

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, October 15, 2009

ANDERSON COURT REPORTING
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A G E N D A

MARC ADLER
PPAC Member

Quality Updates and Initiatives

PEGGY FOCARINO
Deputy Commissioner for Patents

Work Sharing

MARK POWELL
Director, Technology Center

Interim Instructions for Evaluating Subject Matter
Eligibility

ANDREW HIRSHFELD
Acting Associate Commissioner for Patent
Examination Policy

Finance

MARK OLECHOWSKI
Chief Financial Officer

Infrastructure

JOHN OWENS
Chief Information Officer

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1 PROCEEDINGS

2 (8:00 a.m.)

3 MR. MATTEO: Good morning, everybody.

4 I'd like to call to order this meeting of the
5 PPAC. Welcome to all of those of you in the room
6 and those of you listening online.

7 This is the first PPAC since the new
8 Undersecretary David Kappos has taken over. As in
9 any transition, it's a time of change, a time of
10 opportunity and a time of promise. I'm speaking
11 for myself and I think everybody at the table when
12 I say we're all willing to do whatever it is we
13 can to realize the potential in the promise.
14 Without further ado, what I'd like to do is have
15 everybody at the table introduce themselves. I
16 can start with myself. I'm Damon Matteo, Acting
17 Chair of PPAC.

18 MR. STOLL: I'm Bob Stoll, Commissioner
19 for Patents.

20 MR. FOREMAN: I'm Louis Foreman.

21 MR. ADLER: Marc Adler.

22 MR. FRIEDMAN: Howard Friedman.

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1 MR. HIRSHFELD: Andrew Hirshfeld, Acting
2 Associate Commission for Patent Examination and
3 Policy.

4 MR. SALMON: Paul Salmon, Acting
5 Director of the Office of Governmental Affairs.

6 MS. FOCARINO: Peggy Focarino, Deputy
7 Commissioner for Patents.

8 MR. BUDENS: Robert Budens, President of
9 POPA.

10 MR. PINKOS: Steve Pinkos, PPAC member.

11 MS. TOOHEY: Maureen Toohey.

12 MR. KIEFF: Scott Kieff.

13 MR. MATTEO: Thank you, everybody. As
14 is custom, what I'd like to do is start off the
15 meeting with the gentle reminder to everybody that
16 when we sit at this table and when we act on
17 behalf of PPAC, we leave our corporate
18 affiliations and our other hats at the door and we
19 speak only with the best intentions and best
20 objectives of the United States Patent Office in
21 our minds and in our hearts.

22 With regard to public questions, we have

1 several people in the audience and we can field
2 those questions I think effectively here. We also
3 have an email address to which people online can
4 send questions, and I believe that is
5 ppac@uspto.gov. It's not going to be possible to
6 field real-time questions, but what we're doing is
7 we're having somebody handle the email and other
8 questions and they'll be sorting them and
9 filtering them and bringing them up to us. What
10 we'd like to be able to do is handle some of those
11 at the break so that to the extent that you have
12 questions, feel free. What we'll try and do also
13 is keep that PPAC email address open after this
14 meeting and to the extent that questions come up
15 afterwards, we'll get those and we'll deal with
16 those as best we can.

17 In terms of housekeeping issues, for
18 those of you who aren't familiar, please remember
19 to push your button. This is being webcast so I
20 don't that everybody will be able to hear you
21 without that. I will be proactive but not
22 aggressive in terms of keeping us on schedule and

1 timing. I won't cut off conversations that feel
2 productive, but I also don't want us to bleed into
3 tomorrow with this meeting as well. We'll try and
4 keep this on schedule. It wouldn't actually be a
5 PPAC meeting without a last-minute schedule
6 change, so as not to disappoint everybody, we do
7 in fact have one of those. If you look at your
8 agenda, what we will probably be doing is swapping
9 out the 12:35 discussion on the account system,
10 we'll be having that at 9 o'clock instead, and
11 we'll be swapping the financial update into that
12 12:35 slot. It's also likely that the OCIO update
13 will be done later in the afternoon or pushed back
14 by about 15 minutes. Unfortunately, we'll be
15 dealing with that in largely real time.

16 I started the conversation with
17 discussions of change and transition. What I'd
18 like to do now is turn to my left and introduce a
19 brand new change agent, brand new to the role, not
20 brand new to the Patent Office, Robert Stoll who
21 is the new Commissioner for Patents and he's going
22 to be telling us some of his thoughts and

1 impressions, et cetera.

2 MR. STOLL: Thank you, Damon. Good
3 morning, everyone. Welcome to the PPAC meeting.
4 I think you're going to have a lively meeting with
5 a lot of information being exchanged.

6 I am the new Commissioner for Patents.
7 I am so new that it's a little bit unusual for me
8 to use that title, but I'm really enjoying it
9 already, although the hours are significantly
10 lengthened for the amount of work that's coming
11 down the pike. I am uncomfortable going into my
12 background, but I've been told that there are many
13 people who don't know who I am, so I've been asked
14 to say a little bit about myself. I am an old
15 examiner from Art Unit 113, the chemical art, and
16 I was an SPE in Group 220 which was the security
17 cases. I handled radioactive biotreating
18 compositions. After that I was chief of staff for
19 an undersecretary here, and I was the
20 Administrator for External Affairs which I hope at
21 some point in our near future the name goes back
22 to being OLIA because I really like the acronym a

1 lot better. I am now over here as the
2 Commissioner. I have only been in it for one
3 week, but I am very excited and I think that there
4 are a lot of things that we can do together to
5 improve the system.

6 Damon, I want to thank you and the PPAC
7 for your service to the Patent and Trademark
8 Office, and I'm looking forward to a very
9 collaborative effort. I expect that we're going
10 to be continuing our work together because we've
11 already started, and I think it's gotten off to a
12 great footing. I know you people are not doing
13 this for the money, so I'm very grateful for all
14 of the efforts that you've taken already and that
15 I will expect that you'll be taking in the near
16 future.

17 We've got a lot of things on the plate
18 right now. The most recent I hope success, and
19 I'm looking around the corner of the room, is the
20 count system being led by Peggy Focarino, Deputy
21 Commissioner for Patents, and Robert Budens the
22 head of our POPA representatives, and I think they

1 did a phenomenal job coming up with a very
2 reasonable package that I believe will help
3 everyone. In the spirit of that package, let me
4 just say that what I expect to be the major
5 changes here, major change, is not so much the
6 systems, although I think that you're going to see
7 a significant change in the system, but what we're
8 looking to do, what Dave Kappos wants to do, is to
9 change the culture at the Patent and Trademark
10 Office. What we think is important is a more
11 collaborative, cooperative culture, that we work
12 more together amongst ourselves and with our
13 patent filers. I think you're going to see the
14 tone of things changing significantly and I bet
15 many of the practitioners have already started to
16 see some change and that should be evidenced by
17 just about everything that we do.

18 So I really hope that we can actually
19 continue this and progress as we work together. I
20 want to stress where we are going is to be a
21 kinder, gentler Patent and Trademark Office, we
22 are government employees here and we are here to

1 help you, and I really think it's important that
2 there be the focus of the Patent and Trademark
3 Office. I think you're going to find things
4 improving dramatically here.

5 I am hopeful we're going to get your
6 cooperation. I think you're going to find that
7 things are going to be very much improved here.
8 In addition to the culture change, the second
9 major initiative which again is not what I think
10 is a structural initiative is transparency. Dave
11 is very committed that you understand where all of
12 our data comes from, where all of our information
13 comes from with all of the tools that we collect
14 to actually arrive at this conclusions. I think
15 that you're going to find that we're going to be
16 very transparent. How we measure pendency will be
17 very clear. We will be moving forward using the
18 old methods and sitting right next to them new
19 methods so you can compare what the improvements
20 were based on the old methods and see how things
21 are calculated in the future. I think you're
22 going to be very happy with the transparency

1 you're going to see at the Patent and Trademark
2 Office.

3 In addition to the great improvement I
4 see with respect to the count system, we're going
5 to have a lot of other initiatives. The major is
6 one by the Secretary of Commerce which leads us to
7 10-month pendency to first action. That is a
8 very, very difficult goal and it's going to take a
9 lot of work to get there and there are going to be
10 major efficiencies gained to get there, but I
11 think one of the things that are critical in order
12 to obtain a goal of this nature is that we have
13 access to the funds that we need to be able to
14 improve the IT systems, to be able to hire the
15 examiners we need and to be able to use overtime
16 to the degree we can. I believe that we're going
17 to be seeking help from PPAC and probably from all
18 constituencies by just allowing them to recognize
19 what can be done if we have full funding at the
20 Patent and Trademark Office.

21 Part of our goals are going to be to
22 improve training because we think that that will

1 be helpful with respect to interactions between
2 attorneys and examiners, and we're looking at
3 things like interview training because we believe
4 that if we train our examiners in proper methods
5 for arriving at conclusions in interviews, we'll
6 be able to increase the swiftness to which
7 decisions are made with respect to patents so that
8 compact prosecution and anything surrounding
9 compact prosecution will be a goal of the Patent
10 and Trademark Office to come to conclusions
11 quicker.

12 We're looking to measure quality in a
13 manner that educates and doesn't punish so that I
14 think you're going to see some improvements with
15 respect to how we're looking at quality and how we
16 can help examiners to improve their quality.
17 We're looking to expand pre-first-action interview
18 pilots so that we can discuss with the applicant
19 the nature of the claimed invention and see if we
20 can't reach a conclusion quicker. Many, many,
21 many of the processes we're doing as to move to
22 compact prosecution, but they're also to show a

1 collaborative nature and to show a culture change.
2 You're going to hear about that throughout the day
3 today because I think everyone here is on board
4 with Dave Kappos's mandate to improve the culture
5 here, to be more transparent, and to work together
6 to see if we can't come to conclusions quicker and
7 more effectively for everyone, both the examiner
8 and the applicant. Thank you for listening, and
9 if you need me anytime during the week, I will be
10 happy to help. Thank you.

11 MR. MATTEO: Thank you very much,
12 Robert, and apologies for the cell phone. You can
13 throw mine across the room if you like. All very
14 laudable goals, and we'll be hearing more about
15 them when Dave Kappos joins us later this morning.

16 What I do want to do is complement and
17 build upon the comments you made about being open
18 and collaborative because you're right, PPAC isn't
19 here for the money. We're actually here for the
20 fame and glory. No, what we're all here for is
21 what we've already discussed, it's to roll up our
22 sleeves and to contribute in a positive,

1 constructive and collaborative way so that you can
2 count on everybody at this table to exactly that
3 enthusiastically and fully. I feel I'm speaking
4 for everybody at the table when I say that. I'm
5 getting lots of enthusiastic nods, so I'm sure
6 that I am.

7 Why don't we move on? Our next topic is
8 a legislative update, and Paul will be leading us
9 through that. If you would, please. Thank you.

10 MR. SALMON: Thank you very much, Damon.
11 Good morning, ladies and gentlemen.

12 This morning I'd like to give a very
13 high-level overview of our top legislative
14 priority, namely, that is patent reform. It's
15 been in the news a lot lately. This also includes
16 funding issues that Bob touched on as well as
17 telework issues.

18 As you may have heard, it looks like
19 Congress may be staying in quite late this year,
20 in fact, possibly past mid-December. They have a
21 lot of things on their schedule including health
22 care, the appropriations bill, but we hope that

1 there is good chance that patent reform might
2 actually pass this legislative session. While
3 previous efforts have gotten close, the
4 Administration believes that the time is right now
5 to move on patent reform.

6 As you know, the Senate bill has been
7 moved out of the Senate Judiciary Committee with a
8 good compromise that has the hope to bring all
9 industry sectors together around a package that
10 could ultimately be passed as legislation. The
11 next slide will show you the traditional route of
12 a bill through Congress, through a House bill and
13 a Senate bill and then conference. This is not
14 likely to be the case if patent reform moves this
15 session. What's happening is that the Senate and
16 House are working diligently to try to find a
17 compromise, a preconference if you will, that
18 could be then voted out of both houses without the
19 need for a conference.

20 Secretary Locke and Under Secretary
21 Kappos have made passage of the patent reform bill
22 a top priority. Why are they doing this? Because

1 a well-functioning patent system is critical to
2 economic growth for the United States, and the
3 patent reform bill is a critical piece of this.

4 We think that the letter that was sent
5 to the Hill last Monday, the views letter signed
6 by Secretary Locke, may actually give a shot in
7 the arm to the efforts to pass the bill. In
8 particular, we support the bill's provisions on
9 fee-setting authority. That authority will go a
10 long way to helping out the Patent Office on a
11 sustainable funding model. The views letter also
12 recognizes and promotes the authority for limited
13 fee adjustment on current patent fees. I'm sure
14 we'll more about this from our Deputy CFO Mark
15 Olechowski, but we do face a critical funding
16 shortfall for next year and so we do hope that the
17 Congress will be able to pass an interim fee
18 surcharge.

19 The views letter also goes on to support
20 the compromise damages language, substantive and
21 procedural rule-making authority and the orderly
22 transition to a first-to-file system. The letter

1 also indicates support for the establishment for a
2 phased-in approach for postgrant review
3 procedures, and phased-in charges of inter partes
4 reexamination. We don't want to take on more than
5 we can handle.

6 On point of opposition to the language
7 is the bill is the language relating to search and
8 examination duties, the so-called sovereign
9 function provision. We're concerned that that
10 language may serve to limit the benefits to be
11 gained from the negotiation of work-sharing
12 agreements that hold the promise to help reduce
13 the backlog. There are also a number of technical
14 issues that we would like to see ironed out before
15 passage.

16 It's our understanding that Judiciary
17 Chairman Leahy has asked Majority Leader Reid for
18 floor time for the bill and there may be a window
19 between health care and the appropriations to get
20 something done, but as of yet, no date has been
21 set for floor time.

22 We do recognize that there are concerns

1 that continue to various industry sectors. We
2 fully intend to be there to provide any technical
3 assistance that's required to help iron out these
4 differences. We're working very closely with the
5 department, with OMB and with the staffs of the
6 committees in the House and Senate to find
7 language that's acceptable to all.

8 Now a few words with regard to telework,
9 and I have my colleague if there are questions on
10 telework behind me, Judy Grundy. We think
11 telework is a very important component of where we
12 want to go with the Patent and Trademark Office.
13 For over a dozen years the USPTO has incorporated
14 telework as a business strategy and human capital
15 flexibility that has helped us support the
16 agency's mission and achieve our goals. The
17 telework programs have received a lot of praise as
18 a leader throughout the federal government, but
19 their future success will require changes. We're
20 watching legislation that will provide greater
21 flexibility with regard to travel requirements.
22 Currently employees are required to physically

1 come to the U.S. Patent and Trademark Office two
2 times per buy week. Two provisions in telework
3 legislation that are currently considered in the
4 Senate would provide greater flexibility regarding
5 the travel requirements. The Senate reform bill
6 also has a telework pilot program that allows for
7 greater flexibility.

8 If any of these provisions were enacted,
9 an employee may eventually choose to live anywhere
10 in the United States in exchange for a willingness
11 to return on a limited basis to headquarters in
12 Alexandria at their own expense and on their own
13 time. Also the USPTO would require a cap on the
14 number of times the office would require the
15 employee to return to Alexandria after which the
16 office would pay for travel expenses and provide
17 time. We fully support further flexibilities as
18 long as we can support a nationwide workforce and
19 telework both financially and with improvements in
20 our IT systems. Again, this gets to the funding
21 issue which is critical to all of our efforts.

22 While patent reform including funding

1 and telework are key legislative issues, we're
2 keeping an eye on other bills relating to
3 intellectual property and weighing in as
4 appropriate. Thank you.

5 MR. MATTEO: Thank you very much, Paul.
6 If I may, just a quick question. With regard to
7 the search, you seem to suggest that there was
8 some resistance. Do you think that's a function
9 of developing an understanding of what the
10 potential implications are for example vis-à-vis
11 the efficiency gains of work sharing or is it a
12 more substantive objection to the notion of it
13 even with an understanding of the implications and
14 the potential value?

15 MR. SALMON: It may be a function of
16 both. I think some greater understanding on the
17 actual benefits of work sharing to the office and
18 to the examiners would help break down any
19 resistance to it. But I'd refer to my colleague
20 representing the union for his views if there are
21 more fundamental concerns with regard to that.

22 MR. BUDENS: I think there are

1 fundamental concerns. It's been a position we've
2 had for quite some time that we need to be very
3 careful about where we go with work sharing, with
4 outsourcing searching and what have you, that we
5 do believe that this is ultimately a situation
6 that needs to remain within the purview of the
7 examiners at the U.S. Patent and Trademark Office.
8 Our decisions result in the granting of property
9 rights to people throughout the world and that we
10 believe should remain ultimately a sovereign
11 function of the U.S. government. That's not to
12 say that we're categorically opposed to looking at
13 work- sharing situations and possible ways that we
14 can utilize those in being able to work on
15 examining patent applications, but that the
16 ultimate decision of what is good art and what
17 gets searched in a U.S. application needs to
18 remain with the examiners at the U.S. Patent and
19 Trademark Office.

20 MR. MATTEO: Thank you very much,
21 gentlemen. Moving on to our next topic we have
22 Nationwide Workforce and that will be led by Fred

1 Schmidt and Steve Smith.

2 MR. SMITH: Good morning. I'm Steve
3 Smith, the Chief Administrative Officer for the
4 Agency, and among other things I'm responsible for
5 telework coordination and for our facilities, and
6 I was asked to address the status of nationwide
7 workforce planning and we are as an Agency at this
8 particular point.

9 There has been renewed interest in
10 moving out to what we describe to be a nationwide
11 workforce, and I'd like to talk a little bit about
12 definitions so that we're making sure we're using
13 the right language. We tend to refer to
14 nationwide workforce as a brick-and-mortar
15 presence somewhere else in a regional office
16 outside of the Alexandria campus. We have a
17 distributed workforce philosophy where people use
18 the hoteling process and that was Paul was
19 referring to earlier where we would envision
20 having employees having the ability to use
21 collaborative tools over the internet to work from
22 home as their duty station anywhere in the United

1 States. The two are not incompatible with each
2 other and often are complementary, but it's often
3 I think to understand the distinction. As we look
4 at the nationwide workforce, there are lots of
5 advantages for doing something like this and the
6 interest is reasonable. Certainly it could
7 improve our recruiting capabilities. We tend to
8 focus on Eastern schools and Southern schools for
9 the bulk of our recruits that we've been hiring.
10 We have hired 1,200 a year for about 4 years in a
11 row. We've been able to meet those goals but we
12 are not seeking or recruiting the best students or
13 second- career individuals elsewhere in the United
14 States who may not wish to move to the East Coast
15 so that a regional office elsewhere might be a
16 very useful thing in attracting those types of
17 employees to the Agency.

18 The use of regional office or a regional
19 office elsewhere might employee retention. If we
20 have employees who would prefer to stay with the
21 Agency but need to move back to the Midwest or
22 some place like that, we could facilitate that and

1 allow them to work out of a regional office
2 elsewhere, and potentially reduce costs for real
3 estate. Obviously we pay a fairly steep price for
4 leasing space here in the Alexandria/Washington
5 area. If we had a regional office in the Midwest
6 or somewhere it's conceivable that those lease
7 costs could be less than we encounter here, and if
8 we could trade off space here for space that would
9 then acquire elsewhere in the country, there could
10 be some savings there. That's not necessarily the
11 case. There are some higher-lease regions in the
12 country where costs could actually go up, but
13 that's a potential area for savings. Another
14 advantage is of course our ability to reach out to
15 our stakeholders to have opportunities for
16 stakeholders to go to closer locations for
17 meetings or for opportunities to submit paperwork
18 and so on.

19 There are some potential issues and
20 concerns. One principally that I'm concerned
21 about right now is need. We have a substantial
22 presence here in Alexandria with 2.7 million

1 square feet of office space that reasonably
2 accommodates our current workforce. Given our
3 routine growth as it was projected several years
4 ago, we have permission from the Congress to
5 acquire an additional 325,000 square feet which is
6 something similar to the Remsen Building that we
7 have out here right now for additional office
8 space by 2013 and the efforts to move forward with
9 that are in train with GSA right now. That will
10 accommodate approximately another 1,000 personnel
11 or employees. If we hired at our previously
12 expected levels of 1,200 a year, we would run out
13 of space in terms of what we are contractually
14 obligated to provide our employees through our
15 collective-bargaining agreements by late-2011 or
16 early-2012. We have the ability to double up
17 people in offices because we were anticipating
18 that requirement and put additional
19 telecommunications links into offices and so on,
20 but we would not to stay in that configuration any
21 longer than necessary, and the 2013 building would
22 allow us to then return to our authorized

1 configuration of space for our employees. With
2 current reductions in resources, with projected
3 changes in how we go about doing patent
4 examination, there are significant changes that
5 are going to be confronting us and we don't know
6 what our long-range workforce structure is
7 actually going to be. I'm also concerned since
8 I'm responsible for human resources that I may
9 hire more examiners than I will require in the out
10 years once we reach the required number to bring
11 pendency down to a particular level and I don't
12 want to have a thousand extra examiners that I
13 have no longer have work for once we reach that
14 sustainment level of pendency. So we have been
15 working with Fred Schmidt over in Patents as they
16 examine models into the out years to see just what
17 our workforce requirements are going to be to
18 achieve what we think will be the long-term
19 sustainable pendency per examiner and that will
20 then be compared against our existing facilities
21 and projected facilities here to see what
22 workforce then could conceivably be placed out in

1 the country without them leaving them an excess of
2 facilities here which we would have to dispose of
3 and we have long-term leases on the space here.

4 There are other issues related to this,
5 potential costs, and there are different ways that
6 we can acquire space either through GSA or through
7 our own delegated authority and there are
8 advantages and disadvantages to either side.
9 There are IT-related issues in terms of long- term
10 leases for dedicated lines and our capacity to
11 sustain that over the long-term and when will be
12 at that level. But all of these things need to be
13 balanced against their projected requirement and
14 Bob Stoll has been very cooperative and supportive
15 of having his folks do the modeling so that we can
16 begin to see what are the left and right
17 parameters of what our workforce requirements are
18 and our projected impacts of the various
19 initiative that we want to do so that we can
20 define what we will actually need out there in the
21 out year.

22 For now we are continuing to work on the

1 modeling. We are examining our current capacity.
2 We're even looking at whether or not we
3 requirement 2013 building depending on if we can
4 push that back, and we're very close to the
5 drop-dead date on those decisions with GSA right
6 now because we are underway in that acquisition
7 process with GSA. We will be continued to work
8 detailed plans with cost estimates if we begin to
9 determine that we want to look at a regional
10 office and there are other alternatives to a large
11 brick-and-mortar facility. We could have
12 storefront operations out there that satellite on
13 our PTDLs for instance and allow for prosecutors
14 to come there and do interviews so that there are
15 other alternatives that we want to look at once we
16 begin to define the actual requirement. And of
17 course we'll be looking for the legislation and
18 other resources that we may require to accomplish
19 this because there could be a nontrivial cost
20 associated with doing that.

21 I want to assure you that we are in fact
22 looking at all of these pieces. The cooperation

1 within the organizations has been very good.
2 There is some talk of legislative language going
3 into the patent reform bill which would require us
4 within 120 days of passage of that legislation to
5 make a report to the Hill on what our intentions
6 were. That could have an advantage if we do that.
7 It would allow us to say, yes, it looks like a
8 reasonable expectation but there is a cost to that
9 and we don't envision our being able to handle
10 that cost for some years and perhaps we could get
11 some assistance in that if there is in fact a
12 cost. The answer may be that we don't envision
13 requiring it for several years. Largely I think
14 this is going to end up being a political decision
15 as much as anything else as we balance the desire
16 and inclination to reach out to stakeholders and
17 to expand our recruiting efforts with our actual
18 needs and trying to do what makes sense as we
19 balance those interests. Fred, did I forget
20 anything in that?

21 MR. SCHMIDT: No, I think you've got it,
22 Steve. What I'd like to do now is put things in

1 the context of our current hoteling program that
2 we have in the patent business which is a very
3 successful program that we've had running for 4
4 years. We have about 1,650 patent examiners right
5 now who are hoteling. Ninety-two percent of those
6 examiners who are participating in the hoteling
7 program currently reside in either Virginia,
8 Maryland or the District of Columbia. The other 8
9 percent are actually distributed if you will
10 across the United States. We have examiners who
11 are participating in our hoteling program who live
12 in California, Nevada, Washington, Texas, Florida,
13 a smaller number of course, but they are
14 effectively working right now in our hoteling
15 program from all across the United States.

16 As was mentioned earlier, just this June
17 the patent business changed the requirements for
18 coming in to the office from once a week to twice
19 a pay period, halving the number of times that
20 these hoteling examiners have to return to the
21 main campus here in Alexandria. Of course we are
22 eagerly anticipating some sort of telework

1 legislation to give us even further freedom to
2 expand and work on this distributed workforce
3 across the country reducing still further the
4 requirements to come back here to our main campus.

5 In addition to patent examiners we have
6 our administrative staff, our technical support
7 staff. Approximately 150 of our technical staff
8 are hoteling also. We also have hundreds of our
9 managers who are on a more limited if you will
10 work-from-home program where they can work up to
11 16 hours every pay period from home. Working from
12 home or working remotely is a part of the patent
13 business now. It's been very successful. We've
14 found looking at the performance of our examiners
15 in the hoteling program that there has been no
16 loss in quality, productivity or turnaround of
17 work for our employees on the hoteling program
18 over these number of years. We have also expanded
19 the eligible pool of examiners from the initial
20 most-senior GS-14/15 examiners down now to include
21 GS-12 journeyman level patent examiners so that
22 there has been a continual broadening of the

1 eligible population in the patent business.

