads, which is to say -- to identify some limited number of patents and claims which where the claims are unpatentable and the claims are removed. If we weren't in part doing some "death squadding," we wouldn't be doing what the statute calls us to do. The question, of course, is are we hearing each case independently and deciding with no bias what the right answer is based on the evidence presented? That is always what we intended to do, and in my view, the only thing we have done since the proceedings have begun and all we intend to do.

With regard to redundancy, I think you described quite accurately that we've seen a transition from intra- petition redundancy to some amount of inter-petition redundancy. Some of that perhaps is effective and not unintended by the rules. During the lengthy discussion

about the rules and recognizing, for example, things like the constraints on page limits and the like, it was always presumed that some amount of the petitioning for removal might result in patents or family of patents being addressed in more than one petition. At the same time, it's not the board's intention to allow the process to be abused in a way that there is inefficient use of the board resources to decide the case, and the statute gives the agency and the board a fair amount of liberty in determining when the proceedings are no longer efficient because of how the claims or the arguments are spread. I think already we've had a few decisions where we've decided not to institute proceedings because of prior petitions having been proceeded on appeal involving complicated and convoluted combinations of arguments and claims involving the same patent. We will continue to look at that very rigorously to make sure that we are discharging our obligation of efficient justice with these proceedings.

CHAIRMAN FOREMAN: Thank you. And just as a reminder for those who are watching

online, all of the slides are available online. So if you want to see the full presentation and the full slide deck, those slides are available online.

Thank you again, Chief Judge Smith.

CHIEF JUDGE SMITH: Thank you.

CHAIRMAN FOREMAN: We are now into our lunch break. We are going to take a short break for members to go and grab lunch, and then I would like to remind everyone that we do have a luncheon speaker this afternoon. Elizabeth Dougherty, Director of Inventor Education and Outreach will be presenting at 12:15. So if everyone can grab their lunch, come back. Members of the public, please come back at 12:15. It's going to be a wonderful presentation on the efforts and initiatives of the office to get out to the user community and engage in public outreach. So thank you.

(Recess)

CHAIRMAN FOREMAN: So we are back on track for our public session. Welcome back all those who are here in Alexandria and online.

Our afternoon session begins with a

fully funded Chief Financial Officer, Tony Scardino. It's always an interesting presentation, but it'll be even more interesting today now that he's got access to his fees.

So Tony Scardino.

MR. SCARDINO: Thank you, Louis. I actually thought I had a pretty good job until I saw Liz's job. What was it, candy hour and craft beers? We don't do that in the CFO's office, unfortunately.

But we do have a good story to tell today, as you've kind of forewarned. Fiscal year 2014, the first slide here, is kind of status quo since the last time I briefed you. Working estimate remains the same. It's more money collected, we believe, than was appropriated to us, which means for the first time ever we'll deposit funds in the Fee Reserve Fund, which I'll go through in a few minutes. So far to date, collections are going well. There's still probably going to be a little less than what we've estimated. Again, way more than what Congress appropriated this year, but we do believe that collections will be a bit less than we predicted

last time, and we're still looking at elasticity from when we set fees last March. So it's been still 17 months. Every day we learn a little bit more about applicant behavior as well as patent holder behavior. So things are proceeding at pace on that level.

What this will mean, you know, the fiscal year ends September 30th, of course, so less than two months away. We are projecting a carryover of roughly $750 million. Now, the majority of that, $606 million, would be on the patent side. And as I mentioned, for the first time ever, fees would be deposited into the Fee Reserve Fund that was created by the America Invents Act. That again was for full access to fees. And so for the first time ever we will be requesting of Congress in October to get access to the fees that were deposited in the Fee Reserve Fund. So when we say the carryover is $749 million, that includes the money that will go into the Fee Reserve Fund. We consider it one carryover, but some will be in our account and some will go into the Fee Reserve Fund. We'll send a reprogramming letter up, tell them what

we're going to do with the money or what we propose we do with the money, and then money will come into our account. So that's the mechanism.

We've been very successful on patent examiner hiring as well as PTAB judges. This (chart) is as of June 30th data. I've got July 31st data. We've hired 719 patent examiners through July 31st, a little more than the June numbers, and we've hired 40 judges for PTAB of the 63 that we're targeting for the year.

Moving to Fiscal Year 2015, both Chambers of Congress have marked up our appropriations bill. They've actually given us or provided us a spending level that was more than we requested, about $16 million more, so that's a great sign of support from Congress, which is wonderful. Now, of course, the fiscal year starts October 1st. Most folks are anticipating a continuing resolution, which means we won't get this appropriated amount until they actually appropriate the dollars to us later in fiscal year 2015. We'll be under what's called a continuing resolution most likely. Again, last year there was a government shutdown because there was no CR

or continuing resolution passed for 17 days. We're not anticipating that kind of a challenge this year, but if so, we will be ready for it. The operating reserve allows for that. That's why we stayed open during last year's shutdown. Again, the operating reserve will allow us to not only stay open if the government shuts down, which most likely is not going to happen, but under a continuing resolution, we'd be living at last year's funding level, which is actually this year's funding level. The operating reserve enables us to actually elevate our spending a bit to equal what we would normally get appropriated so we don't have to do a bunch of start and stops for projects. So that's all good.