2 We are presently looking at different
3 options for potential satellite offices as Steve
4 mentioned. We are really pursuing two different
5 approaches. One is the storefront approach and
6 offering of patent business services such as
7 possibly electronic business center services to
8 assist people with electronic filing and
9 electronic submission of documents and inventor
10 assistance support that could be located remotely,
11 a service-oriented locale throughout the country.

12 The other model would include in
13 addition to this the physical presence of patent
14 examiners and possibly management staff. We're
15 scoping out those two broad perspectives and then
16 we'll offer up the results of this proposal to Bob
17 and Peggy for discussion with Mr. Kappos and see
18 which way we want to go. Of course the more
19 elaborate program you get for the satellite office
20 the more expensive it gets and the more
21 complicated it gets dealing with issues of travel,
22 et cetera, but we are exploring and are open to

1 those different options at this point in time.
2 That's the status of where we are in our current
3 hoteling program that as I said a very, very
4 successful program. And to give credit where
5 credit is due, I should say that Patents has
6 modeled itself largely on the Trademark model.
7 Trademark have been the pioneer for us in
8 teleworking and hoteling and so we've had lessons
9 learned that have greatly assisted us from our
10 Trademark brethren.

11 MR. SMITH: We have strong anecdotal
12 evidence that a lot of our employees would like to
13 partake in a distributed workforce and if it were
14 offered that we would see increasing numbers of
15 people wanting to participate if they could move
16 out of the region. That's as Fred noted a large
17 factor in our space requirements right now. The
18 1,700 employees who are hoteling save me an entire
19 building which works out to be about \$10 to \$11
20 million a year in least costs right now that I
21 don't incur right here. If we couple the
22 distributed workforce legislation with our new

1 initiatives and so on, that may increase the
2 number of people who are teleworking, reducing
3 further my physical footprint requirements which
4 is why I'm concerned about making sure we have a
5 pretty good model on what we think is going to
6 happen in the future before we commit to procuring
7 additional space.

8 MR. MATTEO: Thank you very much,
9 gentlemen. This appears to be an exercise in
10 understanding, well underway, but still an
11 exercise in understanding and reconciling
12 disparate needs for people and various different
13 models for exploiting those needs. Can you share
14 with us your at least current sense of the
15 trajectory?

16 MR. SMITH: I would hate to commit to
17 that one way or the other because I haven't seen
18 the new models. One model that I had actually
19 showed a level of long-term examiner requirements
20 that I could physically meet completely with my
21 existing facilities right here and the new
22 building that comes online in 2013. So that was

1 the initial red flag that went up as we began
2 looking more deeply into a nationwide workforce
3 about the need for putting a large facility
4 somewhere else in a regional office, and of course
5 there are other issues associated with that as
6 well, how many are you going to bring in, are you
7 going to train them there, are you going to
8 continue to recycle that group, because every 3 to
9 5 years they're going to eligible for teleworking
10 themselves, or am I going to bring in classes
11 every year at that facility which means I need an
12 incrementally increasing size of space out there?
13 It becomes very, very complex and so we're trying
14 to narrow the options as best we can so we can
15 make an informed decision.

16 MR. MATTEO: I very much appreciate
17 that. As I mentioned, and probably didn't fully
18 suggest, it sounds to me as though this exercise
19 I'm understanding is not only well underway, it is
20 well understood and well crafted so that is indeed
21 quite impressive. It seems as though all the
22 appropriate pieces are in play and being

1 comprehended and the analysis, so kudos for that
2 certainly. Does anyone else have questions or
3 comments?

4 MR. PINKOS: Thanks, Steve and thanks,
5 Fred. Much appreciated. Two questions regarding
6 the costs of a distributed workforce. I know that
7 you're continuing to analyze that. One is, let's
8 say a primary examiner is distributed, what's your
9 current estimate on how many times a year they
10 would have to come back to the PTO? Secondly,
11 with the IT costs, what are the current hurdles
12 that you're talking about? Obviously you
13 mentioned there is the Trademark example. There
14 are certainly different tools that they use, et
15 cetera, but they've dealt with IT issues, and of
16 course you have the laptop programs and there were
17 IT issues encountered there and dealt with. What
18 are the current hurdles that need to be overcome
19 on the IT issue for a distributed workforce?

20 MR. SCHMIDT: Steve, relative to the
21 number of visits, that's something that's current
22 under discussion. It's something that I can tell

1 you that Patent management takes very seriously
2 and is not interested in just casually calling
3 people back to the Alexandria campus. Our
4 experience with computer-based training over the
5 last couple of years has given us increased
6 confidence that more and more training can be done
7 remotely. Our experience with our current
8 hoteling staff has shown us that managers here can
9 manage people effectively remotely successful
10 through the career track and have them get
11 promotions. So the need to come back here
12 physically to the Alexandria office, we're
13 checking box after box saying we can do this
14 effectively remotely. Again I think our telework
15 experience currently is building our confidence
16 that it would be a minimal number, however, it is
17 under discussion right now and ultimately it will
18 be a decision that Bob and Peggy make. I think
19 that's the answer, Bob. Right?

20 MR. STOLL: Right.

21 MR. SMITH: John Owens is sitting in the
22 back over there so I won't presume to talk for

1 him, but I know there are issues related to our
2 existing capacity here to receive additional
3 growth in our hoteling or distributed workforce
4 efforts until such time as some of those repairs
5 and replacements have been made, and I won't
6 presume to judge the cost on that. John can talk
7 to that. There are IT-specific costs if we're
8 going to put a regional office in in terms of
9 leasing specific lines, and of course there is
10 always what they call the flip-rate problems, the
11 farther away from here you get, physics slows
12 things up. So there are issues that would all
13 have to be wrapped into the decision on how large
14 a facility we would have out there.

15 MR. BUDENS: Once again I need to raise
16 a question because one of the things I'd like you
17 to answer for us why we are holding off on a great
18 number of people who we could not require to even
19 come in to the office now? For any people who
20 aren't familiar, there has been a lot of talk
21 today about the legislation for telework and that
22 is only required for people who want to live

1 outside the commuting area of Washington, D.C. In
2 other words, outside the Alexandria area and the
3 metropolitan Washington area. For those people
4 who live within this area which roughly from your
5 numbers is about 1,500 people, you could change
6 their duty stations right now today at no cost to
7 the Agency still being able to require them to
8 come without having to pay their travel costs that
9 they have to assume as a commuting cost and we
10 could make that change right now today and about
11 1,500 of these people wouldn't have to come in
12 twice a buy week.

13 My question is, why hasn't the Agency at
14 least gone forward and done that for the 92
15 percent of these people who are still in metro
16 D.C. and then we continue the fight with Congress
17 in the things we need to do to change the laws to
18 allow more of a nationwide distributed workforce
19 as time goes on? I have no problems continuing
20 that battle to get those, but I don't understand
21 why we haven't already made the change for the
22 1,500 people who are living here in Washington,

1 relieving them of the single biggest burden of the
2 hoteling program.

3 MR. SCHMIDT: Bob, I can tell you that
4 what appears to be a very simple issue is not as
5 simple as it first appears. We are working with
6 legal counsel, but there are no standard
7 definitions quite frankly that we've found of
8 commuting area, local commuting area, metropolitan
9 area, even the 50-mile radius that is sometimes
10 thrown out there, there's a series overlapping and
11 possibly conflicting standards as to what
12 authority an Agency would have. We do have legal
13 counsel looking into this issue. We are getting a
14 variety of opinions and it is something that will
15 be offered up for consideration. So there is that
16 question right there, the legal question of
17 authority and definition.

18 In addition there is the apparent
19 conflict in letting local people not come in and
20 requiring your folks who live in California, Texas
21 and Florida to come in to the office. There is a
22 certain logical inconsistency there that, Bob, you

1 may want to elaborate on.

2 MR. STOLL: Only to say that I have
3 discussed this with Dave Kappos and I know that he
4 is interested in moving forward on this. With
5 respect to the disparity issue, he believes that
6 he will do what he can so that if we are still
7 required to have the 8 percent come in from far
8 away, that's something that's outside of his
9 purview, but if he finds that it's within his
10 purview and he discussing it with legal counsel to
11 change those requirements with respect to the 92
12 percent who reside within the 50-mile radius, I
13 believe he will be anxious to do something in that
14 direction.

15 MR. SMITH: Just one final point on
16 that. I've also discussed it with David and with
17 the encouraging motion on the telework
18 legislation, we thought it very likely that we
19 might see some movement on that in the near future
20 rather than having disparate policies now which
21 will treat people different. We also thought that
22 it might be useful to wait and see how this is

1 going to happen and see if we can then have a
2 single policy that we can apply across the
3 organization once the legislation passes. So I
4 think movement on this legislation will also be a
5 factor on timing on when we make the next step.

6 MR. BUDENS: I have two comments. One
7 is if there are other conflicting statutes, I
8 don't know why the Agency hasn't come to POPA, I
9 don't want to speak for NTEU, but presumably them
10 also and say we have some conflicting regs or
11 statutes with this 50-mile radius and commuting
12 standards and travel expenses because we'd also
13 like to know where legal counsel thinks that there
14 is a conflict and problems that arise that prevent
15 us from doing these other things. The last
16 comment to you I would say sounds to me like
17 you're holding 1,500 people somewhat hostage in
18 order to try and get a bill through, but that's
19 all I'll say on that one.

20 MR. FRIEDMAN: Speaking on behalf of
21 NTEU, I guess I would offer a compromise position.
22 We've worked very hard on the Hill to try to get

1 legislation passed and I do understand the
2 thinking about trying to all our efforts toward
3 that particularly if we're close and we've got a
4 couple of vehicles working here both stand alone
5 as with patent reform, so I know speaking on
6 behalf of the Trademark attorneys that we're
7 willing to continue to give it a go this session
8 to see what happens over the next couple of
9 months. We've been working people on the Hill as
10 recently as last week to push this legislation as
11 USPTO officials know.

12 That said, because this has been a 2- or
13 3-year project, if we don't get it done by
14 sometime in December, I think it's vitally
15 important that we follow the issue that the
16 general counsel has been looking at if not for
17 years at least months and it really is time to
18 offer an opinion, share it with the unions, work
19 diligently during the next 2 months while we see
20 what happens on the Hill. If we can wrap it up on
21 the Hill, great, and everybody will be taken care
22 of. If we don't, let's use that as the impetus to

1 roll out something for people in the 50-mile
2 radius however that may be defined.

3 Secondly, going back to a comment Steve
4 said, and we're made this very clear to Meryl,
5 Debbie and Lynne, we would rather offer something
6 that would apply to 90 percent of our bargaining
7 unit and take the heat for the 10 percent as odd
8 as it may be not to offer the very benefit that it
9 would provide the greatest benefit to, but I think
10 we can take the heat and we can explain to those
11 people, no matter how bizarre the legal rules may,
12 why they're going to be hamstrung until
13 legislation is passed and we will continue working
14 on the Hill while helping the people who live
15 within the local commuting area to help those who
16 don't. So I hope we can all use this as an
17 impetus to work toward getting the general
18 counsel's opinion now, perhaps PPAC would like to
19 weigh in on gently suggesting that they work
20 toward the particular issue so that everyone knows
21 where we stand at the end of December if we don't
22 have legislation passed.

1 MR. MATTEO: Thank you very much. I can
2 see it's a passionate discussion with certainly
3 well-grounded positions on both sides. This is
4 something PPAC has been looking at in conjunction
5 with Dave and the different union representatives.

6 MR. KIEFF: I fear that what I'm about
7 to say is obvious, so I don't belabor it but just
8 pass it along on the chance that it happened to
9 have been overlooked. For much of the discussion
10 about workforce and much of the discussion about
11 interacting with the public, I would suspect that
12 the Patent and Trademark operations within the
13 Patent and Trademark Office are not unique to the
14 office. I suspect that other agencies and other
15 departments of U.S. Government operations
16 encounter similar challenges and just hope that we
17 might all look to those other examples and
18 precedents. I hope that everyone is already doing
19 that, but by that I think what I'm really saying
20 is two things. One is if it turns out someone
21 else has a solution, let's use it. And if it
22 turns out someone doesn't, let's sell them ours,

1 because if it turns out for example you're able to
2 find a way to get applicants and their counsel to
3 interact with us from afar using
4 telecommunications equipment, either a virtual
5 booth set up from their home computer or a
6 physical booth, I think you called it a
7 storefront, if either of those approaches actually
8 is cost- effective for us and you decide that's a
9 great idea, then I can imagine whatever costs were
10 incurred in building that could be recovered by
11 reaching out to other agencies that also have
12 people in the United States who want to interact
13 with them and simply being the kind of post office
14 if you will of USG. You get what I'm saying.
15 You're probably already thinking these thoughts,
16 but just in case you hadn't, I just wanted to
17 remind us.

18 MR. SMITH: If I may just say one thing
19 briefly, we in fact are looking at other
20 government agencies who have presence out in other
21 states that I think will be useful as we look at
22 our own planning to see what kind of costs they

1 incurred. In addition, we're also looking at what
2 vacant federal space might be out there which we
3 could incur or take over at low cost from GSA if
4 it happens to be sitting in a region that we think
5 would be desirable.

6 It would however I think be useful to
7 our deliberations and our analysis to learn from
8 the PPAC at some point just what types of
9 interactions you feel are useful in priority
10 perhaps what you would think would be the most
11 useful way that we could project a presence in the
12 rest of the country so that we could keep that in
13 mind as we look at all of this. We think we know
14 but we're not sure. Your positions would be
15 helpful.

16 MR. MATTEO: We're happy to do that both
17 in an individual capacity, we do represent a broad
18 range of constituencies individually, but also to
19 the extent that we have networks and contacts into
20 the various constituencies that the PTO serves are
21 also willing certainly to do that. So I would
22 think that one of the functions and one of the

1 positive collaborative and hopefully productive
2 functions that PPAC can fill is to act as this
3 sort of bridging function between the PTO and
4 again it's broader constituencies and we're
5 certainly happy to do that. I'll make that offer
6 just on the nature of the nationwide workforce
7 telecommuting but in any situation where
8 interaction or a bridging function with the
9 private sector is valuable, we're more than happy
10 to serve that function and gladly so.

11 MR. ADLER: This is a thought that came
12 up as Scott was talking about other government
13 facilities that already exist as possible places
14 for networking or setting up a distributed
15 part-time pilot. If the post office is closed on
16 Fridays, there are a lot of post offices that
17 might be available for us to consider using to
18 cost share or something with regard to that so
19 that there are other probably other parts of the
20 government that we could talking to on that
21 question.

22 MR. FOREMAN: Let me add to that. Most

1 of the focus has been on the value and the benefit
2 to the employees of the Patent Office, but don't
3 underestimate the importance to reaching out to
4 the constituents, the patent holders and the
5 inventors out there. Many inventors never have
6 any interaction with this office in Alexandria and
7 so providing some level of outreach, being able to
8 allow the stakeholders to interact with the office
9 whether it be virtually or locally would have I
10 think profound benefits for everyone so that I
11 think that needs to be factored into the equation.
12 Most of the emphasis has been on the benefits to
13 the employees which I think is very important, but
14 I think you can sell this at a greater value
15 because it benefits more than just the employees.

16 MR. SCHMIDT: If I could just add to
17 that, that's exactly what we're doing in our
18 service-oriented module. I think you're totally
19 correct that there are inventor services that we
20 could offer, services with our electronic tools
21 that we could offer and having a real presence in
22 different communities would be a huge benefit to

1 the whole user community. That's one reason why
2 one of the models we're looking at is more of a
3 service-oriented storefront model, not so much a
4 presence examiners physically located in a spot,
5 but USPTO services that could be offered at
6 various locations throughout the country. Again
7 what we're interested in from PPAC's perspective
8 on what would be this laundry list of services
9 that you think would have the most bang for the
10 buck for us to invest in in the different
11 communities would be immeasurable helpful to us.
12 Thank you.

13 MR. MATTEO: You're most welcome. Again
14 we're happy to do that. For those of you who
15 aren't familiar, PPAC has semi-architected itself
16 in a fashion where we're trying to align each of
17 the PPAC members with different topical areas,
18 sometimes multiple topical areas. Just by way of
19 example, Maureen has graciously considered to be
20 the human resources/human capital liaison for PPAC
21 so that way there is always a go-to person.
22 She'll be living and breathing this topic, she's

1 nodding affirmatively and enthusiastically as
2 well, and will have all of the information. What
3 I hope we can do is use Maureen as a bridging
4 function between PPAC and this effort, but again,
5 each of us has a different area. I'm for example
6 working with OCIO, Scott is working with finance,
7 Steve is working with legislative so that we've
8 each aligned ourselves. What I'll do is as each
9 of these topics comes up I'll point that as to who
10 the go-to or the stuckie person is for each of
11 these individual topics and I'm going to encourage
12 everybody to each out to those people whenever
13 there's a discussion or you need conversations
14 about what the private sector might think or want.

15 One of the other elements of this is
16 what I don't want to see is a diode effect and
17 paying us for information. The whole notion of
18 having Maureen live and breathe this area is that
19 she'll have all of the information that she needs
20 to be able to give meaningful advice as opposed to
21 just off-the-cuff advice.

22 MR. SCHMIDT: Thank you very much.

1 MR. MATTEO: You're more than welcome.
2 I will get off the soapbox right now. It's a good
3 time to mix things up a little bit because we're
4 changing the agenda. Peggy and Robert are going
5 to be talking to us about the new count system
6 discussions that are ongoing. Thank you very
7 much.

8 MS. FOCARINO: Thank you. I'll start it
9 off and then Robert can join me in describing the
10 efforts over the last 6 weeks to reengineer the
11 count system.

12 We've done literally I think 10
13 briefings now with two more to go tomorrow for our
14 examiners so that about 5,000 examiners have been
15 briefed to date. Following the briefings tomorrow
16 there will be a vote by the dues-paying members to
17 ratify this package, and Robert can explain that
18 in a little more detail.

19 You have a slide set in your handouts.
20 I believe you have 47 slides total. The
21 presentation takes 2 hours. Don't worry, I'm not
22 going to go through all of them. Some of them are

1 very detailed and related to if you're an examiner
2 how the credit shifts, but we'll give you an
3 overview of what is occurring and what we propose
4 to occur in the changes.

5 One of the things I want to share with
6 you is when the Under Secretary created this joint
7 management and union task force, he set forth
8 several objectives for this task force and you can
9 see them up there on the slide. We were tasked
10 with doing several things and Bob Stoll mentioned
11 at the outset in his talk about changing the
12 culture, changing the environment. The first
13 thing that he wanted us to do is encourage
14 examiners to address issues early in prosecution
15 and discuss issues with applicants by providing
16 them the time to do that. He also wanted us to
17 reduce rework, in other words, reduce the number
18 of RCEs that are coming in the door. This would
19 happen through a series of initiatives that are in
20 the package, and encourage examiners to go on and
21 examine the next invention rather than examining
22 the same invention over and over again.

1 He wanted the changes to be viewed as a
2 gain for all stakeholders both internally and
3 externally as well so that we want our applicants
4 to see and experience positive results from these
5 initiatives as well. We want to improve the
6 current environment by removing some of the
7 obstacles that examiners face every day when they
8 examine applications and try to get credit for
9 their work. As I said earlier, this has been a
10 6-week effort. Dave Kappos set forth several
11 objectives that you see up there and those
12 objectives framed our efforts.

13 The count system hasn't been changed in
14 decades and we were given 6 weeks to literally
15 blow up the count system. Do we think we came up
16 with the perfect solution? Absolutely not. Do we
17 think we made a big first step in meeting the
18 objectives that Dave Kappos set forth in improving
19 the culture? Definitely.

20 The last objective that you see up
21 there, do no harm, was critical. That goes to
22 making sure that examiners in the transition to

1 the new count system should they ratify this
2 package do not get harmed, that they're not going
3 to face a poor performance rating or not get a
4 promotion or not get an award because we made the
5 transition to this new count system. If we have
6 to make adjustments to this new system, we can do
7 so. If we find that there are unintended
8 consequences of this system that the team did not
9 foresee, we can stop it and revert to our current
10 system.

11 One of the difficult things about this
12 while package has been not what the count system
13 should look like as an improvement but, rather,
14 how do get there from the current system. It's
15 very complicated. We wanted to make sure that
16 each examiner was compensated appropriately, and
17 we had some great people on our team to lead the
18 effort and help in that effort. I'll let Robert
19 get into more of the details about how we've
20 shifted credit and some of the other pieces of the
21 package and then I'll explain to you the risks
22 associated with moving to this kind of system in

1 full disclosure so that you know if things don't
2 change, if behavior doesn't change, if the culture
3 don't change, what could be the price tag for such
4 a change. Robert?

5 MR. BUDENS: Thank you, Peggy. I do
6 want to say that this has been an interesting
7 experience. It's been very intense, but also very
8 collaborative. I think Peggy and I have probably
9 gotten to know each other better than any union
10 president and deputy commissioner in the history
11 of the Agency. We think that it's been a good
12 effort, and as Peggy said, a good first shot at
13 trying to get this system changed to where it can
14 be most effective.

15 Let me show you some of the things that
16 we're doing in this package and I'll go into a
17 little bit of detail with you. I will not go into
18 extensive detail on all the changes because the
19 math and complexity would put everyone in this
20 room and everybody in America watching online to
21 sleep in about 30 seconds if not sooner, but we
22 will give you kind of an overview of what we're

1 doing.

2 A quick overview. One of the first
3 things we're doing is we're putting more time into
4 the system, putting more time into examinations so
5 that examiners will have more time to examine the
6 applications and be able to focus on the areas
7 that take the most effort. We're going to be
8 realigning the count system, the system that gives
9 examiners production credit or work credit
10 throughout the course of the examination process
11 to bring that more in line with when the work is
12 actually done by the examiner. One of the ways
13 we're doing that is to put more time up front into
14 the first action on the merits. That's where the
15 search is done, where the first action on the
16 merits goes out to the applicant, we want to
17 enhance compact prosecution, so that we're going
18 to put more time into the case and more credit up
19 front because that represents the biggest single
20 piece of work in examination.

21 We're also going to start providing time
22 for examiners to do examiner-initiated interviews.

1 Up until now we've been giving time for
2 applicant-initiated interviews when the applicants
3 phone in and want to talk with us, but we haven't
4 been giving time when we've felt like we could
5 reach out to the applicants and try and get to
6 allowable subject matter at an earlier time in
7 prosecution so that that will now be available.

8 One of the objectives of Mr. Kappos was
9 to diminish the credit for RCEs in an attempt to
10 try and disincent those kinds of applications and
11 get prosecution done as early as possible and get
12 to allowable subject matter, so I'll explain to
13 you some of those changes and that's where things
14 get a little complex. Another problem that we've
15 tried to solve is the issue of what we call
16 inherited amendments. As you know, over the last
17 10 years or so or actually longer, the Agency has
18 had a bit of a problem with attrition and when an
19 examiner leaves the office, all the work they were
20 doing has to be picked up by somebody else and for
21 a long time there was never any way of
22 consistently giving the examiner who inherited

1 those cases consistent work credit. Sometimes
2 they got nothing at all, they just had to pick
3 them up and do them and then offset it with
4 additional work to make production. We're getting
5 away from that. We're putting a consistent amount
6 of credit in inherited cases now so that examiners
7 will have the time to pick up those cases and act
8 on them accordingly.

9 We're revising the production award
10 program to put more incentives in for examiners to
11 be more productive. We're putting more intervals
12 in the places where they can get awards and we've
13 raised the top end to 135 percent now from 130
14 percent, so hopefully that will provide more
15 incentive for productivity. We're also changing
16 some of the processes. We're increasing work
17 credit certainty. One of the problems we've had
18 in the last several years or so is examiners
19 having problems getting their cases counted and
20 getting credit for the work they've done when
21 they've done the work has been a source of great
22 annoyance in recent years and we've tried to fix

1 that problem. We're also going to try and make
2 sure to increase fairness to our stakeholders, to
3 our applicants, by making sure that cases get
4 picked up in as close to a first-in/first-out
5 order as we can make while still allowing
6 flexibility for examiners to be able to make
7 production.

8 Finally, we're going to try and balance
9 the workload on the IT systems by changing a
10 little of bit when our deadlines are for finally
11 turning in work. In case any of you are not
12 aware, our IT systems are a bit of an issue these
13 days and we're trying to lighten the load on those
14 so that we don't have small periods of times with
15 intense activities that could risk slowing the
16 system down or bringing it down.

17 Then we're going to improve working
18 conditions. We've taken some actions to try and
19 reduce the fear in the examining corps and
20 management of getting to allowable subject matter
21 and seeing if we can't get back our percentage
22 allowance rate back up some. We want to get to

1 allowable subject matter as early as we can.
2 We're going to reshift some of the resources we've
3 been using in observing and testing quality by
4 getting rid of the recertification program which
5 was very resource intensive but didn't really bear
6 any fruit with noting and so we're getting rid of
7 that program. We will continue to maintain the
8 certification exam for examiners. There was a lot
9 of input from the Agency and from the applicant
10 community that that's a very good thing that they
11 appreciate and so we are keeping that in place.

12 Let me tell some details of what the
13 changes are. The first one we're going to deal
14 with is the revisions to the count system because
15 those are the ones that most people are interested
16 in and directly impact the examiner's daily lives.
17 I'm not going to get into the math, but let me
18 explain to you what we did in a nutshell.
19 Director Kappos gave us an objective to reduce the
20 amount of work credit available in RCE cases. We
21 looked at that and he wanted a small reduction in
22 the first RCE after the parent application and

1 more significant reduction in work credit in
2 second and subsequent RCEs again to try and
3 incentivize both the examiners and the applicants
4 to get to allowable subject matter more quickly.
5 As we went through making those changes we then
6 realized we were going to have to make some
7 adjustments to compensate examiners for what was
8 in essence a reduction in the amount of time they
9 would have to do certain cases so we have gone in
10 and developed a rather complicated mathematical
11 set of formulas that is going to add a fixed
12 amount of time to each examiner and then in
13 addition adjust the hours they have to act in each
14 case by a little more depending on how many RCEs
15 they have on their dockets and what the percentage
16 of that ratio is of those RCEs so the new cases
17 they're doing.

18 Let's take a look at what we did. In
19 this slide, the top diagram shows the system as it
20 current exists. What it shows you is how we get
21 our production counts and we get a count or work
22 credit when we do the first action on the merits

1 in an application, and then we get no more work
2 credit in that application until we get to the
3 point of final disposal of that case, whether it's
4 allowed, abandoned, set up to the Board of Appeals
5 or Interferences so that we have no credit for
6 final rejection, we have no credit for any
7 prosecution that goes on between the time we do
8 the first action and the time we finally dispose
9 of the case. You'll notice that that's the same
10 for first RCEs and for second RCEs. In other
11 words, every new application or RCE has to counts
12 in it available to the examiner for work credit
13 toward their production.

14 If you look this box now, this shows you
15 the system and what we're moving to. What you'll
16 see is in an original new case, instead of having
17 just one credit for the first action on the
18 merits, we're now going to have 1- 1-1/4 counts
19 for the first action on the merits, we're going to
20 have a quarter count for the final rejection, so
21 now in times when we've got loads of amendments
22 and responses that we have to do, we're going to

1 at least get some work credit because final
2 rejections can often times take as much work as
3 first actions. Then we're reducing the amount of
4 credit for the disposal count, the allowance or
5 abandonment. There are still two counts remaining
6 in the case, same as in the original, but we're
7 redistributed when the work credit is provided to
8 examiners.

9 In the first RCEs, you'll notice that
10 now instead of getting 1-1/4 count, you're only
11 getting one count for the first action and you get
12 the same for the final and the allowance, 2.5 for
13 the final, .5 for the abandonment. You'll see
14 this is maintained throughout the system. Now
15 finals will always get a quarter count,
16 abandonment and disposals will get a half count.
17 Then for second and subsequent RCEs, you'll notice
18 we've reduced another quarter count off of the
19 first action on the merits. The original new
20 cases stay the same at two, the first RCE goes to
21 1.75, and the second and subsequents will be at
22 1-1/2 counts. This here shows you that there was

1 a reduction in time to examiners that we needed to
2 compensate for.

3 Let me show you quickly how that
4 happened or what we've come up with. We even put
5 the computer to sleep. I told you that the math
6 was going to rough. How did we figure out these
7 calculations? In order to make sure that people
8 got at least some credit, everybody got some
9 credit, the first thing we did was add 2 hours to
10 everyone's current hours per goal and that's
11 indicated right there. This is where we're
12 currently at, this is the 2-hour addition. You'll
13 see that there's something here called the 1-hour
14 floor that we'll talk about. That was what we set
15 is a minimum, that everybody should at least get
16 to the 1-hour floor.

17 Because of the loss in RCE counts, what
18 happened is that for people with a lot of RCEs,
19 they're going to lose a certain amount of work
20 credit because of the reduction in counts and
21 that's represented by that red arrow. So we
22 needed to make an additional adjustment to the

1 addition to the 2 hours to at least bring the
2 people up to the 1-hour floor and that we refer to
3 throughout here as the RCE adjustment. So what we
4 have to do is figure out how hard are people
5 impacted by the change in RCEs and then add
6 additional time to at least them up to the 1-hour
7 floor. People with fewer RCEs like new examiners
8 or people who are just in dockets that don't have
9 many RCEs, if their effect is less than 1 hour,
10 then they don't get an RCE adjustment, but they
11 have the additional benefit of the extra time they
12 have.

13 I don't know if you even want to go
14 through this much math. The bottom line is that
15 by going through the counts that we have, you'll
16 see that under the old system that an examiner
17 might have 100 counts in a set of cases and that
18 same amount of work under the new proposed count
19 would only provide 95.31 counts. However, because
20 of the adjustment in time, their production would
21 actually go from 100 percent, in this particular
22 case the person would get a 2.08-hour adjustment,

1 2 hours for the time and then .08 hours for the RCE
2 adjustment, and that would bring their
3 productivity up to 103.9. By going through all
4 these machinations we were able to put more time
5 in the case while still reaching Director Kappos's
6 goal of reducing RCE time.

7 This goes into more math. You don't
8 need to know that. It'll just hurt. This is a
9 quick slide. These are the kinds of machinations
10 that we have to go through for each examiner, to
11 look at what their basic goal is now, add their 2
12 hours, figure out their RCE adjustments, how much
13 we have to adjust for their time and then add in
14 the amount of time to their goal to come up with
15 their new expectancy. Again if the RCE ratios are
16 low enough, they don't need any adjustments to
17 come up to at least 1 hour so that these people
18 got 2 hours of time. If their ratios of new cases
19 to RCEs gets up high enough, then we have to start
20 making adjustments and that's these examples here.
21 This colored example is the one we actually just
22 looked at on the previous slide where you see the

1 25.08 adjustment and these people have even more
2 RCEs. We can pretty much bore you to tears.
3 We've given the examiners a number of tools so
4 that they can go back and calculate some of their
5 production based on their fiscal year 2009 work
6 and be able to know where they're at and determine
7 and what the effects are going to be for them.

8 I mentioned also that one of the things
9 we did was to put a standardized amount of credit
10 into inherited amendments. What we did was
11 depending on the status of the case, if it was a
12 new case that's had a first action and an
13 applicant has responded but it's just a new case
14 and it doesn't have a lot of prosecution history,
15 you'll see that we've treated those by putting
16 1-1/2 counts in the case available to the examiner
17 who inherits the case. We've also done similar
18 changes to RCEs that get transferred, and what
19 we've done there because RCEs tend to have more
20 prosecution history and need more time for a new
21 examiner to pick up the case, review it and decide
22 where to go with it, we've handled those by

1 putting in 1.75 credits in each of those cases.
2 We think that's a great boon to examiners because
3 there have been a lot of examiners that when you
4 got an inherited case sometimes you were talking
5 -- beginning for a couple of hours or an
6 abandonment or something to offset the work you
7 had to do in the case, a lot of examiners got
8 nothing at all, and that created a lot of burden
9 so that this is one thing I think that really is
10 going to be good for examiners.

11 As I said, another thing we're doing is
12 putting time available now for examiner-initiated
13 interviews. If the examiner if they're working on
14 the case and preparing it and they realize that
15 there is some material in there that they could do
16 allowable subject matter, they're going to have
17 the time now to be able to call up the applicants
18 and approach them and let them know what they
19 think and where they're willing to go and let the
20 applicants make a decision. We think that this
21 will be a great opportunity for both the examiners
22 and the applicants to try and begin interactions

1 earlier in the case and to try to get to allowable
2 subject matter as quickly as possible.

3 I've already mentioned that we're
4 keeping the certification exam, but we're getting
5 rid of the recertification processes which was
6 very resource intensive and not worth a whole lot.
7 We've made some changes to getting cases. I'm not
8 going to bore you with the details. We've made a
9 lot of changes that will now allow examiners to
10 turn in their cases and get the cases counted for
11 production credit and then if necessary return for
12 correction after the counting has been done. This
13 has been a source of great frustration for
14 examiners over the last several years as we've
15 moved to electronic processing of applications,
16 and we've hopefully solved that issue.

17 Let's talk about the patentability
18 determination. Patentability determination is one
19 of the performance elements of primary examiners,
20 as in did you make the patentability
21 determination? Did you allow a case properly or
22 you allowed it improperly or you didn't reject it

1 properly? One of the problems is with the low
2 allowance rate the numbers were so tight that
3 examiners were in a situation where if you made
4 one error in patentability determination, you
5 could be in performance trouble and be on the
6 slippery slope out the door. We have worked
7 together with the Agency now to come up with a
8 system that will solve that. It doesn't mean that
9 we can now go out and wantonly mess up the
10 production, believe me the performance element is
11 still wrapped tight as a drum, but this at least
12 gets away from an absolute certainty kind of
13 issue.

14 We've had a lot of talk about telework
15 this morning. Because of the rules of telework,
16 generally a hotler has to be at least at the fully
17 successful performance rating. If they came in
18 below that rating, they could be pulled back from
19 hoteling and told to come back to the office and
20 report back to work which is an incredible burden
21 on the examiner especially if they've moved
22 outside of the commuting area. So what we've done

1 is created a grace period with the Agency where
2 they'll have an opportunity to try and improve the
3 performance and show that they can perform at the
4 fully successful level. If they're successful in
5 doing that in that grace period then they won't be
6 pulled back from hoteling so that this is a good
7 move to lighten up on examiners that way.

8 We are changing dockets a little bit.
9 Some of you who have prosecuted with us for a
10 while have probably heard of count Mondays. Count
11 Monday has been an incredible burden on the IT
12 systems of late because we get all of our cases
13 turned and they have to be processed in a very
14 short period of time so that we're spreading out
15 the prosecution of those cases, and we're also
16 moving to more of a first-in/first-out kind of
17 system. We want to get examiners turning work in
18 when they finish it so they can be reviewed and
19 counted throughout the buy week and we want to
20 make sure that applicants are being treated fairly
21 also. We don't want to see a situation where an
22 applicant gets a case picked up that was filed

1 very recently and another applicant is sitting
2 there and has had their application in here for 3
3 or 4 years and is still waiting for an action so
4 that we've tried to get around that problem.

5 Another thing that a lot of people will
6 be interested in is one of the changes we're
7 making is we're taking RCEs which since their
8 inception have been treated as amended cases which
9 means they were put on examiners' amended dockets
10 and they had a 2-month time limit from the time it
11 was put on our dockets for us to respond to it.
12 We are changing that and taking them off of the
13 amended docket and they'll be put on the special
14 new case docket so that it will be treated as
15 other continuing cases or divisionals and that's a
16 change to help manage the reduced counts.

17 The next slide shows the changes in the
18 production award system. We used to have just
19 110, 120, 130 awards and now we've created 115 and
20 125 and we've created a higher amount at 135 that
21 will allow examiners to get more money in the form
22 of bonuses.

1 A couple of important pieces include
2 transition issues. We have transition proposals
3 that will deal with moving the RCEs to the new
4 document. Currently filed ones will still remain
5 on the amended docket because applicants had filed
6 those under a previous set of standards and so
7 those will stay, and then we'll move new ones in
8 the future when the program goes into effect onto
9 the special new docket. Examiners will also be
10 provided with their new hours per their
11 expectancy, how many hours they have for a case
12 before we transition to the new case. This is a
13 little bit of a new paradigm for us because we
14 really truly have worked as a collaborate task
15 force here and we recognize that we may not have
16 thought of everything. This is a pretty
17 complicated set of changes. We have even what I
18 call an elastic clause that will say even if there
19 are things that we haven't figured out, then we
20 will come back as a task force both POPA and
21 management and we will try and solve those issues.

22 Those are some examples we were giving

1 to employees in the briefings which is one reason
2 why they take 2 hours and we're doing it in 20
3 minutes and I'm getting talked out here. The
4 thing is we've created a safety net. As Peggy
5 said, these are the first changes to this system
6 in 33 years and the first really significant
7 substantive change to this system since its
8 inception in the 1960s. So obviously examiners
9 are concerned, I think management is concerned as
10 to are there unforeseen circumstances and what
11 could happen. We've created a safety net that's
12 going to allow us to look at examiners' work under
13 the new system and calculate their production both
14 under the new system and under the old system and
15 then they will get the benefit of whichever
16 numbers give them the best outcome. So by putting
17 this safety net in place, it's allowed us to
18 create a system where we can go out and we can put
19 in place and we can test and we can try and tweak,
20 and if examiners do turn out to be somehow
21 negatively impacted from circumstances we couldn't
22 foresee or miscalculations of their RCE

1 adjustments or whatever reason, we can go back and
2 look at their work under the old system and
3 they'll get the benefit of whichever calculation
4 gives them the best outcome. We've worked closely
5 with the Agency, and even through the process
6 we've been going through with the voting and
7 everything, tweaking and modifying the system so
8 that at this point no matter what happens with
9 this program, examiners will not be worse off than
10 they would be under the system, and I think that's
11 a very key point.

12 I think I'm about talked about and I'm
13 going to turn it back to Peggy for a minute.

14 MS. FOCARINO: Robert always wants me to
15 talk about the risks, the big two right there,
16 increase in pendency and decrease in revenue and
17 how does that happen? This package results in an
18 average of between 1 and 2 hours of additional
19 time per case for each examiner. What does that
20 mean in terms of production? If I'm at
21 100-percent production today as an examiner, I'm
22 responsible for doing a certain amount of

1 production units. Under the new system because I
2 would have more time, I would maintain my 100-
3 percent level by doing fewer production units.
4 That also leads to a decrease in revenue because
5 once the filing fees are submitted and the case is
6 waiting for action, an examiner picks up the case
7 and then begins to generate future fees because
8 short-term and long-term in issue fees, extensions
9 of time, PG pub fees and maintenance fees if the
10 case should be allowed so that if the case is just
11 sitting and waiting for an examination, there are
12 future fees that would not be collected.

13 How do we feel that we can mitigate
14 these risks by this package? A couple of big
15 things. We think the package overall is really
16 setting the foundation for long- term pendency
17 improvements. We're going to focus on quality up
18 front by giving a count and a quarter in the first
19 action, we should seeing more thorough searches,
20 more time for the examiner to engage in the issues
21 and hopefully with an increase in customer
22 satisfaction. We believe that the examiners will

1 have the opportunity to identify allowable subject
2 matter if there is any earlier in the prosecution.
3 They will be reaching out to applicants more
4 because they will be getting time for
5 examiner-initiated interviews. We think this will
6 lead to a decrease in actions for disposal which
7 has been on a steady rise over the past few years.
8 We think this rebalances the incentives both
9 internally, and you saw how the credits would
10 shift for RCEs, and externally we may see some
11 disincentives in the form of fee increases for
12 RCEs.

13 We want to support examiners' ownership
14 of transferred cases by giving them a certain
15 amount of credit so that they know that they are
16 going to get the credit that they need to spend
17 time when they get cases from an examiner who's
18 left the Agency. Overall we think the package
19 will lead to an increase in morale and hopefully
20 reduce our attrition rate which is pretty low
21 right now but as the economy picks up we tend to
22 lose some of our examiners to the outside. So we

1 think that with the package as a whole behavior
2 will change and we can mitigate those risks that I
3 showed you that would occur if no behavior change
4 occurs. That's it. I'll let Robert talk to you
5 about the vote process.

6 MR. BUDENS: Thanks, Peggy. We're not
7 quite done with all of these changes yet or with
8 this process. There are still a few things we
9 need to go. As Peggy said, we have to complete
10 the briefings. We have two more tomorrow, and
11 then those will be done. We also have to complete
12 the POPA vote. The POPA executive committee
13 determined that because of the scope and magnitude
14 of these changes that we would be putting this out
15 to vote of the POPA bargaining unit of the POPA
16 dues paying members, and that's been going on over
17 the last 2 weeks as we've had these briefings.
18 That will conclude tomorrow at 4 o'clock and we
19 will hopefully know whether the examiners have
20 chosen to accept this program or reject it by
21 sometime tomorrow evening, and we'll let
22 management know at some point in time. I know

1 they're not really interested in the outcome.

2 We're all interested in the outcome of it.

3 If it is accepted, we will be looking at
4 a two- stage implementation of this that
5 applicants want to be thinking about. That is,
6 the first stage will encompassing putting into
7 place all of the initiatives you've heard about
8 today except for the revisions to the count
9 system. Those revisions take some extensive
10 reprogramming of PALM which John Owens might speak
11 to in a minute and those need to be completed
12 before we can transition to the new count system.
13 We have a goal in place with a target of the
14 beginning of the second quarter to do that and
15 that would be December 20.

16 One important thing I think everybody
17 needs to hear both on the PPAC and in the
18 stakeholder community is this last issue. We
19 recognize that this is an incredible complex
20 number of changes to a system that was already
21 complex to begin with and both sides are concerned
22 about where this could go. We have provisions in

1 place in the agreements to monitor the program
2 regularly. We're going to be looking at it
3 quarterly and then getting together toward the end
4 of FY 2010 and looking at do we want to continue.
5 We have a lot of data we're going to be collecting
6 and the data is going to be available to both
7 management and POPA. We're going to be looking at
8 it as a task force and deciding if we need any
9 changes, if so, what do we need and how do we do
10 it, et cetera, and continue to be looking at this.
11 As we said at the beginning, it's an iterative
12 process. We think it's a good first step but we
13 recognize that there is work to do. Neither side
14 in this adventure got everything they wanted and
15 we'll still be back at the table talking with each
16 other.

17 One thing I think that's very important
18 and I commend Director Kappos for is the last
19 bullet here. You'll see that no matter what
20 happens, if we have to make changes, even if we
21 have to completely terminate these changes at the
22 end of FY 2010 and go back to our current system,

1 that he has committed that examiners will still
2 get the benefit of the at least 1 hour of
3 additional time per case and we appreciate his
4 consideration there and his commitment to the
5 examiners to get more time in for examining. The
6 POPA will be going on, it will be concluding
7 tomorrow and we'll let everyone know one way or
8 another what the outcome is. Thanks for your
9 time.

10 MR. MATTEO: Thank you very much. I
11 feel the irresistible need to lead with laudable
12 efforts here, pushing back on 33 years of inertia
13 in 6 weeks and coming up with something that both
14 management and POPA, at least POPA management can
15 agree on, understanding that the vote has not yet
16 been taken. I have to compliment you on the
17 culture shift and the dedicated collaborative
18 effort that went into that.

19 Having said that, however, one of the
20 things that I would be interested to hear and I
21 expect it's implicit but for me it would make me
22 more comfortable if it were explicit is we're

1 talking as if there are two parties involved here,
2 but the other implicit party at issue here is the
3 public and patent applicants themselves. In terms
4 of extolling the iterative nature of this and the
5 fact that you want to revisit it periodically, are
6 there built into this system ways to reach out to
7 the IP community and the inventor community to
8 filter their feedback into this view as well?

9 MS. FOCARINO: That's a great question.
10 I had a meeting yesterday with Jennifer
11 Rankin-Byrne and others to start discussing a
12 framework for being able to solicit input from the
13 public and when the appropriate time would be,
14 when can we expect the public to start seeing some
15 meaningful results from the package and
16 incorporating their input into any changes that we
17 make. The intent is to get input internally from
18 the people who are actually doing the work and
19 then externally from our stakeholders.

20 MR. MATTEO: Did anyone else have any
21 questions or comments? For those of you like
22 myself who went blurry-eyed watching the dizzying

1 speed for the slideshow, I want to mention that
2 these presentation materials along with all other
3 presentation materials from this morning and
4 afternoon will be available on the PTO website. I
5 suspect they're all in disparate locations, but
6 maybe we can figure out a way to at least
7 consolidate pointers to those locations on the
8 PPAC website for a one-stop-shop kind of a
9 situation. We'll explore. There are no
10 commitments, but that's something we can look
11 into. But again, all of these materials will be
12 on the PTO website for future reference. I
13 believe, Marc, you had a comment or question.

14 MR. ADLER: This is a great start.
15 Hopefully we get the vote and we can move ahead.

16 I have a couple of questions.
17 Previously we were talking about that we had
18 defined complex applications. All applications
19 here are equal so we still haven't gotten to the
20 question of what happens when you end up with an
21 enormous case and the time required to deal with
22 those. There are probably other opportunities for

1 further improvements to this as we go forward, so
2 let's park that thought somewhere.

3 The other one is if we could reduce the
4 need for the filing of RCEs by a significant
5 amount even though the data has been showing the
6 opposite, if we could turn that trend downward we
7 could change this so that examiners could have
8 even more time on the first office action. In
9 other words, you could trade off some of those RCE
10 numbers for more time up front, again, to
11 pendency, they're all connected. In other words,
12 if we can reduce pendency, we could also get more
13 time for examiners up front.

14 The only one that I think you might get
15 some feedback on which is probably good but just
16 to think about is you're changing the docketing
17 thing. When you go to this amended docket, to the
18 special docket, because you won't be getting that
19 first rejection on the RCE in 2 months, there will
20 be fewer second RCEs probably filed in the same
21 period of time so that there will be some numbers
22 there that we'll have to see as a result of the

1 change. Right?

2 MR. BUDENS: Yes.

3 MR. ADLER: Just to throw out some
4 things for you to think about.

5 MR. MATTEO: Thank you very much
6 everybody. What I'd like to do, it's 10 of 10:00
7 right now and we have a break built into the
8 schedule. Why don't we take a brief break and
9 reconvene at 10:00 a.m.?

10 (Recess)

11 MR. MATTEO: Welcome back, everybody.
12 It is now my great pleasure to introduce to you
13 the new Under Secretary and the Director of the
14 Patent Office, David J. Kappos, who will be
15 sharing with us some of his initial impressions
16 and thoughts. Dave, if you would, please.

17 MR. KAPPOS: Thanks very much, Damon,
18 and sorry for the delay in getting here. We've
19 already had a busy morning and we're closing in on
20 10:30. I want to share a few comments and then
21 leave a little bit of time for questions or any
22 discussion that we need to have with the team.

1 First of all, thanks to the PPAC for
2 your service to our U.S. Patent and Trademark
3 Office and to our country. I appreciate your
4 willingness to take the time and put your energies
5 into helping us to improve this Agency. Second,
6 thanks to my USPTO colleagues. I see Robert,
7 Peggy and Drew sitting here at the head table in
8 addition to Commissioner Stoll and others in the
9 background. Thanks for the energy that you've put
10 in to helping the PPAC to do its job, and I know
11 the considerable amount of time that it takes to
12 be responsive and helpful.

13 On that I want to say that we're having
14 discussions and trying to, if you will, reinvent a
15 lot of things at the USPTO right now and that
16 includes our relationship with our two public
17 advisory committees, the TPAC and the PPAC. I'd
18 commented previously to the TPAC and I'll repeat
19 the comments here that I view that we have an
20 enormous opportunity to work together to do
21 substantive things to take action for the U.S.
22 innovation community and to do what we need to

1 have a partnership between the PPAC and the USPTO
2 management and employees that's probably a little
3 bit different from the way it's been in past
4 years. I'm very encouraged by the PPAC here and
5 by Damon's leadership and I think we've got an
6 opportunity to do things that are going to be
7 positive that really are going to take action and
8 that are going to leverage the unique skills and
9 capabilities, and the statutory advisory nature of
10 the PPAC that gives is an engine for assistance,
11 for comment, for input, for change that we really,
12 really need right now at the USPTO. As probably
13 apparent to you but has become very apparent to
14 me, it can be somewhat isolating to be in an
15 Agency when your ability to interact with the
16 public is somewhat constrained. Having an engine
17 like the PPAC provides us with a very important
18 bridge and a very important way to stay connected
19 with our community and with our constituency and
20 that's the way I want to build up the
21 relationship.

22 As I mentioned at the TPAC meeting and

1 I'll also repeat here, I'm big on joining in
2 public meetings and big on transparency so that
3 I'll try and come and spend time at these public
4 meetings. I probably won't join in any of the
5 closed-door sessions although I realize that if
6 they're kept brief there are reasons for having
7 them and we need to respect that.

8 A couple of substantive comments that I
9 wanted to make. Workload. You might have seen
10 these stats already, but I'll just repeat them so
11 everyone has them on the table if you haven't
12 heard them recently. The latest up-to-date
13 numbers that I've got are the backlog of
14 unexamined cases, 735,961. If you're counting all
15 the way out to the decimal point, that is an
16 astounding number, it's an unacceptable backlog
17 and that is a top priority for us to work on here
18 at the USPTO. Total inventory of applications in
19 the pipeline, that's everything that's in process
20 in addition to the unexamined backlog, 1.280
21 million patent applications. That is in my view
22 about lifetime dancing lessons already for us here

1 at the USPTO, and of course I expect innovation to
2 continue and accelerate over time so I think all
3 of those flow rates are inevitably going to
4 increase, and that's a good thing because that
5 means our economy is generating innovation and
6 people are getting more products and services that
7 they need, access to health-restoring medicines
8 that they need and all the other things that the
9 innovation community facilitates so that it's
10 perfectly okay. It's our job to figure out how to
11 deal with those backlogs much more quickly.

12 Average first action on the merits
13 pendency, 25.8 months, an average overall pendency
14 of 34.6 months measured by I believe by what we're
15 now referring to as the old metrics, and in
16 keeping with transparency we're going to be
17 putting out new metrics which are going to try to
18 fully report pendency from every conceivable
19 viewpoint including total pendency from original
20 filing of a priority case whether that original
21 filing is in the U.S. or overseas, all the way
22 through to final disposal of the case whether it

1 be complete and total abandonment, in other words,
2 no continuation, no CIP, no divisional, no other
3 case filed, or whether it be issuance of a patent.
4 So we'll start trying to track and transparently
5 report what many in the applicant community think
6 of and refer to as the total application pendency
7 and we're working on getting the machinery in
8 place to do that.