Having said that for 2015, we don't think we're going to collect to the level that Congress is most likely is going to appropriate us at. We're seeing a little bit of -- how would I say it-- less growth in application filings. We were thinking it would be 6 percent growth. Right now it's running closer to 5 percent, so that means a little less work is coming in the door. We're also going to see maintenance fees

most likely drop a little bit from what we initially anticipated. It kind of goes back to the bubble we experienced almost four years ago when AIA was enacted. The next tranche of maintenance fees are due and we think they'll be paid in 2016 instead of 2015. So it's just a timing issue.

The Committees also supported a couple things -- Nationwide Workforce Program. Of course, we've been expanding around the country, and both Chambers of Congress support that, as well as our continued path for meeting our pendency goals within 10 and 20 months.

I mentioned the Fee Reserve Fund. We'll access it for the first time ever.

And the last thing is 2016. I know that sounds a little crazy since we're in 2014, but we actually submit -- the agency submits, like all agencies, a budget to the Office of Management and Budget the second Monday of September. This year it's September 8th. The committee will send PPAC a draft of the budget next week. We'll get your comments, but I always would like to remind you and everyone in the audience that this is just a

point in time budget. What happens is we then work with OMB throughout the fall to get better numbers before we submit a request to Congress and the public in February. So you'll get another chance to review the budget and ask questions. We always welcome any and all comments.

That's pretty much all I have for the day -- today.

Any questions or thoughts? Oh, one thing about fiscal year 2016, you'll probably see some enhanced IT projects that have been a bit undernourished over the years. We've been encouraged to make sure that we stay on track with that and spend prudently, but also there are some projects that haven't gotten attention due to the funding shortages we've had over the last several years or So.

MS. SHEPPARD: I really very much like it when you come in with good news. It makes our jobs much easier.

A couple of comments. You mentioned the operating reserve, and the operating reserve, so people should know, allows you to stay in business despite any sudden changes, unforeseen

events, like sequestration, which is why you were able to stay in business. The other portion, which has not ever been tested before, is the Fee Reserve Fund, and that's where you have to go to Congress with a letter and within 14 days you'll have an answer about whether or not you have access to those funds, it’s not automatic.

MR. SCARDINO: Correct.

MS. SHEPPARD: So it's very important for us to keep an eye on that, and we will mention in the report and keep an eye on that to make sure this sort of gentleman's agreement or persons' agreement actually fulfills its intended purpose.

Two other quick comments. You spent more this year than ever before, but that's because it's a much bigger agency.

MR. SCARDINO: Correct.

MS. SHEPPARD: So we spoke about this yesterday. It would be nice to see more than just the knowledge that adding additional examiners gets you additional output, more patents examined, but some actual numbers to show how each hire affects the output. I know it's difficult

to do because people come in on different levels, GS levels and experience levels, but you could break it down by experience or by TC unit. So people really understand how important it is to keep a full complement of examiners to really work down the backlog.

MR. SCARDINO: I appreciate that comment, and we did take that under advisement yesterday. I haven't had a chance to talk to Peggy and Bruce about it, but we'll certainly put our heads together and try to put something together -- and we'll run it by you and see if it kind of answers the mail in terms of your request.

And I do appreciate the committee's support for any help with the Fee Reserve Fund since we haven't tested it before. A lot of folks still don't really recall what it is where it's unlike other Federal agencies. It doesn't really exist anywhere else. And again, the intent of the AIA, of course, was for ready access to fees as they are collected, so I'm very optimistic that Congress will support us in this. But any thoughts on your part would be helpful.

MR. SOBON: Hey, it's good to have

better news. It's nice for a change.

Just, maybe I missed this but on your slide, too, you estimated that you were not going to meet the 3.2 million in working estimate for fees. How much -- do you have a projection of roughly where you're going to hit? I just did it on sort of straight-line. It looks like about 2.9 or 3.

MR. SCARDINO: That's just the patent side on this side. Yeah. $3.286 million was the fee estimate for the entire agency.

MR. SOBON: Yeah, right.

MS. FOCARINO: And if I had to guess, again, usually we see an uptick the last month of the year so it's a little difficult, but I think we're probably be about 40 million short. It could be as much as 80 million, somewhere in that range.

MR. SOBON: Okay. But north of the estimated spending then?

MR. SCARDINO: Oh, yeah. North of spending and way north of the appropriation.

MR. SOBON: Thanks.

MR. THURLOW: So Tony, thanks. Just

for the Reserve Fund for historical purposes, I guess we have a certain amount of skepticism, but how about accessing the money and getting the money. And I guess, you know, we can help to the extent PPAC can have a small voice. But how are you using, you know, we're all active in bar associations, whether it's AIPLA, ABA, others, there was such a fever pitch, I guess, a fervor about all the money that was used in the last patent reform bill. And then when something like this comes up, when you say people may not be aware of it, I agree with you. So if people aren't aware of it, then people aren't talking about, then I'm concerned that we may not get the money that we all think is a good thing. And it's good. So I guess, what was it, Tom Cruise, "Help me help you," or "How can I help you?" or something like that in the movie.

MR. SCARDINO: No, I appreciate that. Thankfully, I have the gentleman to my left helping me quite a bit, but the main folks in Congress that need to help us in this regard are really the appropriators. The authorizers are always very supportive as well, of course, when

they passed the AIA. And I don't really anticipate a problem. I mean, we always say that, you know, hey, it could happen, right, because anybody's crystal ball is cloudy when it comes to Congress, but they've been very supportive to date. I don't anticipate problems. And if we do encounter any issues, we've gone round and round it. We've been building this case for a couple years now. Hey, one of these days we're going to be able to test this and we talk what it would score. The appropriators, OMB, everyone agrees it doesn't score. So we set all the ground work for, okay, this means it's going to work as everyone envisions. Right? So until we hear differently, we're going to be a bit leery as to rally the troops because the problem doesn't exist yet. We can always raise it if that happens. It is an extra step, as Christal says. It does entail an act of -- not of the whole Congress, but the appropriators would have to put pen to paper and say "we approve".

MR. THURLOW: And Christal mentioned this as part of the process, so you submit the

letter and within 14 days, so it's not months?

MR. SCARDINO: Exactly. They have 15 days. Yeah. We're optimistic.

MR. THURLOW: Okay. We'll look forward to the update at the next meeting, I guess.

MR. SCARDINO: Absolutely.

MS. JENKINS: Just quickly, aren't you -- since this is new and other agencies haven't had this type of request needed to be made, aren't you sort of making it up as you go along of how this request is done?

MR. SCARDINO: Not really. Reprogramming, it's the authority in every appropriations act. So reprogramming is an act. It's basically a proposal to shift funds from one place to another, and that happens in Federal agencies all the time. The reason why it's a little different for us is we're moving it from an account that was made up just for us, the Fee Reserve Fund, into our operating account. So that's the only part of this that's new, but the reprogramming action itself, the appropriators approve those all the time.

MS. JENKINS: So you don't have to give any kind of detail of how the money is going to be used?

MR. SCARDINO: Well, you have to give a plan. If it's $172 million, pick a number totally out of the air, I would say this is how we would spend the money. And then that's what they're reviewing. I don't think they're reviewing whether the money should be moved or not because it's already in the act. It's whether they approve our utilization -- the way we propose it.

MS. JENKINS: Good. Thank you.

CHAIRMAN FOREMAN: Any other questions? Well, Peter, that was a great "show me the money."

So if you need his assistance, I'm sure he will volunteer. Channeling his Jerry Maguire. Right?

We appreciate -- Tony, we appreciate that presentation.

MR. SCARDINO: Wasn't it Cuba Gooding, Jr.? Right?

Thank you.

CHAIRMAN FOREMAN: Welcome, Dana. Welcome back for an update on legislative issues facing the USPTO.

MR. COLARULLI: Thank you, Louis. As always, happy to be here. It is August, so members of Congress are generally not in the Washington, D.C. area. But they are very active. And as you know, we talked about it this morning, certainly PTO is in the spotlight and staff are still around certainly asking questions. So I'll talk a little bit about that.

But I've included in the slide deck, what I'm presenting today, many of the slides I've presented previously, I've included them here for purposes of history. This also provides a nice baseline of I think where Congress, certainly in the 114th, will pick up on patent litigation reform. Start with patent litigation reform and move on to a couple other issues.

So I'm not going to spend a lot of time on these slides. As I said, I think it's a baseline. These slides show the progress on the legislative front certainly through the end of May when Senator Leahy pulled his bill from

consideration in front of the Senate Judiciary Committee. There still are active discussions of moving patent litigation forward. It seems to me it's likely that there won't be further action on comprehensive patent litigation reform this Congress as the 113th Congress will end at the end of this year. We have elections coming up. We have certainly budget season. It's unlikely that much will move forward in the IP space.

There have been, and I ended with this slide last PPAC meeting, certainly, Senators Leahy, Schumer, and Cornyn led the discussions in the Senate. They have still a vested interest in moving forward language, and I expect that they will regardless of the makeup of the Senate in the 114th Congress. On the House side, just as eager. I think Chairman Goodlatte of the House Judiciary Committee was able to not only pass a bill out of his committee, but pass it through the entire House. He has a baseline. He's also incentivized to introduce a version of his bill early and try to move that through the process.

So before we speculate further about the 114th Congress, when Comprehensive Patent

Reform legislation really came to a halt, there added a little more fuel to more targeted legislative efforts to address these same issues, particularly on patent demand letters. There was also legislation that was introduced addressing the ITC, specifically codifying the domestic industry requirement.

These are the proposals we had heard of previously, unlikely again I think that they will move forward by the end of this year, but interesting to see this activity furthering. I'll spend a little bit more just on the demand letters. Clearly, additional legislative interests. The House Energy and Commerce Committee had a draft bill that it had discussed, brought in many folk from the stakeholder community to discuss, you know, what could be done here. Certainly looked at the activity in the Senate as the provision in the Leahy bill attempted to move forward. And looked at a lot of state activity. Twelve states have already enacted laws, and 13 more are considering legislation. They're pending. What it's creating is somewhat of a patchwork of

legislation not consistent. Maybe all try to address the same problem but slightly different. Perhaps the biggest value of federal legislation might be to make sense with some consistency of those various different states attempting to address abusive demand letters.