9 I wanted to mention the count reform
10 project and thank you to Robert and Peggy for
11 demonstrating the kind of labor and management
12 leadership that it takes to address as really
13 hard, complicated problem in a constructive and
14 businesslike way. We respect that the union is
15 still voting and in fact I think Robert and Peggy
16 might still be doing the last of the education to
17 union members, so I'm not going to get into the
18 details there. We want to respect the union
19 process and let it complete. But in any event,
20 I'm extremely proud and please of the working
21 relationship that Robert and Peggy have
22 established and leveraged to make some real

1 progress.

2 I need to mention the Tafas case
3 briefly. There is not a lot to say there. It was
4 pretty clear that we needed to rescind the claims
5 and continuation rules. We did it as quickly as
6 possible. We're trying to put that behind us. In
7 my view, Tafas was an example of a net negative
8 result. In other words, it matched a modest, very
9 small, incremental gain in productivity for the
10 office against a very large detriment or cost in
11 the applicant community and it was for that
12 fundamental reason why I viewed the Tafas rules as
13 being something that didn't make sense from the
14 beginning. We'll now be looking for rules and
15 outreach with the applicant community that
16 produces net positive gains. That's not to say
17 that we won't ask the applicant community to do
18 things that involve change from time to time, and
19 of course we'll be changing lots of things in the
20 office, but we'll be looking for a complete
21 equation that produces a significant net positive
22 and my judgment was that the Tafas rules did not

1 fit into that category. We're pleased to move
2 away from those and get on with rule making and
3 collaboration with the applicant community and
4 with the PPAC as a vehicle to keep us oriented, to
5 keep pointing out true north to us as we craft new
6 provisions and new rules, et cetera, and that's
7 what we'll be depending on the PPAC for.

8 Patent reform. I need to mention that
9 for just a minute. This is a process everyone in
10 this room knows has been in the works some would
11 say for a long time, a number of sessions of
12 Congress. The Administration now has a views
13 letter out, so for the first time the
14 Administration has a point of view. This is a
15 high priority for Secretary Locke. It's my very
16 highest priority to get patent reform done and
17 passed and legislation in place. We're very
18 supportive of the work that's being done in both
19 Houses of Congress and we're available here at the
20 USPTO to assist in our role as a technical expert
21 Agency. We've been working hard already at the
22 request and direction of Members to do just that

1 and we'll keep doing it and do everything we
2 possibly can to get patent reform through.

3 The legislation can be very beneficial
4 for the Agency first and most importantly for the
5 innovation community for our country. It will
6 help with litigation reform, it will help with
7 providing viable postgrant processes to enable the
8 prompt challenge, prompt conclusion of those
9 challenges of issued patents. From the viewpoint
10 of the Agency it will put fee-setting tools in our
11 hands which are very, very important to being able
12 to get the USPTO on a sustainable funding model.
13 So there is a lot of good in patent reform
14 legislation. And while not everybody gets
15 everything they want, in fact I think it's
16 accurate to say nobody gets everything they want,
17 I think that patent reform legislation, the
18 legislation that we've got pending in Congress, is
19 a big net positive and so I'm putting a lot of
20 energy into trying to help get it through Congress
21 right now.

22 Those are the main topics that I wanted

1 to address, the main things that are on my plate
2 right now, patent reform, a lot of time
3 reengineering process here at the office like the
4 count system is extremely important. Looking at
5 ways to engage the applicant community is very
6 important and echoes to Tafas and looking beyond
7 Tafas. I'll stop there, but I'll just by way of
8 stopping say that relative to fee collections, you
9 probably already know that we're starting off FY
10 2010 at about \$200 million short of what was
11 originally projected in the budget that was
12 originally set out for the Agency this year and
13 that has put us in a position where we can't hire
14 to even backfill for attrition so that the size of
15 the Agency is shrinking. We're not able to
16 undertake the information technology improvements
17 that we badly need to undertake. We're not able
18 to fund PCT handling to anywhere near the level
19 we'd like to be funding it. We're not able to
20 authorize as much overtime on the part of the
21 examining corps as we'd like to be able to permit.
22 So unfortunately what we're looking at is in my

1 view what the threshold of some might say another,
2 but anyway, at least a lost opportunity and I
3 really don't want to see us lose this opportunity.
4 If we have the funding we need, we can get started
5 immediately on the things we need to do to
6 dramatically improve the functioning of the
7 Agency, and we know what we need to do. There are
8 no inventions needed, no big mystery. We can do
9 these things with adequate financial resources and
10 that's where the \$200 million comes into play. Of
11 course it's within Congress' province to work out
12 funding of the USPTO. It's our job to make the
13 public and Congress aware of funding problems and
14 that's what we've done and that's what we're going
15 to continue to do, and of course we'll help any
16 way we can in terms of bridging the gap.
17 Meanwhile though we're certainly not standing
18 still even in the delicate funding environment
19 we've got. There's lots we can do and we're off
20 doing those things many of which I've already
21 mentioned.

22 Let me stop there. Damon, thank you

1 again for having me in and let's have a discussion
2 if people want to raise discussion points of
3 questions.

4 MR. MATTEO: It's very much appreciated,
5 Dave. It's like to turn it over to the floor for
6 questions or comments for Dave. Looks like we're
7 all sold.

8 MR. KAPPOS: Somebody's got to have an
9 issue or question.

10 MR. PINKOS: Thanks so much for joining
11 us today. We really appreciate your time. I
12 guess on the funding issue, has the Administration
13 settled on a request of Congress, a specific
14 solution going forward I guess one for this year
15 whether such a large anticipated shortfall and
16 then of course for the long-term as well?

17 MR. KAPPOS: Thanks for that question,
18 Steve. The Administration views letter which does
19 represent our position on this is that we need
20 director fee-setting authority which enables us to
21 solve the funding problem in the long-term. For
22 those who don't know, as I've learned in the

1 2-plus months that I've been here, it turns out
2 that getting fee-setting authority isn't the end
3 of solving the problem. You then have to get
4 through the notice and comment rulemaking process
5 which I've gone through the timeline in detail
6 with the team here at the USPTO and it's at least
7 12 months and probably more like 18 months from
8 when you get fee-setting authority to when you
9 actually get the fees reset so that there is a
10 long gap in there and, Steve, that's where the
11 \$200 million comes into play. So our view in the
12 Administration is that it's really for Congress to
13 work out vehicles and it's our job to make
14 Congress aware of the funding gap, and so that's
15 where the matter stands.

16 MR. ADLER: I'm very happy to hear the
17 comments you made with regard to the redefinition
18 of pendency to be transparent because applicants
19 do view the overall pendencies to the absolute
20 final disposition of the case as what it's really
21 about. Certainly that will add more time to the
22 data that you already have, so it makes the

1 initial numbers look even longer than they are,
2 but that just makes it more incumbent upon us to
3 figure out how we reduce pendency and deal with
4 the backlog through process changes both that we
5 can do as well as those things that applicants can
6 do and hopefully the PPAC can help the office in
7 that regard to explain to the public what we all
8 can do to improve the way in which patent
9 applications are written, processed and examined
10 to that we can get a handle on the backlog and
11 drive the pendency first office action to 10
12 months and hopefully complete to the goal of 18
13 months which would also help us figure out how to
14 sink our cases that are first filed here with the
15 patent prosecution highway better so that that all
16 starts to make more sense. Yes, I'm thrilled that
17 you're at least getting more transparency here and
18 we some opportunities to make some changes in
19 spite of the budget and the financial situation.
20 And the count system will also help a long way to
21 push more to the front end which is the right
22 direction. So everything is good and if we can

1 get patent reform passed, where I'm personally on
2 that, I'll be thrilled if that was one or had been
3 done already, but hopefully we can get it done in
4 the next couple of months.

5 MR. KAPPOS: Thanks for those comments,
6 Marc. A couple of things. We are going to put
7 all of the pendency data, and again some of it
8 will be better than others. It's okay. It's
9 facts and we all need to have the facts.

10 Relative to getting the word out about
11 what applicants can do, this is a place where we
12 really can use PPAC help and also some PPAC input
13 because it's the job of many of us as PTO leaders
14 around this table, Drew, Bob, Peggy, Robert,
15 Howard, myself, to get data out and information
16 out that helps the applicant community understand
17 what they can do to facilitate the process.

18 I'll give you a couple of examples and I
19 included this in a speech that I gave earlier this
20 morning. The first action interview pilot has
21 been extraordinarily successful. It statistically
22 increases an applicant's chance of getting a first

1 action allowance very, very substantially. It's a
2 no-brainer that applicants should be using it. So
3 I'm making it a point to lay this out very
4 explicitly in every speech I give. I'll do it
5 again tomorrow, I'm speaking to another
6 association, to ask them very explicitly to help
7 them and us. This is a net positive gain on both
8 sides of the equation. But this is something that
9 the PPAC can do also, is to champion these very
10 straightforward actions that the applicant
11 community can take. So first action interviews is
12 one. Another one now that's quite clear is
13 participation in the patent prosecution highway
14 which we now know statistically doubles your
15 chances of getting a first action allowance and
16 doubles your chances of getting a final
17 disposition that's a patentability disposition to
18 over 90 percent. Furthermore, if I'm remembering
19 the statistics right, the pendency in the PPH
20 program once the petition for acceptance is
21 accepted is between 2 and 3 months, so it's off
22 the charts in terms of how fast the PTO is

1 processing applications once they're in that PPH
2 system, and we ought to get that word out. I'm
3 doing my best. If you guys know more statistics
4 or more information I can use, I will do it, but
5 it's also a place where the PPAC can play a role
6 as advocates to get word out on very specific
7 things that applicants can do to help themselves
8 and help us do a better job.

9 MR. BUDENS: A question for David.
10 Going back to something you had said earlier
11 concerning the fee-setting authority, one of the
12 things I've been doing is when we've been up on
13 the Hill has been saying that we may need to think
14 about more of an expedited rulemaking procedure
15 for the Agency maybe specific for us if we get
16 fee-setting authority so that it enables us to
17 respond more quickly to economic downturns like
18 we've seen recently. That language is not in the
19 patent reform bill. It's not anywhere I've seen
20 other than occasion suggestions I've made when
21 I've been up on the Hill. Has the Agency proposed
22 any language up on the Hill that might provide for

1 any kind of a change to the normal administrative
2 procedures rulemaking process that would allow us
3 to expedite the changes if we need to increase
4 fees or make changes to deal with economic
5 downturns?

6 MR. KAPPOS: Thanks, Robert. That's a
7 really interesting idea. The first I've heard of
8 it. It sounds very constructive to me. It's not
9 something that's in our views letter and not
10 something I've heard about being proposed up until
11 now. Of course it's within the province of
12 Congress to decide what kind of rule making it
13 wants the PTO to go through, but we certainly
14 would be very interested in working with Congress
15 along the lines that you're suggesting if Congress
16 wanted to go that way.

17 In terms of the substance of the
18 rulemaking process, it really does take a fair
19 amount of time. For everyone, I think what Robert
20 is referring to and what I'm certainly getting
21 from the comment is that we have what I would call
22 an impedance mismatch, a mismatch between a

1 necessary cycle time in the office to keep up with
2 a changing environment which is a cycle time that
3 operates in months or maybe on the order of a year
4 versus a cycle time of the regulatory process in
5 Congress which is much, much longer than that. So
6 until and unless we can find a way to match those
7 two cycles times up against one another, we're
8 going to be in a situation were we simply can't
9 keep up in terms of our rule making here with the
10 needs of the applicant community so that anything
11 that enables us to get a closer match is going to
12 be possible.

13 MR. ADLER: One other thing. Earlier
14 today Robert was talking about a new collaborative
15 environment dynamic. I wanted to know whether you
16 could say a few words around trying to provide
17 incentives, instead of moving away from
18 regulations to incentivize the behaviors that we
19 want to see for applicants and the public whether
20 it's to improve the quality of what goes in or to
21 expedite prosecution or other things. So it's an
22 open question to you to say more on what Robert

1 was saying this morning around incentivizing
2 behaviors instead of imposing requirements.

3 MR. KAPPOS: Thanks, Marc. I come at
4 problems like this from a management kind of a
5 private-sector background and the way that I've
6 always looked at management challenges is that
7 you've got some that are in the category of very
8 heavy lifts and here it's like when you need to
9 change the laws because we all know that takes a
10 lot of time and a lot of effort. Then there are
11 other challenges that are in the category of sort
12 of medium lifts that require the regulatory
13 process and it's good that it takes time because
14 we're in a democratic country and want the public
15 to have input and that's all good. Then there are
16 a set of things that we can do much more quickly,
17 many of which we can do very, very quickly, where
18 our constraints are that we want to adequate input
19 and that's where the PPAC comes in and that's
20 where the applicant community comes in, and so
21 we're trying to load up a pipeline. This is like
22 running a PNL in a business. So we're loading up

1 a pipeline with heavy-lift changes, medium-lift
2 changes and light-lift changes and we're loading
3 as many things in that pipeline now that it will
4 take different times to move through it. So we
5 have focused on all three categories including
6 that third category, Marc, that you're mentioning
7 which are things that we can do that are just pure
8 give-to-get kinds of incentives that will help
9 applicants to help the office do things more
10 quickly, do things more accurately, and usually
11 don't involve changing fees because fees are in
12 the medium- lift category and they require taking
13 some time, not that we won't change fees on the
14 ones that we can change that are regulatory rather
15 than statutory fees, but they usually will involve
16 changes to the kind of documents that applicants
17 need to file or the things that applicants need to
18 say in those documents. So examples about
19 predisclosing anything, we're working in a number
20 of ways in that regard to improve let's say as an
21 example the accelerated examination process and
22 that's something that we can do ourselves and so

1 we're doing it ourselves and moving that process
2 away from exacting potentially damaging documents
3 from applicants as a price to enter which hasn't
4 proven to be very successful overall and moving
5 more in a direction toward not forcing applicants
6 to submit a lot of information but giving them
7 some benefits if they're willing to submit some
8 helpful information, that's what Bob was referring
9 to, and there are a number of other places.
10 Again, we're working on this stuff internally
11 making sure we're getting all the right internal
12 government legal advice and we'll be coming out
13 with them seeking input from the PPAC and others
14 here as soon as we can. But we're completely in
15 line with you, Marc, on seeking more
16 incentive-based, nonconfrontational ways, where if
17 applicants will provide us with a little bit of
18 help we can do a lot better, a net positive gain
19 again.

20 MR. FOREMAN: Dave, I think I speak on
21 behalf of everyone on PPAC that first off we're
22 all excited to be working with you to help usher

1 in some of the changes that you want to see in
2 this organization. Not only are these goals
3 ambitious, but they're commendable because we've
4 got a great patent system but we can always make
5 that system better.

6 We all have unique skills and we all
7 have the pulse of the innovator community out
8 there, so what I would ask at this point is what
9 is the overarching goal? What message would you
10 like the innovation community to know with the new
11 Administration? What do you want to achieve?

12 MR. KAPPOS: It's interesting that you
13 asked that question. We were having a discussion
14 about this just as recently as last night and I
15 would put it, and I'm just doing this
16 extemporaneously now, but I would put the mission
17 in one sentence, and the way I think about it is
18 that the PTO, the United States Patent and
19 Trademark Office that we want to create is going
20 to be the world's premiere Agency at championing
21 innovation by granting timely, quality patent and
22 trademark protection by in a timely and

1 high-quality way reviewing decisions that we've
2 made as requested by the applicant community and
3 the public and by leading the world in strong,
4 balanced intellectual property policy development,
5 and nothing short of leadership across the board.
6 That's the PTO that we're going to create here.

7 MR. FOREMAN: Thank you. I think we all
8 look forward with you to achieve that.

9 MR. MATTEO: Absolutely. Dave, you
10 weren't here, but at the risk of repeating myself,
11 transitions are a time of change and opportunity
12 and of promise and all of us here embrace that
13 goal fully. We're happy to engage the PTO in any
14 positive and constructive fashion that we can. In
15 fact, you weren't here for the comments either,
16 but in the series of presentations that have been
17 done thus far, we've seen a definite change in the
18 interaction internally at the PTO and interaction
19 with PPAC, and just as you were encouraged, so too
20 are we. So it feels like that's going to be, to
21 put it in the technical vernacular, where I think
22 we both come from, a positive feedback loop.

1 We're going to build on your strength and
2 enthusiasm, hopefully you can build on our passion
3 and contributions and just keep working that back
4 and forth until we are the preeminent intellectual
5 property protection Agency.

6 MR. KAPPOS: That is just fantastic, and
7 with that I'll let you carry on with the meeting.
8 Thank you.

9 MR. MATTEO: Thank you very much, Dave.
10 Thank you very much, everybody. I appreciate your
11 patience.

12 In our continuing juggle with the
13 agenda, I believe next up is the quality
14 discussions, and we have two back to back, one of
15 the definition and the underlying foundation of
16 quality, and then one building upon that on the
17 quality program, the actual process and updates on
18 programs. We'll start off with the definition of
19 quality. Marc and Andrew, if you'd be so kind as
20 to walk us through the process. This is an
21 ongoing project, and Marc and Andrew are going to
22 give us an update in terms of where they are with

1 this. Thank you very much.

2 MR. HIRSHFELD: I'll start, and Marc,
3 anytime you want to jump in, feel free.

4 For those of you at the last PPAC,
5 obviously all of us and a bunch of others in the
6 room, we had discussed identifying key quality
7 metrics. Since that time of the past PPAC meeting
8 a lot has happened. For starters, when Dave
9 Kappos came on board he had called me into his
10 office and said he really wants to supercharge
11 this project and that this goes hand in hand with
12 his idea and goal to have an open and
13 collaborative process. He would like to expand
14 this project much beyond identifying key quality
15 indicators. He wants to take a complete fresh
16 look at quality, at all aspects of quality, with
17 an eye toward potentially revamping the way we
18 measure quality, the way we evaluate in all parts
19 of examination and prosecution, even looking to
20 actions of those practitioners outside of
21 government. That being said, this project in his
22 exact words has been supercharged. That's where

1 Marc and I come in. He has asked that the two of
2 us co-chair this project, so today I'd like to
3 discuss what we've done so far and where we are.

4 We have started with trying to define a
5 quality patent which I think, as most people know,
6 you can probably spend months and months on the
7 definition of what a quality patent is, but we
8 tried to put something down as a starting point.
9 We have a quality patent is a patent for which the
10 record is clear, that the application has received
11 a complete and through examination. I won't go
12 through the whole definition, that's up there, but
13 a key point is that we're looking at the validity
14 of a patent. We're looking at that the patent has
15 a proper scope and that the public is on clear
16 notice of what is being covered by that patent.
17 What you'll see is what's not in that definition
18 is the economic value.

19 MR. ALDER: You could think of this as
20 quality is equal to validity divided by pendency.
21 In other words, we want to make sure that timely,
22 effective patents are granted. We're not looking

1 at the economic implications of that patent in the
2 marketplace. By eliminating that we can focus on
3 the process by which the patent is granted as well
4 as the resulting metrics about whether that patent
5 hold up as a valid patent in subsequent contests.

6 MR. KIEFF: I totally applaud everything
7 that you are saying and I only just wanted to drop
8 a footnote for everybody including those who might
9 look back later and to better understand decisions
10 that have been made. A patent that issues from
11 the office to later find its way into dispute that
12 either makes its way to court or not could be
13 viewed by those in the dispute or those looking at
14 the dispute later as one that we got wrong, but
15 only I think would it be fair for them to do that
16 if it was one we got wrong based on a fact that
17 was plain in the record before the office
18 initially or some very clear undisputable kind of
19 policy or legal argument that was plain. So that
20 we also in addition taking care to disclaim that
21 we are not in our internal quality metrics
22 considering economic value, nor are we in our

1 internal quality metrics considering the vast
2 wealth of information that the world probably has
3 about every one of the patent applications that's
4 in this office that nobody in the world would want
5 this office to take the trouble to have before
6 making its initial quality determination because
7 that would then be an infinite investment of
8 effort for what we know to be an 18- to 20- hour
9 decision.

10 MR. ADLER: Yes, to answer your
11 question. We're not looking for perfection.
12 We're looking for improvements in quality, and we
13 know that we're not going to find things
14 potentially that might exist in somebody's
15 repository somewhere that we didn't find. But we
16 can do better, we could always do better, and our
17 goal is to try to continually improve overall
18 likelihood and certainty of a patent. If it's
19 clear that there was prior art that was missed
20 that was available to the office that may be of
21 record, those are the things we're talking about.

22 MR. KIEFF: This is to make sure that we

1 continue to remind the readers out there that we
2 were not trying to do more than what we're trying
3 to do.

4 MR. HIRSHFELD: I agree wholeheartedly,
5 and this certainly is an iterative process and
6 Dave has made that very clear. What he would like
7 us to start with is engaging the community. So
8 what Marc and I and others, Steve and Scott also,
9 have been working on is a notice that will be
10 published hopefully in the near future that's
11 being finalized now where we are going to look for
12 public comments on all aspects of quality and
13 engage the public to hear what the public believes
14 we should be measuring, are we measuring the right
15 indicators of quality, should there be different
16 measures of quality, just take an entirely fresh
17 look at the entire quality system, so that that
18 will be coming in the near future.

19 MR. ADLER: That notice will focus on
20 three aspects. It will focus on the search, on
21 examination and on the application itself. We're
22 not excluding other suggestions, but those are the

1 three parts that we're going to ask the public for
2 comments.

3 MR. HIRSHFELD: While the notice is out,
4 the team from PPAC and the team also within the
5 PTO will be gathering past studies. There has
6 been a great deal of work, internal studies and
7 external studies, and so we're in the process of
8 trying to gather all of that information more as a
9 starting point for future discussions, not to
10 duplicate any work that's been done or not to
11 reinvent the wheel, but as a good starting point
12 of jumping off point for the project.

13 MR. ADLER: There are internal metrics
14 that the office uses to evaluate the performance
15 of examiners or the quality of their actions.
16 That's important. In addition to that, we also
17 want to get external feedback about external
18 metrics and other quality items so that there's a
19 blend. If you recall our previous discussions
20 around this, it was very internally focused and
21 now we're trying to get it more externally focused
22 and balance both the metrics that the office is

1 using to measure performance as well as the other
2 things that applicants are seeing in terms of
3 quality.

4 MR. HIRSHFELD: That's essentially all I
5 had with one small addition, that we are looking
6 at having down the road a roundtable. Once all of
7 the comments are received, we will attempt to put
8 those together and have a meaningful roundtable,
9 at least one roundtable, potentially more, where
10 we can further engage the public and try to refine
11 the way that we look at and analyze quality.

12 MR. ADLER: I believe that without
13 prejudging this that if we actually do this in the
14 right way we can look at different metrics that we
15 could use to select and track over time to see
16 whether we're doing well. The allowance rate is
17 one of the historical ones, but there are probably
18 other ones I hope that we can use to measure
19 whether as to claims if the scope was proper, if
20 the application meets 121, there is internal
21 consistency between the specification and the
22 claims, and there are a lot of other things that

1 we could use to then feed back that information
2 back to applicants so that they will be able to
3 write better patent applications in the future.
4 This is iterative. What did you call it?

5 MR. MATTEO: A positive feedback loop.

6 MR. ADLER: A positive feedback loop.
7 This is a feedback loop of both positives and
8 negatives so that people can improve what they're
9 doing. I think there's a lack of understanding
10 about what folks could do in the applicant
11 community to improve the quality. You're not
12 going to get a quality patent if you have a very
13 poor quality application, garbage in, garbage out,
14 so that we need to improve the quality of what
15 goes in if we're going to be able to get quality
16 coming out the other end. That's part of my job,
17 our job, and part of everybody's job because we're
18 all in this in the same way.

19 I want to thank the office, Drew and
20 Diane Campbell and a number of other folks. The
21 cooperation that we've gotten and the
22 collaboration that we're on is exceptional and I

1 hope it will continue. It's great. I'm very,
2 very happy both on this quality part of the
3 initiative as well as the pendency, the other part
4 of it as well. You'll be hearing more about this
5 soon.

6 MR. MATTEO: Just a quick question and
7 maybe a sidebar commentary. It's got negative and
8 positive, I think that makes it a real-world
9 feedback loop which is where we all live.

10 MR. ADLER: Yes.

11 MR. MATTEO: Just a quick question. I'm
12 a huge believer in iterative processes to
13 constantly feed back and improve. I think I have
14 a question in terms of this single roundtable. Is
15 that a vehicle where you're going to roll out your
16 findings fait accompli or is this going to be
17 iterative multiple roundtables where you can help
18 define the measures and metrics?

19 MR. ADLER: Here's the deal. I don't
20 think it will be a single roundtable.

21 MR. MATTEO: Then I misheard.

22 MR. ADLER: We really haven't defined

1 that yet. We're thinking about it this way.
2 There will probably be a first one, whether we
3 need to also have other ones as well, and what it
4 would be will be to say here's the information
5 that we received from the requests for public
6 comment, here are some thoughts that we have and
7 hopefully we'll invite people who have also been
8 studying this issue whether they're academics or
9 patent attorneys or individual inventors, the
10 usual collection of folks, and say here is some of
11 the data that we've found, here are some of the
12 thoughts that we have, what do you think? Then
13 we'll use that and then maybe go to the next forum
14 with that. This may take a while. This is not a
15 one meeting conclusion.

16 MR. HIRSHFELD: I certainly did not mean
17 to apply that it would be a roundtable. I think
18 what will happen is that I envision at least one
19 roundtable, but probably multiple roundtables. I
20 also believe that what we get back from the public
21 during the comment period will also help us decide
22 and see what the right next steps are. One of the

1 difficulties in this project is that it's so huge
2 and so open-ended that we need to take things one
3 at a time and I think the next step is getting the
4 comments and deciding what is the best way to have
5 these roundtables based on the input and feedback
6 that we've received.

7 MR. MATTEO: Marvelous. I apologize if
8 I misheard, but to the extent that you said how
9 you were going to be inclusive of the broader IP
10 community and the various different flavors of
11 constituencies, it's always better to hear that.

12 MR. ADLER: Thanks for the
13 clarification.

14 MR. MATTEO: I think we have now Peggy
15 Focarino up who is going to talk to us about the
16 status of the current quality efforts. If you
17 would, Peggy.

18 MS. FOCARINO: Just to take a look at
19 where we ended up in 2009 if we can see the next
20 slide. Here are the historical measures that you
21 get an update on every time we meet. We
22 historically for many years have had an end check

1 of our work and our allowance error rate. That's
2 the very top row. Then in 2004 we began using an
3 in- process review metric and you can see from
4 2004 through the end of this fiscal year that when
5 you look at our historical measures we've had
6 improvement every year. I know there's a lot of
7 debate about these measures, there's a lot of
8 misunderstanding about these measures, and I think
9 Drew and Marc will be working to remedy that and
10 introduce additional measures. I think what this
11 clearly shows you is that there has been quite a
12 bit of discipline instilled in the process here
13 and a focus on quality and I think certainly the
14 foundation is there to begin looking at different
15 metrics. I think that's really good news. You
16 may debate what we're measuring and how, but I
17 think the discipline is certainly there and that's
18 a great thing.

19 MR. MATTEO: Peggy, before we get off of
20 that slide so we can frame how to interpret that,
21 is there is a baseline against which these
22 progressive years are measured? The 3.1 percent

1 for 2009, the same measures and metrics were
2 applied from 2004 all the way through?

3 MS. FOCARINO: Yes.

4 MR. MATTEO: So there is a baseline?

5 MS. FOCARINO: That's comparing apples
6 to apples. That 3.1 measure has been measured for
7 probably 35 years. The in-process metric, we
8 began measuring that in 2004. The baseline was
9 the 82 compliance rate when we did that baseline
10 measurement the year before in tracking
11 improvement compared to that baseline year.

12 MR. MATTEO: Another one of my pet
13 things that I really like is efficiencies from
14 process understanding and process improvement. Is
15 there build into this a vehicle for learning and
16 processing understanding and circling that back?
17 Is that the genesis perhaps of some of those
18 improvements?

19 MS. FOCARINO: Yes. In Drew's oversight
20 of the Office of Patent Quality Assurance, they
21 have a pretty good feedback loop where each area
22 can go in and get extensive data on the types of

1 reviews that were done and develop training to
2 address the types of areas that we see need
3 improvement. So there is quite a bit of feedback.

4 MR. MATTEO: Excellent. Thank you.

5 MS. FOCARINO: Some of the initiatives
6 that are ongoing and what we've been focusing on
7 is trying to recapture some of the resources that
8 we've been expending on doing that in-process and
9 end check review and focusing more on training
10 initiatives in the tech centers and supporting
11 other initiatives in the tech centers to improve
12 quality. We've also gotten some resources from
13 our Training Academy as we have scaled back our
14 hiring efforts and refocused them in the tech
15 centers also to help with training initiatives and
16 focus more on up-front quality improvement rather
17 than checking the quality at the end of the
18 process.

19 Marc mentioned this, looking at other
20 data points, and we do have several data points
21 that we've been looking at. This is called our
22 QIR data or quality index data, that looks at

1 things like actions for disposal, allowance rate,
2 second, third, fourth nonfinal actions and those
3 types of actions. For particular technology, we
4 can see where people fall at different ends of the
5 spectrum and perhaps focus more in on those areas
6 and focus our training efforts on areas that
7 definitely are outlined in terms of what we see in
8 the different technologies.

9 We're looking at the classification
10 process and particularly the transfer process
11 also. We have a very difficult time when
12 applications need to be transferred within the
13 tech centers and particularly when they need to be
14 transferred outside of the Technology Center, so
15 we're focused on improving that process as well.
16 I think Drew will talk a little bit about the 101
17 training effort that we're undertaking right now
18 and this is a tremendous effort and it took a lot
19 of work on the part of Drew and his staff and the
20 tech center directors also in developing specific
21 examples for examiners. It's overdue to say the
22 least, but it's certainly a really good training

1 package and I think you'll see some real
2 improvement internally in how we're addressing our
3 101 issues.

4 Then we've focused also on skill
5 training for managers, how do they review
6 performance appraisal plans, the guidelines for
7 tech centers to ensure more consistency, how our
8 supervisors provide constructive feedback to
9 examiners when they're giving feedback on their
10 office, employee relations issues, all kinds of
11 things, and providing them automated tools to
12 track particularly our probationary examiners and
13 providing them with regular feedback on their
14 progress so that they know who they're doing in
15 those critical first 2 years.

16 We are also providing training on
17 searching, a lot of training on tech searching and
18 classified searching. We are looking at our
19 search strategy and we have what we're calling
20 peer-to-peer experts, identified examiners in
21 particular areas that considered to be outstanding
22 searchers and having them work with their

1 colleagues to help them develop the same skill
2 set. We have information exchanges for searching
3 also that have to do with looking at errors and
4 having the reviewers meet with the examiners in
5 going through how they might have avoided those
6 particular mistakes in those applications. It's
7 also good to have that because that develops a
8 better relationship with our review group and also
9 with our managers and the examiners so that it's
10 not so much of an adversarial process. Then
11 continuing to survey our SPEs so that we know what
12 the current training needs are in their particular
13 areas and being responsive to that.

14 Then just to show you our allowance
15 error rate, this is the historical rate that we've
16 measured literally for decades so that you can see
17 the outcome from 1975 on. We're pretty low right
18 now, but again the way we measure will be looked
19 at and I think you'll be probably seeing some
20 changes in running this metric in parallel with
21 whatever we decide will be a more appropriate
22 metric. Are there any questions on quality before

1 I get into the more operational?

2 MR. ADLER: I had one question on the
3 search training. Is that something that could be
4 publicly available to prospective applicants to
5 participate in?

6 MS. FOCARINO: It certainly can. I
7 think you heard Dave Kappos mention transparency.
8 Every training package that we've done so far, and
9 I'll have to double-check on the search training
10 package, but we've posted it on the intranet for
11 public consumption, our compact prosecution
12 training, our interview training, and certainly we
13 can look to see if there is developed search
14 training that we can post also.

15 MR. MATTEO: Just to build on that which
16 is an excellent suggestion, is there a way to
17 either engage or more fully engage the IP
18 community in terms of developing the best practice
19 in that you share with them what you're doing and
20 they can do vice versa and hopefully the union of
21 those two things or the intersection of those two
22 things is a best practice that we can integrate?

1 MS. FOCARINO: I think this would be
2 another roundtable topic where we would want to
3 get feedback from our stakeholders on what they
4 feel is an excellent search and what kind of skill
5 set we would need to develop that we may not have.

6 MR. MATTEO: That's great. That's
7 another pet thing that I was interested in. I've
8 already got a few people teed up and I'd be happy
9 to feed them into the process.

10 MR. KIEFF: Just to follow-up on that.
11 The community to which the outreach is being made
12 in this particular context may not be necessarily
13 those who are drafting the applications in the
14 first instance, but those whose so-called practice
15 or business is doing quick analyses of validity.
16 So I'm thinking of, for example, the lawyers out
17 there who practice in the opinion and counseling
18 practice so that that would be one group. The
19 other group includes the people who refer to
20 themselves as the public-interest types. I don't
21 want to label them, but I think for example there
22 is David Ravisher, Dan Ravisher, I'm embarrassed

1 to say that I can't remember his first name, but
2 he runs an organization, Greg Aharonian I think
3 calls himself patent bounty hunter or something.
4 There are people out there who for a range of
5 reasons are happy to try to better assess validity
6 in their view so those might be other
7 constituents.

8 MS. FOCARINO: Let's take a look at some
9 of the other outcomes from fiscal year 2009. If
10 you look at the next slide, we had a strange year
11 when you look back on the review and the filings.
12 We had an opportunity to start chewing into the
13 backlog of applications. In the red line at the
14 top you can see that we in fact were able to cut
15 into the backlog so that we finished the year with
16 about 20,000 fewer applications in the backlog.
17 Filings tapered off a bit, and I'll get into the
18 exact percentage drop, and first actions
19 increased. Unfortunately because of the economic
20 situation we had to curtail our hiring efforts to
21 that we ended up the year with just under 600 new
22 examiners, but it would have been a really great

1 opportunity to hire more if we were able to
2 because the filings were down obviously and the
3 examining corps as a whole was more productive.
4 The good news out of that is that the backlog went
5 down slightly in 2009.

6 MR. ADLER: The average number of new
7 cases filed for the year is about what?

8 MS. FOCARINO: The average number?
9 About 460,000 and something.

10 MR. ADLER: So we have a year-and-a-half
11 of backlog?

12 MS. FOCARINO: Yes. With the next slide
13 I think you heard Dave Kappos mention the volume
14 of applications coming with last year at about
15 460,000 utility plant reissue applications, 24,000
16 plus design and almost a 2 percent drop in filing
17 growth from 2008. Our attrition rate went down
18 significantly from 9.5 percent in fiscal year 2008
19 down to below the 6 percent range and that
20 includes people who transferred or retired also
21 because what we look at in terms of attrition is
22 the loss to the production line. We would like to

1 keep that rate down, but I think there are a lot
2 of factors that are going into that. One may be
3 the economy, but I think also our recruitment
4 bonus and improved hiring efforts and things like
5 that have helped in this area.

6 MR. MATTEO: Peggy, it's only at best
7 tangentially related, but with the effectively
8 negative 2 percent growth in filing over 2008, the
9 immediate follow-on question for me is what was
10 the attendant reduction in maintenance over that
11 period of time? Did you see a larger drop in
12 maintenance where the fees tend to be higher?

13 MS. FOCARINO: You're talking about
14 maintenance fees?

15 MR. MATTEO: Yes.

16 MS. FOCARINO: Yes, maintenance fees
17 went down. I don't know the exact percentage, but
18 obviously our allowance rate was lower in 2009
19 than it was in 2008 so that the maintenance fees
20 were dropping also, and also extensions of time.
21 We experienced a reduction in fees coming in from
22 extensions of time as in our applicant community

1 also was doing some belt-tightening.

2 MR. MATTEO: I was curious if it was 2
3 percent or percent, just the order of magnitude.

4 MS. FOCARINO: When Mark Olechowski
5 comes in to talk about the budget, he probably
6 would know. They track that on a daily basis.

7 MR. MATTEO: Thank you.

8 MR. PINKOS: Just a quick question as to
9 whether you compared your attrition rate to
10 private-sector attrition rates recently.

11 MS. FOCARINO: That would have been a
12 good question. Steve Smith has now gone. His
13 staff has tracked and benchmarked our attrition
14 rate compared to the private sector and other
15 government agencies where you have a highly
16 technical workforce and the attrition rate here is
17 pretty darn good. We ended up the year with
18 almost 6,300 examiners and could have used a few
19 more, actually.

20 If you look at the next slide, you can
21 see we did hire across the board in every area and
22 we had to curtail. We had to planned to hire

1 1,200 examiners and we ended up the year as I said
2 at just under 600 examiners, and we have some
3 areas that are getting fairly large, particularly
4 the electrical areas.

5 The next slide concerns the count system
6 discussion with a heavy focus on RCEs and the need
7 to reduce the RCEs. I think you can see looking
8 from this slide why. Almost 30 percent of our
9 filings in 2009 were RCE filings.

10 MR. KIEFF: May I jump in and ask has
11 there been thinking about the RCE problem which
12 has arisen? Problem is too strong a word. The
13 RCE factor which has arisen a few times and the
14 focal point of conversation that's arisen a few
15 times in this conversation today, has there been
16 thinking about what is motivating the applicant
17 community to be filing so many of these?

18 MS. FOCARINO: We've thought a lot about
19 it.

20 MR. ADLER: I think there are two things
21 going on. One is strategic filing, this idea of
22 not wanting to specify what your real invention is

1 until you get more data so that there is this
2 intentional delay and certain segments will figure
3 that out over time. I don't know what percentage
4 of the cases are that. The other part of it is
5 the final rejection practice and the ability of
6 not really reaching closure at final, therefore
7 instead of filing an appeal, they file an RCE. I
8 don't know yet. We need to parse that apart and
9 figure out what we can do about the finals. There
10 was a previous slide about the QIRs and finals
11 that get pulled that aren't really final. There's
12 a whole issue about final rejections. Amendments
13 after final rejection used to be at least looked
14 at and that's not happened as much. There is some
15 percentage of cases that are filed because they
16 just don't know what to do so they refile it. I
17 think those are the two aspects of the RCE
18 practice and we need to figure out what is
19 business model related and what is prosecution
20 model related.

21 MR. KIEFF: To follow-up, I think I
22 share your intuitions on this and my only added

1 gloss to put on it would be that there might be
2 some in your second category who think of
3 themselves as being frustrated with the responses
4 they're getting from the office and think to
5 themselves that, A, legitimately an appropriate is
6 to file an RCE, and not a game response, that to
7 go to the board is to make a federal case out of
8 it, so to speak, but to just refile is a way to
9 congenially interact with the examiner in a way in
10 which she after all will be receiving more credit
11 so she may enjoy that interaction too without
12 having to learn a new record and that there is
13 this kind of dynamic that then goes on that could
14 be impacting some portion of that.

15 MS. FOCARINO: Good points. Taking a
16 look at pendency, again this is another area where
17 we're sliding, although first action pendency is
18 pretty close to what it was in 2008, but the total
19 pendency you've seen has gone up slightly. These
20 are our traditional metrics. You heard that we
21 are looking at new metrics so that we would be
22 showing you these metrics in parallel with

1 whatever way determine is appropriate and ask for
2 input on this also as to how should we be
3 measuring pendency.

4 MR. ALDER: This is the old way?

5 MS. FOCARINO: This is the historical
6 look where we're looking back from the time it's
7 disposed of or first action is back to the filing
8 date.

9 MR. ADLER: So that when we go to the
10 new pendency, we'll be having these plus the total
11 pendency?

12 MS. FOCARINO: That's the way I envision
13 happening, that there is some reporting criteria
14 that we have to follow, we can't just switch our
15 metrics. That's probably why you'll probably be
16 seeing both for a while so that we can ease out of
17 this way if it's determined that there are better
18 looks at pendency, and more transparent looks.

19 MR. MATTEO: Not only that, but seeing
20 them juxtaposed helps you calibrate between the
21 two to help the transition more effectively.

22 MS. FOCARINO: Right. Some of the

1 things that obviously impact pendency in a good
2 way, and you heard Dave mention some of these
3 include the first action interview program and
4 that's one that I'll talk a little bit more about,
5 and accelerated exam and you heard Dave say that
6 he wants to make changes to this, but it is
7 working very well for the people who choose to
8 jump through those sometimes onerous hoops of
9 getting their application in this particular
10 program. We've done extensive training on
11 interview practice for every examiner in the corps
12 that has gotten some really great reviews. This
13 is posted and available in the intranet. And
14 really giving examiners who don't have a comfort
15 level with doing an interview, giving them the
16 skill set to be able to have a productive and
17 effective interview.

18 Another bit of training that we've done
19 for every examiner in the corps also is training
20 on compact prosecution and some of the tips and
21 the skills necessary to be bringing a final
22 disposition to an application in less than five or

1 six or more office actions and just making
2 examiners aware of some of the best practices
3 here. Both of these training sessions have been
4 performed in more of a workshop setting so that we
5 have a lot of interaction with the examiners and
6 the trainers and the format has been pretty well
7 received. The examiners like this.

8 MR. ADLER: When I was talking to the
9 pendency team about compact prosecution, I
10 misheard them and I thought they were saying
11 combat prosecution awareness.

12 MS. FOCARINO: I'll have to check and
13 see if that's one of the best practices.

14 2009 as I said was a very interesting
15 year operationally with trying to work with less
16 revenue than we had anticipated. We had to
17 curtail or suspend a lot of the program that we
18 have so that we focused on how we could maximize
19 the resources that we have and to mitigate some of
20 the effects that we were going to see from reduced
21 hires and turning off overtime and those sorts of
22 things. PCT outsourcing was one that's allowed us

1 to outsource those Chapter 1 cases and have our
2 examiners then be able to pick up U.S.
3 applications in place of doing the PCTs, so that's
4 definitely contributed to a reduction in pendency
5 and also generates revenue from the fees that we
6 would subsequent collect from this U.S. filings.

7 We've taken a look at our examination
8 resources and redirected a number of resources
9 that were in other areas and not focused on
10 examination whether they were detailed or in other
11 areas and redirected them back to the examination
12 pipeline. Also in our Office of Patent Quality
13 Assurance shop that's under Drew Hirshfeld, we had
14 a number of resources from there that were focused
15 on training examiners, search techniques, claim
16 interpretation, compact prosecution, everything
17 that would lead to earlier disposition of
18 applications. I talked earlier about our
19 attrition rate, so that was a help also. We
20 realized a lower attrition rate so therefore we
21 had more FTEs on board than expected and that also
22 helped us with the backlog.

1 Then the heavy focus on maximizing
2 resources resulted in about a 10,000 PU gain than
3 what we would have expected so that we finished
4 the year I think in a better position through the
5 efforts of the directors who came up with a lot of
6 different ways to make sure that we were making
7 the use of our examination resources in a year
8 that was really tight in a lot of ways.

9 MR. PINKOS: Peggy, on that last point
10 what were the top one or two redirections and
11 maximizing resources that were so effective?

12 MS. FOCARINO: I think just taking a
13 real close look at how we were spending our time
14 that wasn't examination time by an examiner, what
15 kinds of activities were being done, what's normal
16 for the activity whether it's classification
17 activity, that's one good example, and either
18 trying to have that activity performed by a
19 different type of resource or being more efficient
20 in the performance of that activity, so taking a
21 very close look at how we're spending our
22 nonexamining time has been real effective.

1 MR. ADLER: It's like 35/65. Right?

2 MS. FOCARINO: The percent of examining
3 time was about 73?

4 MR. WILEY: Seventy-three.

5 MS. FOCARINO: Seventy-three percent.
6 Seventy- three percent exam time, of course people
7 are going to take leave, so that's historically
8 pretty high for the corps.

9 MR. HIRSHFELD: So that's 25 percent.

10 MS. FOCARINO: Right. We normally model
11 an 80- percent exam time for one full-time
12 equivalent because we take into account leave, and
13 if you have a more experienced workforce obviously
14 they earn more leave and they're going to take it,
15 and we've never been close to that because no
16 examiner examines 100-percent of their time.
17 There are other activities. They're training and
18 classifying cases.

19 MR. MATTEO: Peggy, with regard to the
20 redirection maybe as a jumping-off point for the
21 question, in revisiting all of this, have you
22 stepped back and taken a fundamental look at how

1 to adjust these resources and what for example
2 would be the down side of redirecting detailees?
3 Was there that kind of exercise that was the
4 backdrop for having done this?

5 MS. FOCARINO: I think that's probably
6 one of the next steps for the directors to look at
7 so that when you stop detail activities, those
8 types of things generally should be an investment
9 because our examiners can acquire a bigger skill
10 set that should help them. So there are some
11 downsides there, but I think some of the benefits
12 probably have been more consistency in those
13 nonexamining activities and what would be normal
14 in terms of the amount of time that any examiner
15 should spend on a particular activity. I think
16 it's been very beneficial there, but it's an
17 ongoing thing so that we have to keep looking at
18 that.

19 MR. MATTEO: This is the kind of thing
20 that's best ongoing.

21 MS. FOCARINO: Yes. I mentioned before
22 in the count discussion the actions for disposal

1 and how that number had risen over the last
2 several years. You can see back in the late-1990s
3 we were a little bit over 2.3 actions for
4 disposal, it steadily rose as we approached the
5 last few years, and now we're seeing a decline, so
6 I think that's a good indicator that some of the
7 initiatives that we've been focused on are
8 working. Of course, when you have a large
9 percentage of new examiners, your actions for
10 disposal are going to go up because these new
11 examiners typically don't dispose of applications
12 so the calculator for that, the numerator, gets
13 higher because new examiners do new actions and
14 they do very few disposals. So I don't want to
15 mislead you. There are other things that you need
16 to be aware of when you look at this number.

17 MR. MATTEO: That's what I was going to
18 say that since your attrition rate was lower and
19 the new hire rate was lower, is that an artifact
20 that we're seeing here? And to what extent is
21 that an artifact and how much of this is the real
22 gain?

1 MS. FOCARINO: You would have to go back
2 each year and compare the same thing, how many
3 hires did you get in that year, what was the
4 attrition rate and the age of the examining corps
5 and the experience level.

6 MR. ADLER: How do the RCEs factor into
7 that? They're included in that as well?

8 MS. FOCARINO: In the actions for
9 disposal? No. That's another thing we may want
10 to look at. I know what you're thinking.

11 The appeal conferences. We have
12 pre-appeal conferences and we have appeal
13 conferences, and then the application finally then
14 goes to the Board of Appeals. Just taking a look
15 at this one, the middle line there that's going
16 down, examiners' answers, obviously the volume of
17 examiners' is going down as a percentage of total
18 applications. The purple line, reopenings, we had
19 a period of time there in toward 2005 where we
20 were increasing the number of reopenings. This
21 was prior to when we had begun taking a look at
22 applications before they get to the board so that

1 we have the pre-appeal conference that's now
2 available to applicants and then every application
3 that goes to appeal is conferenced in an appeal
4 conference. The reopenings have gone down I think
5 because of those conferences where we're taking
6 another look, is the application ripe for appeal,
7 are the issues ripe for appeal? The bottom line
8 are the abandonments that have been going down,
9 and then the top line there are the examiners'
10 answers so that the answers have gone up by quite
11 a bit actually. The volume of workload at the
12 board has increased and I think you've heard that
13 in other venues, but the number of abandonments
14 have gone down.

15 MR. ADLER: Is that allowances?

16 MS. FOCARINO: It's allowances. Yes,
17 it's allowances. I didn't make that slide, Dave
18 Wiley did. So allowances have gone down which is
19 good because if you're going to get to that point
20 obviously you don't want the examiner then
21 suddenly allowing the case on you. The volume of
22 work that we're getting to the board is going up,

1 but the reopenings are going down, so just another
2 couple indicators I think that show at least we're
3 going in the right direction and sifting out the
4 cases before they get to the board that really
5 aren't ripe for appeal.

6 Then to take a look by tech center over
7 the last few years of what was the affirmance
8 rate, you can see if you look at the bottom have
9 steadily gone up. We've stayed around the same
10 for the last couple of years at 74 to 73 percent
11 affirmance rate, and the affirmance rate is
12 defined as the cases that are affirmed and
13 affirmed in part.

14 First action interview statistics. You
15 heard Dave Kappos mention that this is a program
16 that we would like to see more participation in.
17 We've had good participation to date. The key
18 with this is that we're allowing in proportion a
19 substantially larger number of applications
20 earlier in prosecution that participate in this
21 program. I've just worked with Robert and POPA to
22 expand this. I think the last time we met we were

1 trying to expand it. We would like to expand it
2 to every area in the corps, but working with the
3 union, they agreed to expand it to each tech
4 center, so we picked a work group in each tech
5 center and we picked a work group whose pendency
6 was the longest to try to get the biggest bang for
7 the buck so that those indicate the work group
8 numbers to show you where we will expand. The
9 program has some things that needed to be changed.
10 It was a very intensive process because we had to
11 do a lot of manual tracking so we wanted to do
12 some automation changes so that we were in the
13 process of doing those and also surveying
14 applicants to find out if they were in the
15 program, what their experience was like, ways we
16 can improve the program.

17 MR. ADLER: Has this expansion occurred
18 yet?

19 MS. FOCARINO: I don't see Wendy Garber
20 in here, she's been working with the union on it,
21 but I believe that it hasn't occurred yet. We've
22 just got agreement from the union and settled on

1 the work group and the process changes that were
2 needed to allow the expansion so that we weren't
3 losing track of these cases. I'm not sure if it's
4 targeted for the beginning of the second quarter,
5 but I'll find out for you.

6 The last thing, and you heard about this
7 too earlier, and I think Mark Powell will be
8 sharing a little more details when he talks about
9 work sharing, but you can see that we have a
10 number of pilots going on with different
11 countries. The only program that's permanent is
12 with the JPO, and Korea too, but not a high volume
13 there. You can see 1,160 applications, but
14 certainly you can double your chances of getting a
15 first action allowance as you heard if you enter
16 the program, so every little bit helps and these
17 are the kinds of things that we need to continue
18 to explore and move forward with so that we can be
19 doing a menu of things that will help us reduce
20 our pendency. I think that might be the last one.

21 MR. MATTEO: Thank you very much, Peggy.
22 Are there questions from the floor?

1 MS. FOCARINO: Don't ask me any
2 questions on the slide that I totally screwed up.

3 MR. MATTEO: Yet again to keep things
4 interesting, Drew Hirshfeld was called away, so
5 we'll either need to postpone the 101 until later
6 in the afternoon, or perhaps since it's just a
7 small self-contained piece of the agenda, we can
8 push it off to a separate call that we can have on
9 some other way. It's unclear whether he will be
10 able to return, but for the moment we'll have to
11 pass on that. I don't see Mark Powell in the
12 room. He's behind the other Mark. Would you mind
13 terribly moving up in the agenda? Thank you very
14 much. Thanks again everybody for your patience
15 and being flexible.