And I will mention that the 42 state attorney generals clearly also want to make sure that they have the tools to actively enforce, inspired somewhat by the Vermont AG and others who have been actively enforcing the sending of abusive demand letters. FTC has a study that they're doing. Unclear when that might come out. So a lot of activity there.

I will add a shameless plug for PTO. We're doing our part trying to provide basic educational information. This will be -- I know you heard from Liz Dougherty over lunch -- certainly one of the things featured in the Independent Inventors Conference. I'll add that Liz said that the attendance during the summer is usually low. They also have asked me to be on the agenda, so I think that will drive some attendance, maybe at the last moment. I

encourage you to go and pay attention.

Good resource. What PTO can do is provide basic education, and we can provide access to at least the information resources that are publicly available. Has this patent been in litigation before? What's the history? We try to do that on the website.

Other considerations for the remainder of the 113th Congress, one of the few pieces of legislation I think may move forward is trade secrets legislation. There's been very active discussion on the Senate led by Senator Coons from Delaware and Senator Hatch from Utah. On the House side there's been parallel discussion. A bill introduced by Representative Holding who sits on our House Judiciary Committee. Both bills are trying to address a similar problem and a new misappropriations of trade secrets, essentially a tort. And they're consistent. It seems to be good support from the stakeholder community in getting some legislation to move forward, not controversial. That's the type of legislation that moves forward. And like I said, I think it may be one of the few that moves forward

this year.

I will say that this Congress, 163 bills have passed Congress, generally, of about 7,500 bills introduced. It's an incredible ratio. In our space, in the IP space, my staff tracks about 205 IP-related bills. So far this Congress, only one of those has actually been enacted into law, and that's the cell phone unlocking bill. Again, a bill that had a lot of stakeholder support. So I think, I'm hopeful by the end of this Congress we'll get two related to IP issues that could move forward. Not a reflection of the discussion, very active discussion around the number of other issues, but actually those that got over the finish line probably by the end of this Congress should only be about two.

Satellite offices, you heard the deputy director talk about Denver. I was also on that train and heard the mayor welcome me to Denver. I was very excited to hear that. A lot, a lot of continuing support activity for my team will be to continue to connect the new regional directors to their congressional members around them, including bringing Russ Lifer certainly up to the

Hill to provide a face to that office for those members becomes a really important tool for us to be able to explain what it is that we're doing and what the purpose of those offices are so we're doing that.

A continued activity around the green paper, Shira Perlmutter and her team in the Office of Policy and International Affairs, continuing to facilitate a discussion there and will throughout the rest of this year with the hopes of putting together a white paper on those issues. Again, something that the Hill is very interested in as they're holding hearings, put together by the House Judiciary Committee, and we expect additional hearings before the end of this Congress.

And then we're doing our general work of trying to respond to Hill staff's questions about intellectual property, our IP awareness. We have not mentioned on the slide but the trademark expo coming up later this year, we'll be up on the Hill trying to engage staff what the purpose of the trademark expo is, what the purpose of these types of intellectual property rights

are. There will likely be an additional trademark caucus we understand that's going to be launched for members to join, so they can help us with the IP awareness efforts as well.

Just two more items from me. I haven't talked a lot about the hearing, oversight hearing that we had on July 30th. The deputy director was able to go to the House Judiciary Committee, particularly the Subcommittee on Courts, Intellectual Property, and the Internet. The committee has oversight over the USPTO.

The committee has not had an oversight over the USPTO. The PTO has not had an oversight hearing in two years, so it does provide a great opportunity for us to tell the good story of the PTO. And certainly respond to any other questions that members have. Like this moment in time today, when she went to testify, there also had been some high visible IP issues. The Redskins trademark had been widely covered in the press. There had been one OIG report, so the deputy director fielded questions on those topics. But I wanted to put this slide up here to give you a sense of all the other questions that

she was asked.

Where the written testimony provides us an opportunity to spell out the things that we think are working at PTO, members of Congress are interested in many other issues, many driven by their constituents that have a particular interest, so we have to be ready for just about any question. I think the deputy director did a great job in fielding all of those questions, and from my perspective, the hearing was a success on that respect.

We have a number of informal get-backs that we've already been following up with members. We also have a formal opportunity to respond to questions for the record, which have not been submitted to the agency yet but I expect them to in September on a number of issues. Again, a good opportunity for us to go through and tell our story on a number of issues.

Lastly, I'll mention because of the OIG reports and the Washington Post article, my office has gotten a number of inquiries from staff trying to get some context on the report, and we've responded to those. I expect that we will

go up and also brief staff more generally on these reports and how the agency is responding in addition to a messaging on the formal responses to the OIG, so we'll be very active in meeting with not just the judiciary committees but others as they ask us to come up and describe what we're doing to respond to those issues.

That's all I have.

MS. SHEPPARD: Thank you, Dana. On slide 7 you mentioned the likelihood of these measures moving forward, you say unclear, but unlikely in 113th.

MR. COLARULLI: Yes.

MS. SHEPPARD: Which I assume implies that some of them are in the 114th. And some context about which of the items you think moving forward would be great. One of the items that I'm most concerned about, as we talked about before, is twofold. One is the patchwork of state regulations that are impeding patent holder rights through the states, and if that's going to be allowed to continue or if there's going to be some sort of preemption that's stated quite clearly to the states. Because in the meantime,

while Congress has not been able to pass anything, the states have been. So I think you said there were 12, and there's 19 more who have legislative drafts already, so that's a concern.

The other thing that I was going to ask about is that the Supreme Court, having taken up six patent cases in the past four years, and the majority of them being on section 101, there has been some talk about 101 and being addressed legislatively, and I wanted to find out if you thought that was a likelihood of happening in the next round of patent reform.

MR. COLARULLI: Both good questions. I think that's exactly right on the demand letter side. There's significant state activity because they want to make sure that their AGs have certainly the tools for enforcement. The reason why I think they're not unlikely this Congress, I think it gets subsumed into comprehensive patent litigation reform next Congress. I think members are -- well, two reasons. One, time is running out. There are not many legislative days on the calendar for committees to, in the case of the House, actually introduce a bill and complete

the work that they need to do before a bill would get to the floor, and where that activity has focused really has been in the House in recent days on demand letter legislation. So the time component is really a limiting factor.

Second, I think there are enough members that have a stake in comprehensive reform, and I think they would discourage and at least push back against any very narrow efforts to push forward legislation on this area. There's a political dynamic there whereas this moves forward, other pieces of legislation -- other pieces that have been considered in comprehensive legislation might not. They carry with them significant constituent support. So I think there's that political dynamic in addition to the fact that certainly time is running out in this Congress.

On the Supreme Court and 101 issues, I've heard that issue discussed within our stakeholder community. I have not seen any discussion yet on Capitol Hill. As I think I suggested to you yesterday, it's not the 101 course, it's the 201 course. It's more the

advanced course that I think staff -- members of Congress and their staff have not gotten into and at least in our area they are very much focused on what can we do on abusive patent legislation, what can we do to enhance tools available to enforce trade secrets, and then there's conversations on the copyright side that I think we're still watching and we'll see what happens there.

MS. SHEPPARD: But don't you teach the 201 course?

MR. COLARULLI: I do. To anyone who will listen. The other oversight issues of PTO limit my ability to go into that type of education.

MS. JENKINS: Just real quick. On the 101, I've been hearing that for 20-plus years, so I'm still waiting to see it be change. But knowing you're saying that, it'll happen next years.

You mentioned satellite offices, and it just kind of came to me wondering if we are looking to do more satellite offices and I'm not sure who in this room I direct your question to. Who wants

to answer that?

MR. COLARULLI: I'm happy to --

MS. JENKINS: Great. Thank you.

MR. COLARULLI: -- take the first shot at it. I've been involved in both helping with the selection and the rollout of the offices, and interestingly over the last two years, my team has taken on additional roles as local mayors are very interested, very interested in us coming, so we've been trying to create the best opportunities among the local officials in those areas.

I think the initial thought around the satellite offices, consistent with the AIA direction for us to open three in three years in addition to Detroit, was stand these offices up, learn from them, and then later consider whether you open up other satellite offices. So I think where the team is right now is focused on getting those last two permanent offices open before considering moving beyond that.

That does not preclude, however, a lot of great activity, and as I already referred to Liz Dougherty in the Office of Innovation and

Development looking at various different areas around the country to continue to up the availability of PTO resources, to look for targeted partnerships. We have a great partnership in New York right now, an independent person on the ground. So there may be those opportunities coming up, but I think at least in the bricks and mortar locations, we're limited to the four locations, making sure those are a success, learning from them, and then making some decisions.

MS. JENKINS: Just to touch on New York, since Peter and I are both in New York, we think that having Mindy Bitel in New York helping us, doing outreach, getting the message is just a great, great thing. And I certainly would encourage if there's funding available -- I notice funding has left the room, so to speak -- if there is funding available, to consider doing that for other cities or areas. Nebraska, right? Nebraska. I think that would be a great allocation of funds. So.

MR. THURLOW: So I'm going to ask you a tough question, the first question you can't

answer. But the whole Washington Post thing and things that maybe folks from outside the office don't understand is from -- it just seems to me that it would have been just so easy to get the information up on the website and provide a response, and we really haven't heard much about that, and that's what's raised a concern outside the patent office. So getting information out and hearing people explain it just seems to me the simple approach, and there must be certain dynamics of getting approval and things that I don't appreciate or understand, but it sure seems like a real easy thing just to say, you know, when I get the explanations from Chicho Smith and others about it, it makes sense to me. They're working on it. And the reluctance -- well, not reluctance but whatever the procedure is just needs to be reviewed. So that's my speech. Not Jerry Maguire.

And the other comment from outside the areas, when we go to the bar association events and different meetings and functions and so on, we do get a lot of feedback about director vacancy, and the concern is not only for today.

So I say this to you, of course, as you meet with people up at the House and the Senate is that it's not just a concern for today but it's a concern for the next two years because many believe that nothing is going to happen until the next presidential election and you're going to have all that stuff going on.

So we all say, because we know Peggy, Bruce, Andy, Drew, that it's running well, but we just don't see anything happening for a long time and it raises a lot of concern throughout the whole stakeholder community. So to the extent that's raised, people say what did PPAC say, you can say that's one of a few things. So if that makes sense.

MR. COLARULLI: That makes sense. I will say, you know, our communications team has a hard job and when the Washington Post comes to us and says, "Hey, we have this report, I think they do a fantastic job of trying to educate on what's happened, and certainly, we provided a statement to the Post in advance of that, and that's a lot of credit to our communications team.