16 MR. POWELL: Thank you, Damon, and I'll
17 be somewhat brief since this is more of an update
18 than anything else.

19 I wanted to touch on work sharing in
20 general with the Patent Prosecution Highway focus
21 in particular, talk a little bit about what we're
22 doing in PCT, and bring you up to date on where we

1 are with the IP-5 foundation projects.

2 Here I've laid out the basic principle
3 behind the PPH for refresher purposes. Claims are
4 allowed in a first office and those corresponding
5 claims are copied into the application in the
6 second office and the case is taken out of turn in
7 the second office.

8 This slide is a month newer than the one
9 Peggy just had up so that we're up around 2,000
10 and we're getting requests at the rate of about
11 100 a month at the moment. There was a real spike
12 in the summertime where my TC alone was getting
13 100 to 110 a month, and the television area was a
14 very interesting phenomenon. That seems to have
15 leveled off a little bit.

16 MR. KIEFF: Just a quick question.
17 Where were those coming from?

18 MR. POWELL: They were coming from
19 mostly Korea and Japan because in PPH we are the
20 office of second filing and they were the
21 television companies, LGE, Toshiba. You can go to
22 Circuit City and pick out the name brands. There

1 was a lot of that, or Best Buy. It was
2 interesting because in discussions with the PPH in
3 other contexts, the Australian government
4 suggested that perhaps because of the economic
5 downturn certain sectors of manufacturers were
6 trying to up their use of the PPH to get their IP
7 rights quicker for whatever reason in the consumer
8 electronics area.

9 In any case, the overall allowance rate
10 of these cases is still approximately 95 percent
11 which is about double our ordinary allowance rate.
12 I think our allowance rate of nine PPH cases is
13 probably a little bit higher than that, so pardon
14 that inaccuracy. Actions for final disposal, I
15 think Mark tangentially asked about this figure,
16 by final disposal I mean after RCEs at the end.
17 In PPH cases that's been running at about 1.7.
18 When RCEs are added to the whole mix, the latest
19 figure I saw was about 3.38 and I think Mr. Wiley
20 will verify that for me.

21 MR. ADLER: So that that 1.7 compares to
22 the numbers we just saw around 2.6 or whatever it

1 was?

2 MS. FOCARINO: 2.7.

3 MR. ADLER: 2.7?

4 MR. POWELL: 2.7. Right. That may be
5 apples and oranges. I'll have to think about that
6 for just a second. In any case, it's taking a
7 significantly fewer number of office actions to
8 get through these cases and that is a significant
9 pendency improvement.

10 To what do we attribute this? You have
11 a set of claims in the second office in our case,
12 using being the second office, that have been
13 through a rigorous examination and a major patent
14 office or IP office and we believe that some of
15 the patentability questions such as novelty,
16 clarity, perhaps to some extent obviousness have
17 been to some degree resolved in that first office.
18 It is very difficult to measure that. In some of
19 our pilot cases, we went through an analysis case
20 by case of what rejections were made here and what
21 were made in the first office. It seems to vary,
22 but it seems like in particular novelty is taking

1 care of and again clarity.

2 MR. PINKOS: I'm sorry to interrupt, but
3 before you move on to the next step, maybe the
4 statistics just speak for themselves with the 1.7,
5 the action for disposal, but have you received
6 feedback from examiners? Clearly they can't give
7 full faith and credit so to speak to the action of
8 the JPO, but have you received the feedback of how
9 useful it is? Again maybe the statistics speak
10 for themselves.

11 MR. POWELL: It's been a while, but we
12 had a couple of roundtable sessions with the
13 examiners just to get some feedback on it and they
14 really like them because they're getting a case
15 with fewer claims in it and narrower claims, and
16 plus they're getting from the first office a piece
17 of the prosecution history, references and all
18 that.

19 MR. PINKOS: So it's a much better
20 roadmap and the applications are much better.

21 MR. POWELL: They are already part of
22 the way along in the process to some degree.

1 MR. ADLER: If they're Japanese
2 applications they tend to be shorter, there are
3 fewer claims and they've already gone through
4 examination and they've been allowed. Do you have
5 data on the pendency of those cases in the first
6 office?

7 MR. POWELL: On the pendencies for
8 example in Japan?

9 MR. ADLER: Yes, because they have up to
10 3 years --

11 MR. POWELL: Defer. I can probably get
12 them. No, I do not have them right off the top of
13 my head.

14 MR. ADLER: I'm trying to figure out how
15 it affects pendency really.

16 MR. POWELL: The pendency from the first
17 filing?

18 MR. ADLER: The overall pendency.

19 MR. POWELL: From the priority. Japan's
20 deferred examination system was 5 and is now 3.
21 It's difficult to predict. Some 30 percent of
22 their applicants request examination within 2

1 years, I believe, and I don't know what the mix is
2 as far as technology sectors.

3 MR. ADLER: When you're over there maybe
4 you can ask them.

5 MR. POWELL: I will certainly do that.
6 There is a work sharing benefit to these cases.
7 We've had 2,000 which for a relatively new
8 program, this has only been going on and this
9 started as a pilot only about 2-1/2 years ago as
10 permanent in Korea and Japan. As Peggy has
11 mentioned, we have now pilots or agreements with
12 nine other countries who have smaller offices, but
13 it's picking up. Among the next steps that we
14 have going here, there are eleven and there may be
15 a twelfth country in the whole mix of bilateral
16 agreements between all these different countries.
17 We have 11 bilateral agreements, Japan has 11 or
18 12.

19 MR. ADLER: China?

20 MR. POWELL: China has not participated
21 to date. So we have a form now, what we call the
22 Plurilateral Forum on PPH. I had to check with

1 some of my friends at the State Department as to
2 was it plurilateral or multilateral, and
3 plurilateral is what you use when there's a bunch
4 of bilaterals you're trying to pull together.
5 There is that context and in that context we're
6 trying to work to harmonize requirements among the
7 various offices so that it will be easier for
8 users not to have to continually go through
9 different sets of requirements for different
10 entries in different countries. We're also
11 working to reduce burdens on applicants where we
12 can in terms of translation requirements
13 particularly for our Asian customers because the
14 bulk of our work is from Japan and Korea. We've
15 worked to reduce things that we absolutely have to
16 have translations for down to the minimum, for
17 example, to check for claim correspondence because
18 that's an important part of it, and then indeed to
19 adverse the program to try to get the usage up. I
20 think it's coming up again for a new program, but
21 given the benefit of this that we can see from the
22 numbers, it will be a good thing if we can get

1 this rather greatly expanded.

2 I want to talk just a little bit about
3 the PCT. One of Mr. Kappos's major concerns is
4 PCT process and the stature of PCT, not just here
5 at USPTO but worldwide. The system of having an
6 international application and an international
7 search is the original work sharing proviso and I
8 think that no office has taken full advantage of
9 that, and we certainly intend to try. Over the
10 past couple of years mainly through the use of the
11 PCT contract we've been able to get much more
12 timely than we were a few years ago and our
13 quality is also very solid. But the good thing
14 coming up in the very near future is we're agreed
15 with the European and Japanese offices to pilot
16 the use of international search results in a PPH
17 framework to see how that works and that will
18 include of course reuse of work of our own
19 contractors in cases where we are the ISA and
20 there's a national phase filing. The planning for
21 that is to have a formal agreement reached at the
22 November trilateral in Japan and for this to begin

1 in January. Are there any questions? If not,
2 I'll go on to the next slide.

3 Also in parallel to this again back to
4 what we call the IP-5 context which began in 2007
5 with the idea of adding to the traditional
6 trilateral, the Chinese and Korean offices, the
7 next two largest offices, is to a discussion of
8 how we could cooperate with them in this larger
9 vehicle and further increase efficiencies around
10 the world. When the IP-5 offices first met of
11 course work sharing was one of the things that was
12 discussed and the way things have actually gone is
13 that instead of trying to start another round of
14 pilot programs and work sharing between all of
15 these five offices, that those offices would focus
16 on things that facilitated work sharing as opposed
17 to work sharing per se. So over the course of the
18 last year and a half and really a small number of
19 meetings, three heads of office meetings or deputy
20 heads of office meetings, they resolved to work on
21 some of these systems types of projects.

22 What you have here is a list of what

1 they call the foundation projects and they include
2 for example search strategy, machine translation,
3 search and examination, things that if all the
4 major offices shared it would facilitate work
5 sharing by providing ways for examiners to
6 understand what the other corresponding examiners
7 are doing and why.

8 MR. MATTEO: Excuse me, Mark. In terms
9 of allocating, which is probably the wrong word,
10 but choosing which patent office did which
11 project, did you endeavor to identify who was
12 particularly advantaged in search for example and
13 that became the PTO we're going to lead by best
14 practices and we'll do this?

15 MR. POWELL: I actually wasn't at that
16 particular meeting, but to my understanding it was
17 on a voluntary basis. I think the EPO volunteered
18 first to take the documentation part which really
19 makes sense because they spend the highest
20 percentage of resources on documentation than
21 anybody. We took the first search strategy and
22 the examinations rules, and I think Japan and

1 Korea picked up on two. There were eight
2 originally, and China in the end wanted to start a
3 project on statistical reporting, comments --
4 offices which really ties into our pendency
5 modeling efforts and that sort of thing and is
6 important, as well as common training or rather
7 common approaches to commonizing to the extent we
8 can procedural things and quality measurement
9 systems. I think it was more a quick we'll do
10 this and we'll take that and I think that's more
11 or less how that panned out.

12 However, going to the next slide, since
13 then what they've done is because there is so much
14 overlap of the topics that you saw on the previous
15 slide, the group has broken this down into three
16 basic working groups. One of them has a single
17 project and that is the common hybrid
18 classification system. Just to give you an update
19 on that, the thought there is that each of the
20 offices or many of the offices and offices outside
21 of this forum have focused resources on
22 classification in certain areas and frankly have a

1 better classification system than other offices in
2 certain areas. Certainly by example, the USPTO in
3 our medical devices and other areas, we have the
4 most granular system, the most easy to search and
5 the most logical. Other offices, Japan for
6 example, has an excellent breakdown of a lot of
7 the automotive-related technologies and that sort
8 of thing. The idea behind this whole system is to
9 try to combine the best parts of the offices into
10 one system which is using the IPC as the backbone,
11 not the IPC itself, but as a format, and then
12 eventually over a period of time have one
13 classification system in which all examiners are
14 searching so that when an examiner in Korea is
15 searching a subclass, the examiner in the United
16 States knows that he's searched that subclass
17 using these key words with the idea that if
18 examiners can share what they've done and convey
19 what they've done, the examiner in another office
20 won't have to repeat it to save efficiency.

21 MR. MATTEO: Mark, if I may, the intent
22 of this is to supplant and each individual

1 national classification exists in parallel?

2 MR. POWELL: In the ideal it would
3 supplant it in the end.

4 MR. MATTEO: Clearly there needs to be
5 some juxtaposition for at least a while.

6 MR. POWELL: Of course, as with
7 everything we do in the IPE community, there is
8 never a 100-percent solution because we have
9 technology that other offices don't examine, for
10 example, business methods and that sort of thing
11 so that there are always exceptions.

12 MR. MATTEO: Fair enough. I'm just
13 trying to get a sense of the trajectory and the
14 objectives.

15 MR. POWELL: Again this is a tremendous
16 undertaking and coming up with a common
17 classification schedule is probably relatively
18 easy. The difficult part is getting all the
19 documents reclassified into that over some period
20 of time and that's very costly obviously. There
21 are tools that can help do that that could be
22 phased in to areas that are hot currently. This

1 of all of them is probably one of the longest-term
2 of the 10 projects.

3 What they've done of late is identify
4 some potential pilots to start essentially
5 discussing areas where one office is better than
6 the other and to try to work them into some very
7 basic straw man beginning for the process.
8 There's a meeting next week in Japan on that, and
9 then we have another one in March.

10 The second working group very, very IT
11 oriented. Again as I said, a lot of these
12 projects are very interdigital. I think the first
13 item you see there, the one portal dossier.
14 That's probably one of the foundation projects
15 that we would like to see come to fruition the
16 quickest. Without going into a lot of technical
17 detail, this is the one I think of, to click here
18 for all search and examination results, and there
19 it is all around the world. Then we have the
20 common documentation database. They're still
21 discussing the concepts. We would all like to be
22 looking at the same group of references in line

1 with the PCP minimum documentation ideal. Is that
2 one data base? Is it a distributed database? The
3 office have agreed to the concept of these and all
4 the things you see here and they're currently
5 looking at different technical solutions which are
6 feasible.

7 MR. MATTEO: A federated search of
8 sorts?

9 MR. POWELL: Frankly, I'm not an IT guy,
10 but they're looking at, yes, I think a federated
11 search.

12 MR. MATTEO: The broad direction if not
13 exactly the incarnation.

14 MR. POWELL: Yes.

15 MR. MATTEO: Thank you.

16 MR. POWELL: Exactly. That's what this
17 working group has focused on.

18 There's a third working group which is
19 more examination-related practices if we can go to
20 the next slide. That again is the statistical
21 parameters, the training, how can we cooperate on
22 harmonization of rules and procedures, more

1 long-term things. At the bottom of the slide you
2 see outside of the first work group the next steps
3 for the others.

4 I believe I brought this to the last
5 PPAC a few months ago. During this fiscal year
6 absent any particular work sharing program or IP-5
7 project, we try to be a little more proactive
8 inside the USPTO and put together a guide for
9 examiners which we called the Prosecution Passport
10 and it looks like a passport. It's an IT guide
11 where if an examiner has an application with EPO,
12 Korean or a Japanese priority, they can go to this
13 guide and it shows how in our systems they can get
14 directly to the file wrappers of those offices and
15 extract the work. Unfortunately right now you see
16 that it's limited to three offices, but those
17 frankly right now are the only three offices that
18 have work available online through our dossier
19 access system. We'd like to have the German work
20 available because they're our third-largest
21 cross-filer believe it or not. When I visited
22 them last year I noted that they were about where

1 we were about 7 years ago. They were just about
2 to go into an electronic file wrapper system. So
3 hopefully very soon we will be able to have access
4 as well. That's your update. Are there any
5 questions?

6 MR. MATTEO: No. Thank you very much.
7 In particular, I appreciate your pinch-hitting.
8 Thanks for stepping up. We've had some changes to
9 the agenda. It's just about 10 after 12:00. Why
10 don't we take a 30-minute lunch break and
11 reconvene about 12:40 and hopefully by then Drew
12 will be back and we can kick off the 101. If not,
13 we'll pick up the agenda from there.

14 (Recess)

15 MR. MATTEO: Why don't we reconvene and
16 we'll get started? We'll return to one of the
17 very beginning items, PT 101. Drew Hirshfeld, if
18 you would, please.

19 MR. HIRSHFELD: Thank you very much. I
20 apologize for having to leave suddenly. What I'd
21 like to talk about are the interim instructions
22 for evaluating subject matter eligibility.

1 Interim instructions were given by me to the
2 examining corps on August 24, 2009, and all of
3 these instructions are posted on the USPTO's
4 website. In combination with the instructions is
5 about an eight-page document. There is also
6 training material that goes with the instructions.
7 As with the theme that we've talked about
8 throughout today with a collaborative effort on
9 all of our activities at the PTO, we do have a
10 public comment period which was first set out for
11 30 days and then it was extended so that that
12 comment period is now open to November 9, 2009.
13 Comments that we've received to date are posted,
14 or at least comments that we received by September
15 29 are currently posted on the website, and
16 additional comments will be posted on the USPTO's
17 website as well. It certainly should go without
18 saying but I'd like to reiterate that these
19 comments are very important to me and the PTO as a
20 whole to hear what people think of the
21 instructions, what changes should be made, and of
22 course where appropriate we will certainly make

1 changes to the instructions. This goes with an
2 earlier theme also of have an iterative process.
3 I think that these instructions are certainly no
4 different from anything else, that this a step in
5 the right direction hopefully and changes will be
6 made. We all know that there's the big Bilski
7 case coming right around the corner, and of course
8 changes will also be made relative to the decision
9 in the Bilski case.

10 Also it should go without saying that
11 the purpose of issuing the instructions was simply
12 to provide guidance. I don't think there's any
13 secret that there's been feedback to the PTO and
14 through internal reviews at the PTO that there was
15 not as much consistency as we would like, so
16 certainly the goal of these instructions was to
17 promote consistency throughout the corps which of
18 courser is better for examiners and practitioners
19 and puts everybody on the same front and on the
20 same page as a good starting point.

21 It was an attempt of mine in coming up
22 with these instructions not to add significant

1 restrictions on eligibility. As a matter of fact,
2 I would say it was the opposite, that it was the
3 rein in to make sure that people weren't going too
4 far in what they were making in 101 rejections.
5 Certainly we're in a state of flux. We understand
6 that the Supreme Court case is pending, so these
7 were as an interim basis to try to promote
8 consistency, try to bridge the gap to the Supreme
9 Court case and of course revise as necessary.
10 Also there has been a lot of discussion about how
11 various case law has affected certain technology,
12 software, business methods, et cetera, and there
13 was an attempt to try to treat all claims
14 similarly regardless of where they are and to
15 minimize impact on certain technologies.

16 Today I only have a small amount of time
17 so I can't take you through the whole instruction,
18 but as a very high-level summary, changes were
19 made and the instructions addressed not only
20 process claims but also product claims as well,
21 and of course that was to promote consistency
22 where I was getting feedback that there were

1 inconsistent practices, and it was also to provide
2 examiners with important guidance that's
3 necessarily since because the Bilski decision put
4 questions as to the continued validity of the
5 useful, concrete, and tangible test.

6 For method claims, all method claims are
7 analyzed under the machine or transformation test,
8 and again that's all method claims. There have
9 been a lot of question as to do you treat business
10 methods differently than anything else or computer
11 method claims, and the answer would be, no, all
12 methods are going through the machine or
13 transformation test. For products, all claims are
14 analyzed to see if there is a judicially accepted
15 subject matter first, and if there is, the inquiry
16 doesn't end there. In other words, the claim
17 would not automatically be ineligible, we would
18 look toward the preemption test and there would be
19 a preemption to see if there's a particular
20 practical application of that judicial exception.

21 Another area that the instructions
22 address, and this in at least my opinion is it is

1 a significant change and probably again in my
2 opinion, others may feel differently, but I think
3 this is the largest change to the instructions,
4 the difference between the handling of functional
5 descriptive material and nonfunctional descriptive
6 material. Previously these were issues under 101
7 subject matter eligibility. In other words, an
8 examiner would look first to see do you have for
9 example nonfunctional descriptive material and
10 look at that material by itself and see if that's
11 eligible or not and then make the determination of
12 the claim based on a specific limitation. In
13 trying to teach examiners that we want to look at
14 claims as a whole, that analysis really makes more
15 sense in a patentability type of analysis under
16 102 and 103 and not under a 101 analysis so that
17 the instructions do tell the examiners to now look
18 and do a functional/nonfunctional descriptive
19 material analysis under art and look at the art
20 and not as a 101.

21 That was a very quick high-level
22 summary. As for the training, in September

1 approximately 5,000 examiners were trained on
2 these instructions. Again they are on the USPTO
3 website. Each of the technology centers are
4 working on more specific training geared to their
5 particular examples that they see in their
6 technology centers. Certainly what we had rolled
7 out with the 5,000 examiners was 1 hour of
8 training, there was an overview as a first step,
9 and the next step would be the TC-specific
10 examples and those are currently being worked on
11 by each TC and also with my office and they're at
12 varying stages, but in the works of rolling out
13 that training to examiners which will be the next
14 step.

15 The people who are working on these
16 training have been instrumental, and in my group
17 I've had a 101 group that's been formed from
18 representatives from all of the technology centers
19 so that the people who are working on this
20 training in combination with some of my direct
21 staff have all been working together for months on
22 the training materials.

1 Finally, as with most of the training
2 materials or all of the training materials, we're
3 making an effort again to make sure that we're
4 working with the public and receiving public
5 comments and all of the training materials that
6 are rolled out will be posted on the USPTO's
7 website and available for public comment. That's
8 the quick overview of 101.

9 MR. MATTEO: Thank you, Drew. Just for
10 my purposes of clarity, you had mentioned
11 something at the beginning of your conversation.
12 It sounded as though this was an attempt at
13 expanding the criteria. Was it your sense that
14 you were getting false negatives before this in
15 terms of 101 determinations?

16 MR. HIRSHFELD: I think that the main
17 problem was a lack of consistency. There were
18 many false negatives or many rejections that were
19 being made that I did not feel were appropriate
20 101 rejections. Overall I feel that the
21 instructions have done a good job in making people
22 more consistent, but I think any time you have

1 inconsistency you're going to have errors on both
2 sides that you need to rein in and bring together.

3 MR. MATTEO: I appreciate that. Thank
4 you. Are there any other questions from the
5 floor? Why don't we move to finance? I'll ask
6 Mark to pick up. And apologies in that we're
7 changing the schedule again yet to availability.
8 I think from now on we'll just skip the agenda.
9 We're doing fine, do don't worry. If you would,
10 please.

11 MR. OLECHOWSKI: I appreciate you
12 webcasting as well. I was able to sit up there
13 and listen in and write down all the questions
14 people were asking Dave and Peggy and make sure I
15 say the same thing.

16 MR. MATTEO: As long as you come down
17 with the answers, that's what we're looking for.

18 MR. OLECHOWSKI: Thanks. I'm Mark
19 Olechowski. I'm the Deputy CFO here at the Patent
20 and Trademark Office. The first slide is a slide
21 of our average workday patent fee collections. We
22 have the ability to, and we do, we count money

1 every day and so this is the average number of
2 patent dollars from all patent fees that we
3 received on a daily basis for the entire fiscal
4 year. You can see that in the beginning of the
5 year, the first quarter, I would say that's pretty
6 nominal first-quarter activity. If you remember
7 last year, we implemented a 5-percent CPI and what
8 typically happens when we institute a consumer
9 price index adjustment to our fees, we get a lot
10 of money in September. People are paying their
11 maintenance fees ahead of time to save the 5
12 percent. It might not affect the individual
13 applicant, but certainly companies that have a
14 large portfolio will pay us in advanced and then
15 we see a decrease in the amount of fees we receive
16 in the first quarter because people have paid
17 ahead. The CPI while it increases our fees,
18 actually the money we get in September is less
19 than we would have gotten if they had paid their
20 maintenance fees on time, even though it's
21 certainly within their window.

22 We started to notice, it was around

1 January, in fact it wasn't the January decrease in
2 fees that alerted us to a problem, it was a
3 decrease in the number of applications. We saw a
4 significant decrease in the number of applications
5 filed in January relative to what we've seen in
6 previous years and so we started asking ourselves
7 questions, we're asking Patents questions, we're
8 looking at our fee collections and everything
9 else, and I remember the management council
10 meeting where we said that we were concerned that
11 we needed to know if it was an anomaly or a trend.
12 As you can see from the remainder of the year, it
13 certainly was the start of a trend. In February,
14 then Acting Director John Doll instituted some
15 immediate cost- saving measures as we revised our
16 projections from our initial president's budget
17 level down significant and went through a series
18 of cost-saving measures which I know both the PPAC
19 and the public are aware of. We made some
20 significant decisions through the year in order to
21 make sure we ended the year with a positive
22 balance and from a CFO perspective certainly keeps

1 us from going to jail. There were some
2 significant decisions made by the Patent Office.
3 Probably most significant was patent hiring. We
4 were on a trajectory to hire 1,200 patent
5 examiners a year significantly affecting backlog
6 and pendency in 2010, 2011 and 2012, and that was
7 probably the most significant cut we made, but it
8 got to the point where we had to continue to make
9 cuts across all of the business units. As you
10 know, we finally secured patent examiner overtime,
11 we've cut travel and training and supplies. We're
12 not hiring anybody right now, not even if somebody
13 in your office leaves with very, very minor
14 critical exceptions and that's the way we've ended
15 the year. I will note that if you see a large
16 increase in September which somewhat surprised us,
17 I would say in the last 5 days of September we
18 collected \$20 million more than we thought we
19 would, and when we looked it they were all from
20 our bulk maintenance fee payers, so it's money I
21 think we would have gotten in 2010. I don't thin
22 it's the start of a trend, although it would be

1 nice if it was the start of a trend, and I think
2 through the first few days, half the month of
3 October, we're seeing something in between the
4 depths of where we were in July and August and
5 where we ended up in the month of September,
6 hovering between \$6 and \$7 million a day. But it
7 got to the point last year where everybody wanted
8 to know what we were collecting every day and so
9 we've stopped issuing daily fee reports because we
10 don't want to trend on daily fee projections, but
11 I think the shape of this curve tells you that it
12 was a difficult year for us last year and Dave,
13 Peggy, Robert and the people who have talked today
14 have talked about the impact not only on the
15 office but to the community at large.

16 MR. MATTEO: Mark, if I may, just a
17 quick question on that previous slide. To put
18 that in perspective, do you have year-over-year
19 trending analyses to give us a sense of how to
20 interpret this?

21 MR. OLECHOWSKI: We do. I can provide
22 you something, Damon. In fact I can tell you the

1 exact numbers if I can read my own chart, in 2008
2 we collected just in patent fees \$1.643 billion,
3 and this past year we collected \$1.656 billion, so
4 just from 2008 to 2009, I only collected \$20
5 million more than I did in 2008. But when we were
6 hiring 1,200 patent examiners a year, the cost of
7 1,200 patent examiners in the first year is only
8 about \$30 million, and now when they all stay on
9 board and I have to pay them their entire salary
10 for an entire year, it's about \$100 million, so
11 the fact that I collected what I did in 2008
12 certainly was not going to cover the cost of our
13 operations in the next year which was the reason
14 we had to start scaling back. If you want to talk
15 about attrition, this is purely a financial
16 statement, attrition is a two- edged sword. While
17 we like to see our people stay, we project that so
18 many people will leave so that when they don't
19 leave it costs us more money which is a good thing
20 that they're staying and examining patents, but
21 they cost us more money. That's purely financial,
22 Robert. As I said, it's a good thing and even

1 that has made our lives a little bit difficult
2 because we've had a normal attrition rate over the
3 years that everybody has been fighting, we have
4 recruitment bonuses and we think we have our arms
5 around that, so now we're seeing what's the effect
6 of the economy on all that with people staying
7 around, like I said which I think is a good thing,
8 that's just one aspect of the projections we have
9 to do that makes it a little more difficult in
10 this day and age. I think somebody asked Peggy
11 about maintenance fees. We collected maybe \$20
12 million less in maintenance fees last year than we
13 did the year before, but the rate of payment
14 changed. The first stage went from 89 to 83,
15 second stage went from 79 to 69, this stage from
16 49 to 43, so even though there was a bigger pool
17 of patents out there that people could pay their
18 maintenance fees on, companies were choosing to
19 pay a lesser amount of them, and we got that
20 information as we talked to some of our
21 stakeholders, the AIPLAs and the IPOs and some of
22 our interest groups and I think companies were

1 taking a hard look at their portfolios, where in
2 years past they have decided I'm going to keep
3 that patent in force, they were taking a hard look
4 at the patents they were paying their maintenance
5 fees on. So those were probably the two biggest
6 drops from our fee collections, maintenance fees
7 and application fees. We received more money than
8 we thought we would in issue fees because people
9 are here, they're staying here, they're working
10 and they're pumping out the patents so we received
11 more money in maintenance fees. We were about
12 even on things like extensions of time. From a
13 CFO perspective we were concerned about extensions
14 of time. We thought that with the economy and
15 everything else we'd see a significant drop in
16 that fee category and it was about consistent with
17 what it had been in years past. You guys are
18 running businesses and I don't know what the
19 future holds, but those are the kinds of things
20 that I think have made it difficult in 2009, 2010
21 and 2011 to really project what we think is going
22 to happen. I think we've been fairly

1 conservative, and I'll get into that in a minute,
2 on what we think is going to happen in 2010. I
3 know Dave and Peggy have big plans that we'd like
4 to get done, but until we see a significant
5 increase in the revenue stream, it's going to be a
6 challenge to get a lot of those things done which
7 I think is what Dave was talking about with an
8 interim fee adjustment that would certainly help
9 things here at the Patent Office as we watch for
10 fee-setting authority and some of the longer-term
11 fixes that we think we need.

12 MR. MATTEO: Thank you very much.

13 MR. OLECHOWSKI: This slide is not
14 actual fee collections. These are what our
15 projections were at that particular time. You can
16 see in the beginning of the year that we were
17 projecting that we thought we'd collect what we
18 had put into the president's budget, a little more
19 than \$1.8 billion, and then as we got into January
20 we revised our fee-collection estimates and at the
21 same time we revised our fee-collection estimates,
22 we had to start cutting our spending. So you can

1 see that in the February timeframe the spending
2 projections started to fall below collections
3 which keeps us out of jail. You can see at the
4 end of the year in the September timeframe we
5 started to collect a little more fees than we had
6 thought we would and the bump-up in spending is
7 not because we started to see fees come in and so
8 we started to spend more money, just before the
9 end of the fiscal year we forward-funded a couple
10 of contracts that started on October 1, paid a
11 month of rent ahead of time to get us started on
12 the fiscal year on a little bit better footing,
13 reduce our carryover somewhat, but we tried to
14 keep the spread between projected income and
15 projected spending about consistent with what it
16 had been all year.

17 MR. MATTEO: Mark, these numbers are
18 listed as projected.

19 MR. OLECHOWSKI: Of course, they're
20 exactly what they are on September 30, so we ended
21 up collecting in patent fees last year around 1656
22 -- because we have other sources of income, we had

1 the carryover we had the year before, we made a
2 significant effort with all of our business units
3 in the Office of the CFO to go back and look at
4 old contracts. We closed out a whole bunch of old
5 contracts. We normally recoup somewhere between
6 maybe \$8 and \$10 million from old contracts. We
7 recouped probably upwards of \$25 million last year
8 so that that comes back. Since our fees and the
9 money we collect are available until expended,
10 that money comes back to us and we're able to use
11 it so that added to our carryover this year which
12 will certainly help us get through 2010. But
13 overall, we collected around 1656 in patent fees
14 last year.

15 MR. MATTEO: 1656, and an operating
16 expense of?

17 MR. OLECHOWSKI: It's somewhat less, but
18 it depends on when the actual cost is incurred.
19 So while I might sign a contract, I don't have to
20 necessarily pay the entire cost of that contract
21 so that when we do our books it's the number
22 that's actually expended. We carried over I

1 believe \$56 million in patents, so what's the
2 difference there? We probably had expended in
3 patents around 1.6. I think the last time we had
4 talked to you some of the difficulties we had last
5 year in making our cuts is that in recent years,
6 maybe 5 or 6 years ago, the slice of the pie in
7 the Patent and Trademark Office that was
8 compensation was about 50 or 55 percent. Today
9 it's almost 70 percent because we've grown so
10 much. We've been hiring people for the past 3-1/2
11 years, so it makes it difficult to do cost- saving
12 measures when 70 percent of your spending is in
13 people. We're not going to get rid of our people.
14 So then when you talk about I have to pay my rent,
15 I have to pay my utilities, the amount of the pie
16 that's available for cost savings really starts to
17 shrink. We talk about our IT contracts, I'm sure
18 John is going to chat about where he is.

19 MR. MATTEO: Fair enough. I understand
20 how that works and how accruals work. My question
21 maybe wasn't clear. What I was trying to get at
22 is you have projected here, I was trying to get a

1 sense of how closely the actuals map to the
2 projected so we can get a sense of confidence
3 about our forecasting ability. Is it getting
4 better? Are there things that we as PPAC or our
5 connections can do to help refine the forecasting?
6 The better visibility, clarity and certainty you
7 have in forecasting, the better able you are to
8 manage strategically. So if there's a way for us
9 to help, that's where I was going with that.

10 MR. OLECHOWSKI: We would certainly
11 enjoy any help we can get. I think it's certainly
12 challenging in this environment to do forecasting.

13 MR. MATTEO: You're not the only one
14 trying to forecast in a challenging environment.

15 MR. OLECHOWSKI: In February when we
16 were trying to get our arms around this, we had
17 projected that we would end the year around 1850
18 and I think that's where we ultimately ended up,
19 around 1856, so I think once we got our arms
20 around what was going on out there, we were able
21 to like I said get our arms around it. I think
22 we've been conservative with our estimates in 2010

1 for good reason. I think we're all hopeful that
2 things are going to start to look up. Dave asks
3 me daily when can he start getting things done.
4 He talked this morning about some of the things he
5 wants to get done. While we're hopeful, we really
6 do need to monitor fees and we're 14 days into the
7 fiscal year and so I encourage your family and
8 friends to apply for patents pay their maintenance
9 fees. If you want some briefings on how we do
10 forecasting, we'd be glad to provide that to you.

11 MR. MATTEO: I would certainly be
12 interested, there are people with finance or
13 economic backgrounds as well, because we're all
14 struggling with this from different perspectives.
15 Maybe there is some learning that we can share.

16 MR. OLECHOWSKI: Absolutely. And a lot
17 of it is what is the applicant community going to
18 do?

19 MR. MATTEO: Not only that, we represent
20 a broad base of constituencies. One of the things
21 for example that I do in my organization is to the
22 extent we rely heavily on a particular industry or

1 a particular customer, we create an X-Y-Z watch so
2 we map what their fortunes are because we know
3 ours are probably going to follow theirs so that
4 there may be different ways that we can engage and
5 help you in this process. I'll offer that up.

6 MR. OLECHOWSKI: That's great. This is
7 another pictorial representation of where we were
8 in 2006. You can see that we were on a trajectory
9 once again to continue to grow. We knew that the
10 patent community lags the economy. The Trademarks
11 organization is much more responsive. It's almost
12 a leading indicator of the economy. They're much
13 more affected by the economy sooner than the
14 patents community is. Usually it's a year or two
15 after the economy goes up or down that the patent
16 community feels the impact so that we knew that we
17 would feel some impact to the patent community,
18 but we didn't actually think it would happen until
19 later in 2010 or 2011. So we were continuing to
20 hire our patent examiners, work on our IT systems,
21 so when our fees really started to decrease in
22 2010, you can see that we've leveled off from

1 where we thought we'd be somewhere up in the \$2
2 billion range to where we ended up in 2009 which
3 is just about 1.8, and I'm talking total PTO now.
4 So in 2010 we're estimating that collectively both
5 patents and trademarks will collect around 1886.
6 In patents dollars it's only \$10 or \$20 million
7 more than we collected in 2009, which leads me to
8 the next slide which I think Dave certainly
9 alluded to and Peggy talked about some. These are
10 the things that are currently not funded in our
11 2010 operating plans that our business units have.

12 MR. KIEFF: May I quickly ask a quick
13 question? Am I right then that in noticing that
14 the overall expenses for the office are almost
15 totally from the patent side and not the trademark
16 side?

17 MR. OLECHOWSKI: The patents/trademarks
18 revenue split varies over time, but it's anywhere
19 from 8812 to 9010. It's about 9 to 1 patents to
20 trademarks in terms of revenue that the office
21 generates.

22 Like I said, I think some of the people

1 who have talked before me have talked to you about
2 where we are in 2010. We're not hiring anybody
3 which I think is a big impact to the Agency
4 whether that be a patent examiner who leaves or an
5 accountant from the CFO's office or an attorney
6 from Drew's group, that's a big difference in the
7 way we do business. Overtime has been curtailed
8 for patent examiners and all across the Agency.
9 The PCT which we had a little discussion on before
10 is funded at the contractual minimum. We're not
11 funding some of John's most critical projects.
12 We're asking him to keep the systems up and
13 running to the best of his ability. The same cuts
14 that we executed in 2009 to the travel, the
15 training and the supplies rolled forward into
16 2010. So I think it's going to be a very
17 challenging year to keep operations at the level
18 they've been through 2010. Dave talked about a
19 \$200 million shortfall and that's certainly as
20 number that we've talked about to our
21 stakeholders, to Congress, to Commerce, and it's a
22 shortfall as in I don't have the money to do that,

1 it's things that we'd really like to get done,
2 hiring people, turning back on overtime, all these
3 other things that we've currently cut out of the
4 budget to get the PTO to what we call a sustaining
5 level of operations.

6 I think Dave talked about a missed
7 opportunity. I think we have missed an
8 opportunity in 2009 with filings dropping. It was
9 a great opportunity to really dig into the backlog
10 and get pendency down, and we're projecting that
11 filings through 2010 will remain flat, I think
12 maybe at a number this morning or this afternoon
13 where Peggy said around 460,000. So it's another
14 opportunity with the people who we're keeping on
15 board to really dig into the backlog and get it
16 down to a more manageable level, but I don't know
17 if we're going to have that opportunity with the
18 current level of revenue we're expecting.

19 MR. PINKOS: A quick question? Or maybe
20 not so quick. With the cutting that's had to
21 occur, and Peggy might want to comment too, and
22 even related to the ceasing of all hiring, we as

1 PPAC are probably most concerned obviously that
2 the hiring of examiners has been cut back, the
3 overtime, the pendency reduction measures that are
4 in place and the concern that the progress that
5 was being made will regress, so that's obviously a
6 difficult issue to handle and deal with. Are
7 there some positives that are coming out of the
8 belt-tightening in the really deep scrub you've
9 had to do in finding areas that maybe the spending
10 wasn't so important? In fact, on the hiring
11 outside of patent examiners, do you find that when
12 you're forced to do more with less that you can do
13 more with less? Many times it's difficult to pare
14 back the number of government employees in a
15 particular area once you reach a level, but now
16 that you have some attrition, have you find that
17 maybe some of the positions don't need to be
18 filled?

19 MR. OLECHOWSKI: I can start that.
20 You're right, that wasn't quick, Steve.

21 MR. KIEFF: I also realize I can rarely
22 be quick. I don't know why I prefaced that.

1 MR. OLECHOWSKI: I'll try to answer a
2 couple of the questions that were in there.
3 Certainly there was some housekeeping done. I
4 think we had gotten to the point where we were
5 funding things because they were for lots of good
6 reasons the thing to do, so then as the economy
7 turned, priorities have to set, so that certainly
8 there was a degree of housekeeping that had to
9 happen. I would think that business units,
10 whether it be Patents or the CFO or External
11 Affairs were doing more with less, but I think
12 it's a matter of endurance. How long can you ask
13 your people to continue to do more with less? I
14 think every day people come to work and they want
15 to get the same things done. They want to try to
16 get everything done that they got done in the
17 past. I think a good example, I'll just use art,
18 I have a procurement shop that has normally I
19 think has 34 billets and we're down to 24 people
20 and we have 1,700 contacting actions that we did
21 this year and the same amount we last year.
22 That's a significant strain on people and I think

1 that while we certainly talk about efficiencies
2 gained, I think it takes its toll on people
3 especially in the acquisition community where the
4 1100 and the 1102s really can jump around. There
5 are so few of them in the federal government that
6 they can really move around and I think we've seen
7 the effect of that in our contracting shop just
8 because there is a lot of movement within that
9 community to begin with so that people are jumping
10 up but they're not allowed to jump in. Maybe
11 Peggy or Robert can talk about the examining
12 corps. I think we've certainly seen a fewer
13 amount of attritions that we've seen before and
14 it's hard to put your arms around what the exact
15 reason is. We've certainly done better in our
16 recruiting to get the type of people we want in
17 here. We have a recruitment bonus that is
18 attracting our very best. And I'm sure that the
19 economy has something to do it. People just
20 aren't leaving in the numbers they have before,
21 but it may be because we're getting the right
22 people in here. So I think all of that said is

1 certainly there are good things about it, I think
2 there are bad things about it as well, Steve, that
3 we've learned.

4 MR. MATTEO: Scott, did you have
5 something?

6 MR. KIEFF: Is there a rough guess, and
7 if not, what would it take to make an informed
8 guess, about the tradeoff in a coming year like
9 this between impact to your budget and every X
10 percent of the backlog being decreased so that an
11 informed choice could be made about whether it's
12 actually prudent to spend the money to chew up the
13 backlog? It may be because everybody likes to get
14 rid of a backlog, but it may be that the cost of
15 chewing up the backlog is your \$200 million
16 shortfall in which case ride the backlog for
17 another year and there's your \$200 million.

18 MR. MATTEO: Is it a stasis question?

19 MR. KIEFF: I don't know.

20 MR. MATTEO: Or is it an
21 eat-away-the-backlog question?

22 MR. KIEFF: It's both.

1 MR. MATTEO: I think this is part of a
2 sustainable enterprise question. I'm answering
3 your question for you.

4 MR. KIEFF: I'm really asking the very,
5 very narrow, the specific do you know has anyone
6 done a rough costing of what it costs to chew up
7 backlog?

8 MR. SALMON: I don't know if we've done
9 a specific cost analysis on what it would take to
10 get to, I don't know what the optimal number is,
11 Peggy.

12 MS. FOCARINO: Ten months.

13 MR. MATTEO: Let's ask the question a
14 little differently in terms of how much are you
15 spending to eat up the backlog every year, if you
16 can put your finger on that?

17 MR. KIEFF: Yes, that's all.

18 MR. MATTEO: So whatever that number is,
19 maybe we dial it back, maybe we dial it up in
20 trying to get a sense of what is the sensitivity
21 analysis regarding that? Is that a better way to
22 phrase it?

1 MR. OLECHOWSKI: Peggy, how much of the
2 backlog did we eat up last year?

3 MS. FOCARINO: 20,000 cases.

4 MR. OLECHOWSKI: I would say that's
5 pretty expensive. That's why I said it's an
6 opportunity missed because I think if we had been
7 able to continue on a trajectory where we were
8 including some of the things we're trying to do
9 now with process improvements, the new count
10 system, possibly a new fee structure, I think that
11 that trajectory could certainly take off in a
12 different direction than just 20,000 cases a year.

13 MR. KIEFF: I hear that, but I guess all
14 I'm saying is an opportunity was taken. The
15 decision was made either actively or possibly,
16 consciously or unconsciously, to over the last
17 year take advantage of the fact that filings were
18 down to pay attention to backlog, and maybe what
19 we could have done is taken advantage of the fact
20 that filings are down and paid attention to
21 something other than backlog.

22 MR. MATTEO: Independent of whether

1 filings are up or down, if you're teetering on the
2 brink of being a sustainable enterprise or not, IT
3 systems crumbling around us or not, that's the
4 kind of decision that needs to at least be
5 considered.

6 MR. OLECHOWSKI: Maybe I can answer
7 without really answering and say that I think
8 2009, and it's in some of the documents that we've
9 put out, exposed some vulnerabilities in the way
10 we're funded. So what I think Dave and ourselves
11 and Commerce and the Administration are working on
12 for a long-term solution is giving the PTO tools,
13 that if we're going to operate truly as a
14 fee-funded Agency as a business then we probably
15 need tools to do that. So in a normal business if
16 revenues are down, what are the options? You
17 probably can either borrow money, you can dip into
18 a reserve, you could get some other investors. We
19 don't have those kinds of tools.

20 MR. MATTEO: This is a different
21 question that we're asking. I think we all to a
22 person enthusiastically support increased

1 financial mechanisms, having reserve drawdown, all
2 of those things are for me at least independent of
3 this question, independent but I support them
4 fully. My question is, let me put it this way,
5 how much did those 20,000 dispositions cost the
6 PTO this year, or last year, sorry, in dollars?

7 MR. OLECHOWSKI: They cost us \$1.7
8 billion. That's the cost of operating the PTO for
9 a year.

10 MR. MATTEO: You've chipped away at
11 20,000 of the backlog. Incrementally how much did
12 that cost just ballpark. I don't need it to 12
13 decimal points.

14 MR. OLECHOWSKI: I'm still not so sure I
15 understand the question.

16 MR. KIEFF: Let's imagine you were as
17 happy as possible with the books. I know you're
18 not and we want to help you get there. I know
19 that we should respect your heart-felt,
20 well-reasoned, intense preference that we focus on
21 that point, so we will focus on it. But the
22 question that Damon and I have been asking is a

1 different question. We apologize for distracting
2 the conversation, but want to distract it. We
3 want to take you off the track of trying to
4 convince us because we are convinced, that there
5 is a deep need to have overall more resources and
6 a deep need to have overall more financial
7 flexibility so that we're on our side. But
8 please, a totally different question. Last year,
9 this past year, the backlog changed. It changed
10 by 20,000. Is there a way to make an informed
11 guess about what that cost?

12 MR. OLECHOWSKI: While I hear and
13 understand the question, I'm not even so sure why
14 it's a pertinent question. It's not just that we
15 reduced the backlog by 20,000, we issued some
16 120,000 patents.

17 MR. KIEFF: The reason we're asking is
18 because on a going-forward basis, no one I think
19 has done -- in a perfect world you might want to
20 run an operation that has no backlog.

21 MR. MATTEO: A completely different
22 approach. Let me try it this way. Part of the

1 messaging could be, and let's make it messaging,
2 PTO has desperate needs for this versus pendency.
3 Which do you think we should be supporting with
4 our \$1.8 billion of resources? Do you want us to
5 dedicate that on a going-forward basis to IT
6 infrastructure or whatever or is it more
7 important, public and Congress and whomever, to
8 eat away at the backlog?

9 MR. OLECHOWSKI: I'm certainly not the
10 person to answer that question about what the
11 priorities are.

12 MR. PINKOS: It doesn't really work that
13 way in the sense that it's not like the PTO is
14 ordering up 20,000 or more cases to be finished
15 and we're paying somebody on the outside to do it,
16 hiring these people, it's not just for 1 year, you
17 can't calculate -- and much of the 20,000
18 reduction was because applications were down.
19 You're hiring thousands of new people not for 1
20 year, not for 2 years, not just based on a
21 calculation of what you want to reduce that
22 particular year, but going forward for the

1 long-term.

2 MR. MATTEO: That's the difference
3 between a diachronic and synchronic view of this.
4 I'm talking about this as a long-term strategy.

5 MR. PINKOS: I don't know what those two
6 words mean.

7 MR. MATTEO: It's a snapshot which is
8 very true now. People aren't fungible. You can't
9 make examiners IT people, although I think
10 sometimes we try.

11 MR. PINKOS: Some of them started that
12 way.

13 MR. MATTEO: That's true too. I guess
14 the question for me is long-term strategically,
15 and I believe this is about fundamentally changing
16 or at least revisiting the fundamental strategies
17 of the PTO and the priorities of the PTO, maybe in
18 a perfect world you had a choice between we had
19 finite resources, let's channel them long-term
20 where we do have the ability to change the nature
21 of our investments to infrastructure or whatever,
22 versus chipping away at the backlog.

1 MR. PINKOS: I think that's a good point
2 about revisiting because that policy decision was
3 made in participation with the public, with the
4 Congress and everybody else over the last 5 years,
5 that the resources will be dedicated to bringing
6 in new examiners and to chip away not just at the
7 backlog and new cases coming in. The revisiting I
8 think is a strong point. That decision was made
9 and they've been carrying it out and then the
10 question is where are we now and how do you
11 prioritize.

12 MR. MATTEO: Things have changed.

13 MR. KIEFF: Let me refocus the
14 conversation today for a second. Is there an open
15 question, Mark or Peggy or somebody, in the office
16 about what Damon and I are asking? Do you
17 understand what we're asking?

18 MS. FOCARINO: No, I'm not clear.

19 MR. KIEFF: Let me back up and let me
20 tell you what I'm going to say.

21 MR. OLECHOWSKI: If you just want us to
22 do the math and say what is the cost of reducing

1 the backlog by one patent, we can certainly do the
2 math. Then if you want to multiply that by the
3 750,000 cases we have and come up with some number
4 that says the PTO needs that amount of money to --

5 MR. KIEFF: Just one second. Just bear
6 with me for a minute. I would like to be able to
7 know whether you understand it. Then I'd like to
8 be able to know whether you think it's even a
9 prudent question for me to be asking. Then I'd
10 like to know whether you think that even if you
11 understand it and even if you think it's prudent
12 whether you could get an answer that would be
13 convenient and reasonably accurate so that then
14 Damon and I can get an understanding about what
15 the answer is and then we can make a
16 recommendation about whether we think it's
17 actually even worth revisiting this.

18 MR. MATTEO: This isn't about we need an
19 answer or anybody questioning what you did with
20 your money. This is about to the extent that you
21 have the opportunity to give you the opportunity
22 to revisit and if there is a change that you would

1 to make for us in toto as PPAC and to the extent
2 we can reach out to people to help support the
3 case that you would like to make going forward
4 whether it is stay the course, reallocate
5 resources on a going-forward basis, the backlog is
6 important, but we need to get the infrastructure
7 in place. If that's the kind of decision the PPAC
8 wants to make, we want to get behind that and help
9 you support that. That's the nature of the
10 question. It's not about I don't believe that
11 you're doing the right thing with the \$200 million
12 or whatever it is on a per- patent basis, it's
13 about again offering up what is it we can do to
14 support any message whether it's contrary to the
15 decision that was made 5 years ago or not. Things
16 have changed. I guess this is more of an offer of
17 help than anything else. I want it to be
18 hopefully heard in that perspective.

19 MR. OLECHOWSKI: I appreciate that and
20 we can talk offline, Scott, about what the real
21 question is, but I think you probably need to talk
22 to the Director about help in terms of setting the

1 priorities for the PTO and where we spend our
2 money. I'll be certainly glad to share any
3 information I have on a financial basis with you.

4 MR. KIEFF: But the financial
5 information is important.

6 MR. MATTEO: It's a data point. We can
7 take this conversation offline.

8 MR. KIEFF: Subject to any other
9 question.

10 MR. MATTEO: Thank you very much. I
11 appreciate your patience as we were trying to work
12 our way through that. We'll think of a better way
13 to cast the question. Again take it in the spirit
14 in which it was intended. Off target, but the
15 intent perhaps was good.

16 I think what we'd like to do is move to
17 John Owens who will talk to us about
18 infrastructure. John is the OCIO of the PTO.

19 MR. OWENS: Good afternoon. My
20 apologies for the earlier disruption in the
21 schedule. I got called by a higher power, Mr.
22 Kappos. I'm going to give you a brief overview

1 and leave most of the time so I can answer
2 questions you folks may have.

3 First off, at the beginning of this
4 year, the end of last year, almost about the same
5 time, I came to you, the current Acting CIO, with
6 a document called The Roadmap, a roadmap to get
7 the organization's IT systems healthy after they
8 had been neglected for some 10 years. I could
9 tell you out of those initiatives that the bulk of
10 them on track, six of them are on track. They
11 were process improvement, data center
12 stabilization, AIS stabilization, that's automated
13 information systems and those are the actual
14 systems themselves, service desk where we call and
15 answer questions, network, telecom and enterprise
16 architecture. Three of them are slightly behind.
17 Organizational strengthening, my human capital
18 plan, was not finished on time and I'll go into a
19 little detail on that. As for disaster recovery,
20 there is an offsite facility that I put a large
21 quantity of storage in, almost 2 petabytes of
22 storage, and we started backing up our systems.