And Peter, I think certainly we look for

opportunities to clarify the record if we can. I was glad that the deputy director was able to stay here today and start that. As I suggested, I expect that we'll have lots more opportunity to do that in September when members get back. We've already had some back and forth with members who have read the Post article and reached out to us immediately, and I think that will continue.

Chair?

CHAIRMAN FOREMAN: Thank you, Dana. And again, the PPAC is ready and willing to assist in that process. To the extent that you can share that information with us, we'd like to be able to help you vet it and also be a sounding board and get the message out to the community on the great things the office is doing. So thank you for the presentation, Dana.

MR. COLARULLI: Thank you.

CHAIRMAN FOREMAN: So our next presentation is John Owens, Chief Information Officer. John is going to be giving us an update on all the exciting things and improvements being made to the IT infrastructure. And just like Tony being a happy CFO with access to his funds,

I'm going to assume that John is a happy CIO with access to his funds as well.

Welcome, John.

MR. OWENS: Thank you, and good afternoon. So I'm, of course, not alone. I brought Kat with me, and of course, my very valuable customer representative, Debbie Stephens along with me because, as you know, we operate as a pair. We don't do anything without one another and so I am going to hand it over to Kat to start the conversation. And, of course, as usual, I'll chime in with a little tidbit here or there as we go along.

Kat?

MS. WYROZEBSKI: Good afternoon. I'm Kat Wyrozebski, portfolio manager for the Patent side of the IT systems. And today we'll give you a quick brief about PE2E or Patent End-to-End Next Generation Systems and Legacy Systems.

So we will start with accomplishments. In Fiscal Year 2014, we have accomplished major releases in April and -- I'm sorry, in February and May. In August, we are also on track to release further ideas, considerations, features,

and data intakes and search functionalities. We are also on track with some of the features for October. However, some are at risk due to limited human capital for onboard and ET&I, as well as high turnover in contractors. There's expected a one quarter slip due to those limitations.

MR. OWENS: So I'm going to chime in for this. If you remember the last meeting, and we heard those wonderful words from Mr. Budens, which I did not pay him for by the way, though I was happy to receive, there was a note on the last sheet that said at risk. We're not quite sure. The focus is still on quality. If you remember sequestration, I told everyone we would hit a six- to 18- month slip. It took us two years to build the teams we dumped in 30 days, and we had to recover from that. Now that we have all the teams on board and they've been working, we use our tools to manage the velocity of work being accomplished under Agile, and now we have actual physical hard numbers of how fast we're getting through the user-centered stories and the backlog as defined by the patents business.

With those hard numbers, our projections actually slipped. We have an October release, but our window is very narrow this time of year. If I don't hit October to November 15th with the proper quality release, with all the features and functions working perfectly, then due to the holidays, as well as the quiet time in December, Mr. Budens will tell you that he doesn't want anything happening to the core during that time of year, and therefore --

MR. BUDENS: I'm not sure I'm the only one.

MR. OWENS: Just back me up. So we would then slip. So our current projections clearly show, and I warned the last time we were here, that because it does not look likely we will hit that window and our focus is still a high quality product with the cooperation of the unions and, of course, the added rounds that we will be doing sprints, it makes a lot more sense as a business, and within the agreement with Debbie and her team in Patents, that we slip into the delivery in the first quarter, and then of course, training comes into being and everything

else, and people will be onboard and using the product between the second quarter and third quarter of the year.

So I wanted to do a little bit of explanation in detail because that's important. The focus is still on quality. I'd rather slip like I'd projected due to sequestration than (a) I'm telling you way early. Okay, this is not a surprise. And I warned you last time, telling you this time, and we will keep everyone appraised of the current efforts and where we are, and we look for a smooth, noniterative rollout as in the past as Mr. Budens said we're well on our way to avoid.

MS. WYROZEBSKI: Okay. For our cooperative patent classification systems, we are on track for August release to enhance classification vocational tools. And in January we are also on track where we were stuck out automating revision and classification tools.

One Portal Dossier is a new project that has been added in 2014. There will be an examiner portion of it and a public portion. The examiner portion will allow examiners to access foreign

application dossier. This project is implemented as part of ET&I functionality, and in October 2014, it will be rolled out to the pilot of 340 examiners who will be using ET&I as well. For the public access to foreign dossier, this will be expected to be completed by quarter one of FY16. It will look similar to the public pair.

Hague Agreement implementation. We are also on track for successful deployments to OACS and PALM ExPO, as well as standardized international design application in one language. However, we are limited to the time when the international rules will be published.

And improvements for assignment and search, this is also a brand new project. It gives applicants and examiners some greater flexibility in searching the assignments and it gives more search fields.

MR. OWENS: So I'm going to --

MS. WYROZEBSKI: Mm-hmm.

MR. OWENS: So one of the things we're actually doing in our dissemination organization is we're rebuilding the assignments search tool for both patents and trademarks, and in doing so,

we're going to make much more of the data open to the public, plus added search functionality. Today, it's very limited. You can choose one field to search on. If it's not the first word, it doesn't find it. It'll look very much like -- there will be a Google style interface where you can type whatever you want and it searches everything, as well as a multi-fielded with Boolean expression search engine as well. It is the same search engine that we are deploying in FY15 in Beta to replace east and west as the search tool. So we will be using that same search tool here, which is an important note of repeated use of technology.

MS. WYROZEBSKI: Okay. Patent Law Treaty implementation. We had numerous releases in FY14 that will allow US applicants to file standard international filing, and we are on track in Quarter 4 of FY14 to modify patent term adjustment. As a result of the Novartis v. Lee court case, and this will be an impact only to (inaudible).

MR. OWENS: So just overall I was asked recently to give an overall impression. The OCIO

budget did grow from the president's budget last year. I was asked to do more. I think some of that came from you all. Of course, it also came from TPAC, the folks at the House that we visited, just about everywhere else.

So my total was $565 million. A little over $86.5 million was just patents allocation. We saw good growth in the project count patents, and approximately 13 projects. The Patent Legacy, that's the click 25, and that works to further stabilize the development. It should be noted that for all of that work, all 38 projects, they were completely stopped at the beginning of the year and we had to restart them all and go through procurement to get them all re- going. So it was quite a bit of effort.

We have for the first time in many, many years exceeded our goals and really brought on quite a number of people. We believe that by the end of the year it'll be 138 new federal employees with modern technologies in their portfolios, and of course, the patent systems took a good sizeable chunk of those. Not that they don't share employees in the other support areas, but just

dedicated to patents projects, we believe a total of 31 by the end if everyone accepts and actually shows up on their onboard date by the end of the year. So a substantive effort not only to spend and account for that money being spent -- remember, I like driving the dollar value for the dollars spent. We are within 3 percent of our spend this year, which is a pretty tight number given the growth, and our hiring was almost double, the best we've ever done. Literally, double the number of people on-boarded than we ever have had before in my tenure here.

Given the fact that a third of my employees are eligible to retire, it might seem a lot, but that offers a great risk if people start leaving in the middle of things, for the entire agency, not just Patents but Trademarks as well. We'd like to avoid those issues.

A little bit of the major functionality delivered. Thank you very much, Kat. Don't forget we had to restart almost everything for Patents post-sequestration. The CPC classification allocation tool was deployed, completed the enhanced CPC combination sets and

search capabilities, examiner tools for the patents, and was expanded. And of course, we got some very good feedback and data and incorporated that into our user center design process using Agile.

We imported another 117 million pages of applications and converted them into XML and made them available to our examiners. We finished complying with the America Invents Act, and we had numerous releases to stabilize and enhance the legacy systems. You see many of them up there. And of course, continue to work on that systems stabilization.

All right. And with that my presentation is done, and I'm open to answer questions.

MR. JACOBS: Great. Thanks a lot, John. And Kat and everyone.

So I know some of the people in the room may gloss over a little bit when they start seeing things like PALM and EDAN and some of the discussion of technology, so I always try to pop it up to 30,000 feet and then ask a couple of questions from the 30,000 foot level.

So first of all, it sounds like, as Louis and others alluded to, a lot of this is good news. Right? We picked up a lot of projects that had been on hold from sequestration. There were major enhancements to functionality for the examiner tools, for example, that were rolling out. These are the tools that the workforce needs to get their job done and deliver a quality project. In addition, there were these demands from international, such as CPC and Hague and some of the others you mentioned, Kat. And Marylee and I got a look at some of the CAT tools and they really were very cool. And all of this is going on while you're enhancing the infrastructure and supporting the legacy systems and also supporting a growing workforce. And so although it looks good, I want to emphasize this is quite a difficult job now, especially after what happened last year.

And with respect to that, I heard a comment yesterday that wasn't entirely fair. The comment was, well, this is built on -- some of it at least is built on Apollo era technology. So we're talking about systems like PALM and --

MR. OWENS: I don't believe I made that comment.

MR. JACOBS: No, no. It was not you. It was not you. And it was unfair because it's not actually Apollo era. It would have been the early '60s technology. Right? And in fact, its space shuttle era technology, which is more like early '80s, with some of these things like the BRS engine underlying east and west and database technology underlying PALM I guess is really 1980s technology. But that still means it's 30 years old, and we're building -- we're attempting to build state-of-the-art systems to support this growing workforce on top of these systems that were obsolete a decade or two ago some of them.

So with that in mind the question is, first of all, how did we manage to do this without something going wrong -- seriously wrong in the last few months? And then second of all, how long is it going to take before we really are out of the woods in terms of eliminating some of the obvious risk that's associated with trying to build these large or more sophisticated systems on top of this aging technology?

MR. OWENS: Okay. Well, I think I've belabored the point of how old some of the technology is here, and it is difficult to operate in those conditions.

I wouldn't say we've had no failures. We have. I think many of you know about them. You detect them just as fast as I can in some instances, and many of you have written to me what's going on. We have had failures. We have, and there have been a number of them this year. No project is ever without risk. When we change the systems, there are failures that happen. Over the weekend we had a release of a product that affected public pair and a bunch of others, and early on Monday morning we realized that there was an underlying bug we didn't determine, and though we quickly rolled back, some people noticed that those systems were slow. And those things happen.

We're not -- sometimes those things happen because we make so many changes, literally hundreds of changes a day or in the evening most of the time and the weekends, and those failures do happen, but there is nothing that we do on those

legacy systems without risk. And because they are designed with a lot of single points of failure, they do have issues. So I would never say that we haven't had any issues this year. That would be not quite true. Though we have seen an increased ability over my tenure to rapidly address those issues and correct them very quickly, or at least as quickly as possible.

Now, there have been failures with the website. There have been failures in other places this year. I don't want to discount those. Some of them were the first time we've seen. I remember sitting here and explaining a couple of those to you all. And all I can say is my organization learns from their mistakes. We tend not to repeat things, and if we have to recover from a like failure, we do it very rapidly.

Now, as far as the -- so the question is when are we really going to start getting rid of the legacy applications? And there's always a choice that we discuss very carefully with Patents. And Peggy and I have talked about it, and I know I've had the conversations with Bruce

and Debbie. You know, there's a choice to be made. Do we enhance the current product knowing that in a few years we're going to replace it? And the answer to that, if it's for the continuity of the office and to better give the tool to the examiner today and give them a piece of functionality today, the answer sometimes is yes. And we have done many of those projects over the last few years. We're happy to do those.

And of course, at the same time we add those features and functions to the next generation of products and we are very close, and I know everyone is anticipating the release, and no one more than myself of Patents and first release and really getting on that new platform. And then we have a schedule of retirements that start at the end of FY16 and move on through '17 and '18. Of course, we have an agreement with Patents and POPA, that this isn't a date where we walk in and we turn on Patents and shut off the old systems. That will not happen. Right? We're going to keep both running parallel for the time. We have to be safe. The most important thing is the continuity of examination. And we

will be safe and run them in parallel for the while, and then we have a schedule of at least a year gap with both of them running in parallel. The same thing for Trademarks by the way. And then a series of shutoffs, because we do want to save that time, that money, that effort. And not only mentioning that keeping both of those systems in sync functionality-wise is a double cost to the agency for a while, right, till you shut one off. So if you make a change in one system, you have to make the change in the other, and the changes in the legacy system are always more costly, both in time and effort.

So you know, I look very much forward to the day where all that we have are new systems. And the legacy ones are shut off and the new ones are built on very modern distributed computing technologies, multiple data centers, multiple servers, scalability, the cloud, and all of that in mind, and very extensible through our use and design of modern architecture using services. And I know a lot of that doesn't make sense to a lot of folks, but I can say this. We will have a system designed with the capability using all

the technologies that Twitter and Facebook and Google and Microsoft and Netflix and Etsy. In fact, I've had folks from Netflix and Amazon and very soon in the next month, Etsy come to speak to my folks here on doing rapid development using some of the technologies we are using. And working collaboratively as a team towards a fully integrated, from development to operations, or what's known as Doub Ops model for rapid deployment. And that is where we're going. That is what we're building. And that is not legacy technology. That's modern, this century cutting edge. And not so cutting edge that no one knows how it works. It's at least five or six years old. But enough to put us in the best places we could possibly be, and we are still headed there.

I hope that answered your question.

MS. JENKINS: I want to come on with kind of a tag team.

I just want to commend again how quickly you have gotten your team up to speed and you've been able to hire people and get the work continuing to go and move forward with new

projects and new assignments. As an outside user, as you know, we rely heavily on your systems, so when your systems don't work, they greatly impact us.

Also, very excited about the new project, which is the assignment. I think I'm the only one on the committee that was very -- I was like, yes, I volunteer -- to help with the assignment searching and to update that. The one thing though, as many of you know, I wear two hats often. I do both Patents and Trademarks, and so I would like, and I've expressed this to you, that when you have a certain type of technology that you're using -- for example, on the Trademarks side, there's a very ease of access for assignments. There are little buttons and you can actually get the assignment document online and it just makes it easier, more cost effective, more efficient, and clients love it. I strongly encourage leadership to support IT to do the same type of systems as best we can on the Patent side is it makes it easier, I think, for everyone. So, that's my plug. Thank you.

MR. OWENS: We are definitely in

agreement. In fact, the changes we plan on making for Patents will be incorporated into Trademarks. And just so you know, the current assignment system doesn't allow you to look at the actual documentation for the Patents assignment. That is one of the first changes we are making in the first round. So right then and there, just like with Trademarks, you will see the actual documentation with a single click if you want it in a very modern, sortable view. So the changes are in sync. It's hard to believe there are different views into the same backend system. We're redoing that common backend system, which actually handles both Patents and Trademarks, and we're giving it the same view on the front end. It won't come out exactly on the same day, but those are in the works. And those improvements will improve for both sides, and we're going to try to lockstep those in the future.

CHAIRMAN FOREMAN: Any other questions for John and his team?

Again, thank you, John, for the presentation. And thank you for sharing good news with us today. We always welcome that.

MR. OWENS: Thank you.

CHAIRMAN FOREMAN: And at this point I just want to thank Commissioner Focarino and her deputy commissioners and the rest of the USPTO staff who prepared their presentations. I thought this was a good and collaborative discussion. Our next PPAC meeting will be in November, and so we'll start off the new year, the new fiscal year with updates on a variety of topics.

And unless anyone else has anything to share, we will adjourn. Thank you.

(Whereupon, at 1:58 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: November 30, 2016

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