1 Unfortunately the connection between there and
2 here is full. I cannot keep up. The bandwidth is
3 not such that I can keep up with the number of
4 changes here a day and store them offsite. We
5 have ordered up more bandwidth. We are stuck at
6 somewhere around 78 percent backed up of all the
7 data here. It's not insurmountable, it's just
8 slightly delayed. That bandwidth has been
9 ordered. Unfortunately it's to a pretty remote
10 location so it's going to take a little bit of
11 time. As for desktop stabilization, when I
12 inherited this organization we hadn't even pushed
13 out completely Service Pack One for XP nor most of
14 the security updates, so I'm happy to report this
15 week that I am pushing out Service Pack Three for
16 XP and the bulk of the security updates to protect
17 the Agency and its data from hijacking or
18 corruption. I would have liked to come to you and
19 say nine out of nine full -- in the game. It was
20 always a stretch goal to get there. We tried
21 very, very hard. The organization has really
22 pulled together to try to get there. We didn't

1 quite make it, but six homeruns and a couple of
2 base hits isn't so bad to be quite honest. So I'm
3 very proud of the organization and how we've done.

4 Let's talk a little bit about funding.
5 At the beginning of October when I presented you
6 the plan I had an idea of what I was going to be
7 able to spend. That is under the October 1
8 column. This doesn't take into account some of
9 the forward funding. This was a snapshot as of
10 just before the end of September 30 so there were
11 some forward-funding activities for my contracts
12 as well that were due on October 1 that's not
13 taking into account -- before that happened. The
14 compensation of course was reduced. Business
15 projects were drastically reduced, and I'll
16 explain the major impact that that will have for
17 you. The roadmap projects I tried to protect with
18 my life quite literally in some instances because
19 I still do believe that they are foundational for
20 the success of this organization, because at the
21 end of the day this is the system that the
22 processing of patents and trademarks happens on.

1 So if this system doesn't work, pendency does not
2 go down, transparency through data dissemination
3 does not happen, and we start issuing pencils
4 which is not what you like. This is very
5 important. The roadmap is important for those
6 reasons and it's funny to say, but it's not an
7 exaggeration. We have had system failures as
8 Robert would be able to relate horror stories to
9 you where I've had to call him and tell him I'm
10 sorry, something is broken and we are fixing it as
11 quickly as possible. That means downtime for an
12 examiner which is a loss of revenue and that loss
13 of revenue I'm just as concerned about as everyone
14 else not just because it adds to the roadmap, but
15 because that's future unrealized revenue and lost
16 potential that I don't get a piece of to fix the
17 systems, so there is that interconnection there
18 that I am well aware of.

19 Then of course operations and
20 maintenance which we've tried to prune down this
21 year to focus on stabilizing the environment,
22 spending less in this area and shifting some of

1 the money over time elsewhere. We did take an
2 impact there, but this was of course to keep
3 things operational. All in all, total reduction
4 before those pay- aheads for this year of \$60
5 million, the largest organization hit in the
6 USPTO. I have to tell you that for historical
7 purposes this has happened for many years. Over
8 the past 10 years since the year 2000, we have had
9 these types of hits to fund other things inside
10 the Agency over time, mostly hiring, and that is
11 what got us into this situation. We developed a
12 roadmap which is a 5-year plan to correct the
13 mistakes of the past, and unfortunately due to the
14 economy kind of continued along those same trends.
15 This does make me worried as the CIO because I
16 don't believe truthfully that the infrastructure
17 can take much more with the growth that we've had
18 placed upon it, and we want the growth to happen
19 because as I said, more examiners drives more
20 patents being reviewed and processed, hopefully
21 more being granted, and that drives revenue which
22 can then be used to fix the systems. We have a

1 very symbiotic relationship with that and we want
2 to see those things resolve themselves so we can
3 continue on the path of improvement.

4 Hiring. This is also an incredibly
5 important thing for the CIO. As you heard Mark
6 say, next year we plan on zero hires. I inherited
7 the organization and I was down approximately 100
8 people. I have been able to sustain through my
9 limited hiring ability this year at 95 vacancies.
10 That means I lost as much as I gained pretty much,
11 plus or minus a couple. You might also think for
12 a moment 550 people, you have 450, 100 is not all
13 that bad. One-hundred of my people are in charge
14 of data dissemination. These are the folks that
15 provide copies of documents and patents and
16 trademarks and official copies and put out
17 publicly available data, but they are not the
18 technical folks who get the job done and
19 maintaining the systems. They're vitally
20 important for the success of the Agency in
21 fulfilling my role as the Chief Information
22 Officer in the dissemination of data to the

1 public. My number-two goal. My number-one goal
2 as the CIO is to keep the systems available for
3 examination, one that has been some trouble on and
4 off over the past year, so out of these 450
5 people, only about 300 of them are technicians
6 plus a slew of contractors which I would like to
7 reduce and hire some more federal employees to
8 keep the knowledge in house which I described to
9 you in previous sessions. But above and beyond
10 all else, take that into perspective. My data
11 center runs 24 by 7. I don't really have a day
12 off. There are 200 separate systems that operate
13 inside of here, and over 1,500 servers. That's
14 not a lot of people. So not being able to hire
15 this year is a serious problem. It is a serious
16 problem for me. I wouldn't make an argument
17 against hiring in one place over another. I know
18 that the CIO has shortfalls, the CFO has
19 shortfalls, Patents themselves to keep up that
20 future revenue that I count on to get the job done
21 needs to continue to hire. It is a major problem
22 however for my organization and I'll just put my

1 name on the list of people who really need the
2 help. But it is a serious issue.

3 Let's talk about something else.
4 Details. I did get a little bit of help. SIRA
5 and Patents provided me 29 folks to help keep the
6 boat afloat, those 29 folks, and Trademarks
7 provided me three, filled some part of that 95
8 positions to help me keep going. That was
9 incredibly, incredibly appreciated. I thank them
10 all from the bottom of my heart, I tell Peggy that
11 all the time, because 95 people down and the
12 stress that it puts on my people without the
13 ability for overtime or anything else, I probably
14 couldn't have been successful this year without
15 these folks' help, and I am not kidding, each and
16 every last one of them. They were all focused on
17 development and customer support and we are
18 working on the details of these folks to Q3 2010.
19 Unfortunately that's about the maximum length of
20 time I can detail someone a year, and then I'm
21 going to have a real problem if somewhere in
22 between I can't hire. You should all understand

1 that the federal hiring practices are such that
2 for me to hire a large quantity of people, each
3 and every position takes somewhere between 3 to 6
4 months to fill. We can go into long details on
5 it, I can tell you about all the wonderful things
6 I've thought of from private industry which I just
7 came from like job fares that I'd like to do, but
8 federal regulation prohibits many of those types
9 of quick-hiring activities, so getting a decision
10 or the ability or the funding to hire early on in
11 the year is going to be more beneficial than at
12 the last minute. Otherwise I will have to look at
13 some other solutions that I haven't thought of
14 yet, so if you have any, let me know.

15 The roadmap in and of itself promised
16 that in the middle of FY 2010 we would start
17 concentrating on projects to further the systems
18 here beyond the state that they were not currently
19 in, not just stabilize them but move them ahead.
20 Mr. Kappos is very interested in doing that. In
21 fact, he's already encouraged me as some of you
22 may know from the last TPAC meeting to move

1 forward with Trademark money to advance them
2 beyond just infrastructure into building the next
3 generation. I can tell you that over the
4 discovery we've had over this year that some
5 systems that we have are so far outdated that
6 they're not worth saving while others are
7 patchable and workable. But we really have
8 stopped embracing new technology on or about the
9 late- 1980s to early-1990s era of technologies. I
10 never would propose moving us to the very latest
11 cutting-edge, but something in the last 10 years
12 is certainly my goal. To embrace this we've
13 conducted work with all of the internal customers
14 here and certainly we are looking at ways of
15 reaching out into not only the examination corps,
16 but also the public in general to get their
17 feedback, and we're developing a more robust
18 strategic IT plan or what's known as an SITP.
19 This plan will be condensed and it will be how we
20 track ourselves. It will have at its foundation
21 the CIO's desires for the roadmap involving the
22 infrastructure while at the same time addressing

1 the needs of the examination corps and the future
2 endeavors there as well as the public and what
3 they would like to see. Chapter 6 is the patent
4 chapter. The document has 10 years of pent-up
5 frustration requests in it. It's over 1,000 pages
6 long. It is a fantastic collection of material
7 that now has to be reduced down into that secret
8 sauce that we need to actually do and the action
9 items and metrics for each quarter this coming
10 year and the next five. We are still in the
11 middle of writing this. Trademarks next
12 generation which I'll talk to you a little bit
13 about will also have a direct impact on patents
14 because the technologies that we explore here to
15 move them forward of course we can hopefully bring
16 in to help patents as well, and I'll give an
17 example of that.

18 Just to talk about the trademark system,
19 I know we're PPAC here, but this is as I said
20 important for those reasons, we are looking to
21 move the trademark system to a redundant scalable
22 virtually hosted environment. Again, not anything

1 that's cutting-edge. It's been around for well
2 over 10 years, but it is something that will move
3 us away from dedicated software written on
4 dedicated outdated hardware and outdated software
5 to a more robust platform. We will migrate from
6 the legacy technologies onto reasonably modern
7 ones. We will host on industry-standard- based
8 environments so that if we outgrow this facility
9 here or have to migrate somewhere at a later time
10 or even duplicate our environment across the
11 United States, we will be able to. Today that is
12 not possible. We will replace the heavy client
13 front ends that we have with Web 2.0 style
14 technologies that are much lighter, much more
15 transportable and much more adaptive to say a
16 nationwide workforce than having remote heavy
17 client deployments are. Of course, we've already
18 embraced not only what the recent release of our
19 website which was more important for me because of
20 the infrastructure and the first time we've had a
21 content management system here for our website at
22 USPTO, but because we embraced the open standards,

1 the things that are open source, Apache, Tomcat,
2 Documentum, Web Publisher. We're looking at MySQL
3 and continued use of Oracle where it makes sense;
4 service-oriented architectures and buses and other
5 catch words that you may or may not know like
6 Ajax; but all of those things that would make a
7 modern scalable system that's much more
8 maintainable and measurable with built-in metrics
9 would also be nice that we have not yet embraced
10 here at the Agency. Some of you might be shocked
11 that we haven't, but remember, we're dealing with
12 technologies here that are late-1980s or
13 early-1990s-based and we haven't really evolved
14 past those. This project though it's related
15 mostly to trademarks will establish the
16 foundational infrastructure and the knowledge in
17 my organization and the contractors we've hired of
18 how to build and operate in this type of world
19 which is the type of world that I came from before
20 my tenure here at USPTO.

21 MR. MATTEO: John, if I may, it's not
22 explicit up here, but I'm guessing that a move

1 away from custom software to COTs is part of this.

2 MR. OWENS: Yes.

3 MR. MATTEO: If this presages something
4 you'll get into later, that's fine.

5 MR. OWENS: No.

6 MR. MATTEO: It seems like an important
7 point in terms of contractor reliance and internal
8 capabilities to highlight.

9 MR. OWENS: It's been quite an
10 interesting series of conversations. A lot of
11 folks here were under the impression that to get
12 something useful they had to go with
13 custom-written software, but there is a heavy
14 burden or heavy up-front cost to writing custom
15 software. It's like the Air Force building an
16 airplane. The Air Force comes out with a new
17 fighter jet and they say that that fighter jet
18 just rolled off the line and it was the fourth one
19 in line and it cost \$3.8 billion. That airplane
20 didn't cost \$3.8 billion. That's the cost of the
21 airplane plus all of the research, development and
22 everything else that had been spent and the more

1 airplanes you build the less that cost is because
2 you divide that initial introduction cost over a
3 greater quantity of actual final product. The
4 same thing with development. The cost of
5 development, gathering requirements, writing them
6 down, hiring contractors, fixing bugs, and
7 deploying something for 10,000 examiners, once you
8 look at the cost per person it's very small,
9 whereas if I write custom software for our Office
10 of General Counsel, 400 or 500 people for a
11 reasonably complex system, it is going to cost
12 much more per head and it makes it untenable. I
13 try to use the 80/20 rule. If you can get 80
14 percent of what you need out of a noncustom COT
15 solution, and many of the COTs products today can
16 be configured to be very customized particularly
17 with the advent of standardized interfaces, XML
18 capability to exchange data, is more than adequate
19 to meet our needs and we just have to look at it
20 like that and I have been working with my peers
21 and highly encouraging them to move to those COTs
22 products. Unfortunately for me though there is

1 one open-source patent application system project
2 that doesn't seem like it's going anywhere, but I
3 did look at it just in the by and by. We don't
4 have a patents filing system readily available for
5 purchase. The last one we did inherit has its
6 issues and I think this does deserve quite a bit
7 of care attention, and the same thing with the
8 trademark system, by the way, whereas it probably
9 wouldn't be completely akin to a COTs product, but
10 as parts of it we can use COTs products. I think
11 the largest example of a success of that is the
12 financial systems here at the USPTO which are a
13 complete COTs product. We have a system called
14 RAM that interfaces with all of the legacy
15 systems, but the financial accounting system we
16 use here is COTs and it's been configured and it's
17 very easy to maintain and the CFO and the CIO work
18 cooperatively together to make sure that those
19 activities happen on time that handle the needs
20 and the growth of our environment. I'd like to
21 start seeing more of that. Turnaround time will
22 drop and costs will drop.

1 Where we need to focus is on the
2 examination systems and our public interfaces.
3 Getting the information from the public, getting
4 the applications from the public, whether they be
5 trademarks or patents, monitoring, measuring,
6 knowing where your stuff is in the examination
7 process, who to contact, what the disposition of
8 it is, how to pay the bills that we need you to
9 pay so that no one misses anything on time,
10 everything is clear and concise, one set of
11 credentials for the entire Agency, for the
12 consumer and the internal employee examiner is in
13 my mind critical for our future and success.

14 So if we flip the page real quick, let's
15 talk about some of the new things that we're
16 doing, I've added a couple here, and then I'll
17 talk about some of the impacts that I wanted to
18 highlight. We are moving very quickly on doing a
19 couple of things. One is data dissemination.
20 President Obama has a focus on making our
21 government transparent to the public. We recently
22 put out an RFI to the general public for a

1 zero-cost contract, something I had never heard
2 of. Zero cost didn't exist in my vocabulary. I
3 had to go look up the word free. It got me
4 confused. But the fact of the matter is we are
5 asking companies to step forward and for no cost
6 to the federal government fund a project that
7 separates the public system of dissemination of
8 data, public pair, from the examination system.
9 Today they are tied together, hardtied, whereas
10 outside requests for information detriment to
11 performance for the examiner. I need to duplicate
12 the data. I need to separate those systems. I
13 need to build a system that condenses and
14 repackages the very bloated patent file wrappers
15 we have today into something a little more
16 transportable and concise while still providing
17 the function and features that the public wants
18 which is the data itself so that they can
19 manipulate it to mine it for information. I need
20 to do that in bulk. I can't just get on line and
21 you can do five to 20 queries and then I give you
22 another little capture window with a graphic

1 image. That is there to protect us because we
2 were literally getting what we call BOTs or
3 programmed robots that hits us with tens of
4 thousands of transactions or more a second. We
5 couldn't sustain that load. So this project, this
6 zero- dollar contract, is literally to ask a
7 company to step forward and say I give you this
8 ability. I will give you the hardware, the
9 software, the people to do it, we will build the
10 correct system, we will repackage the data and we
11 will give it away to the public for free.

12 This does have a small impact on some of
13 our fee recoupment efforts. We do currently sell
14 some of this data today as you may know. That
15 will stop. There is a schedule to stop the
16 selling of that data and give it away for free
17 just as soon as I can cover the cost of hosting
18 it. This will all be through data.gov as well as
19 whatever RFI or RFP contact that is written by the
20 awardee.

21 E-Learning. We highly believe that
22 e-learning is the future for our organization not

1 only in looking at a nationwide workforce, but in
2 educating the general public. I listened earlier
3 to the thoughts of having a forum on how to do
4 better searches or maybe a class on how to do
5 better searches. Providing that information to
6 the public to generate a stronger application is I
7 believe critical to our future. So Mr. Kappos
8 again asked me, Why don't we try this out? Go out
9 and put an RFI for another zero-dollar contract
10 and we provide the classes to a company that hosts
11 e-learning. They will give us internal access for
12 our employee for free and they can sell classes to
13 whoever else wants them, so we did that. We put
14 out another zero-dollar RFI for that. Again, I've
15 got to be creative here. I don't have any fun, so
16 bear with me here. That RFI completed actually
17 and we are about to write an RFP hoping to get a
18 good taker or two. This hasn't been unheard of by
19 the way. I had a nice conversation with Mike down
20 at the Government Printing Office who did a
21 zero-dollar contract to take back volumes of
22 congressional typeset records and get them scanned

1 to put online and he wrote a zero-dollar contract
2 and we took a lot of their knowledge in
3 contracting experience to them extrapolate our
4 contract from that and has had quite a bit of
5 success at the Government Printing Office getting
6 for free a third party to take documents, scan
7 them in and turn them into in his case PDFs and
8 then signaturize them and put them online and
9 certainly we've both been talking and hope to
10 follow in his footsteps. So as crazy as it
11 sounds, there is precedence for it actually
12 working in the federal government and I'm highly
13 hopeful we'll be able to drive that to conclusion.

14 Improved online access to Web 2.0. We
15 just launched a new website. That website is far
16 above and beyond or at least infrastructure-wise
17 better. A lot of the content is the same. We're
18 going to have to work as an Agency on the content,
19 but I'll give you the highlights of the good news
20 story there. The hardware is scalable. It uses
21 Apache. It has a Tomcat back end which means that
22 it will allow us to do interactive products,

1 things like if you're familiar with Google, the
2 i-Google products where you can set up customized
3 pages and interfaces and look in fields to express
4 yourself and the desired information you want to
5 see to handle things like real simple syndication
6 or RSS. The technology base is completely redone.
7 It has a content management system. It's
8 completely been approved for federal government
9 use and is on the latest software to protect our
10 Agency from intrusion. That infrastructure, that
11 content management system, allows me to place in
12 the hands of each and every business unit here
13 including Patents the ability to add and modify
14 the data without my intervention like typing a
15 Word document, and whatever they put up there can
16 just be posted. I just have to create new styles
17 of content or interactive widgets -- the
18 development side, but each business unit now has
19 the capability to publish with their own chain of
20 approvals whatever they want. This alleviates
21 myself from a function and puts that function
22 directly into the hands who control and know

1 something about the content because trust me, you
2 don't want me giving an opinion about the patent
3 process. That wouldn't be good. And it lets me
4 concentrate on the technology. What I hope to do
5 sometime in the near future, and I know Damon and
6 I have spoken about this, is reach out to the
7 public to describe a My USPTO, or in particular in
8 this instance, a My Patent Experience. What do I
9 see when I get to the USPTO Website, login with a
10 single set of credentials, what can I do? What
11 can't I do? What status can I see? How will it
12 look? How will it feel? Do I want a
13 configuration like Google where I can choose how
14 the screen is laid out and little fancy things
15 like that? Or do I have a specific set of tasks
16 that I know I want automated? Do I want an RSS
17 feed coming off my page that feeds a client on my
18 i-Phone that tells me when an action has been
19 taken on my patent? These are the things that are
20 going to propel into this century of technology.
21 It's not too far away to consider it. The reason
22 it's not is some of those systems that I have

1 found just need to be replaced and I don't want to
2 replace them solely with the technology to make
3 them stable. We will want to bring something to
4 the applicant community and to the public of
5 value, and of course to the examiner. You may
6 even think of the examiner interface being
7 something very similar, My Patent Examiner, where
8 an examiner may be able to choose the look and
9 feel of how the system is organized on the screen
10 for their own personal taste but still be provided
11 and function all of the tool that they have today
12 to a single interface or reduced number because
13 today there are all these applications that have
14 to work together that complicate the environment,
15 and to be quite honest, sometimes they're a little
16 clunky. We're going to want to get away from that
17 particularly as we look at a nationwide workforce
18 where we embrace the concept that people can be
19 anywhere and instead of static transactions or
20 static connections with lots of transactions being
21 the weak link of the chain that eventually breaks
22 and then people lose work or have to reestablish

1 connectivity, the Web offers secure way with
2 dealing with that which is unbeknownst to many
3 people, when you're on the Web, all the data that
4 you get and send doesn't exactly get to the same
5 place. There are protocols I place that allow for
6 retransmissions and it's seamless to you, but
7 there's a lot of stuff going on on the back end.
8 We want to get there. We want to get to a more
9 resilient system and a more customized system for
10 both the examiner as well as the public. Of
11 course, I've reached out to this organization to
12 help me plan how to do that, how to ask for that
13 feedback, and will work with Patents, Trademarks
14 and TPAC to do the same.

15 Finally, I'd like to talk for a moment
16 about the changes that we are undergoing here at
17 the USPTO on the count system. It is a big and
18 scary thing for the CIO and you should know that.
19 Peggy said to me, You know how important this is.
20 Right? I'm like, yes, we know. We know how
21 important it is no doubt about it. I had the
22 conversation with Mr. Kappos myself. But the PALM

1 system, EDAN and PFW will all have to be changed.
2 It's not just PALM. PALM is a centralized system.
3 In fact, if you were to make a diagram and see the
4 center of our universe, it would probably be
5 labeled PALM, and all kinds of connections go into
6 it and it is a particularly unstable system, but
7 we are working very hard to write a solid set of
8 requirements that are almost done. I have looked
9 at them myself. We are working very close hand in
10 hand with SERA and Patents. We are very confident
11 that we will do the best that we can and we are
12 going to hit the date that's before us. And we're
13 going to be very careful as to not break the
14 system in the process which I'm sure you're happy
15 to about, Robert. I wanted everyone here to know
16 that it is critical on the minds of the CIO that
17 though we make many changes a day, there are days
18 we make hundreds of changes a day to the system
19 and every once in a while something does break and
20 we try to recover from it as quickly as possible
21 with good risk planning. But there is always a
22 risk especially when there is the unknown, and

1 that is the risk here. Lots of our systems are
2 still largely undocumented and I know enough now
3 to know that some things that don't seem to be
4 risky could be. So I'll leave it at that and
5 allow you folks to ask questions.

6 MR. MATTEO: Thank you very much, John.
7 It's very much appreciated. Are there questions
8 from the floor?

9 MR. ADLER: I was listening to the
10 problems and the difficulty of trying to design
11 and get the money to build and maintain. I'm just
12 wondering have we ever thought of this totally
13 differently like renting rather than buying? In
14 other words, going to somebody who's an expert in
15 software and saying free software, come in and fix
16 our systems and charge us a monthly fee? Why do
17 we have to own it? Why do we have to build it?
18 Why do we have to maintain it? Why can't somebody
19 else do that? You're not going to be able to do
20 it with 450 people. Right? You already know
21 that. And there isn't any money. So I don't see
22 how we're getting out of the box. I don't see how

1 we get out of the current system by continuing to
2 do what we're doing. Do you follow me?

3 MR. OWENS: I do, actually. In fact,
4 I've given some thought to this both from a
5 hardware and operations perspective because when
6 Mr. Kappos got here he asked, Why do you run a
7 data center, John? You can go rent data center
8 time. That's absolutely true. I knew that. AOL
9 had data centers all over the world most of which
10 were rented. I'll break it up into a bunch of
11 different boxes. Let's just talk about virtual
12 hosting. I couldn't give the systems that I have
13 today as undocumented and as fragile as they are
14 to another organization because I couldn't tell
15 them how to run it. I really couldn't. It's just
16 not written. It's hard to believe. But I just
17 couldn't do that. The cost would be overwhelming.
18 The support and being able to resolve problems
19 quickly just wouldn't happen.

20 Then we looked at let's over the next
21 year look at the most difficult of the 200
22 systems. We did 20 this year with the AIS swat

1 team, the Automated Information System SWAT team.
2 What do we think? I think that some of our
3 systems we actually can save and others we've
4 determined now after looking at them and
5 documenting them and putting patches in them to
6 make them more resilient, they just have to be
7 thrown away. I would not be afraid of going to
8 third parties and asking, Could you just build me
9 system X? In fact, I'm doing that with data
10 dissemination. It is a very large problem, and I
11 kind of going to see how that goes. The one nice
12 thing about the data dissemination is I can very
13 easily and quickly with the work I had done last
14 year and what I believe we need to disseminate
15 because I actually know what we need to
16 disseminate and want to stick to the international
17 and XLM standards that exist today and how that
18 data is formatted, I believe I can define that
19 system, so we are going to go partner, a zero-
20 dollar contract, for a very large system. It will
21 entice a lot of hardware, a lot of design, a lot
22 of architecture, work with that company,

1 hopefully, to build the system and architect it in
2 a way that meets our requirements because we will
3 be specifying how that system is developed and
4 architected and let them do the work because I
5 want to make sure that it is virtualizable, that
6 it is scalable and that there is monitoring and so
7 on built in, and we're using this as an experiment
8 and we're going to see how it goes. If this goes
9 very well, I highly expect to embrace exactly what
10 you're talking about whether it be free or paid to
11 get the work done. Our problem in the past that
12 really prohibits us from doing this is the same
13 thing that prohibited us from writing a lot of,
14 before I got here, fixed-cost contracts.
15 Fixed-contracts work great in a development
16 environment if you can completely specify what you
17 want in detail, because if you change it along the
18 way, change requests in a fixed-price contract are
19 what kill your costs and manageability and
20 maintainability and seriously screws up the whole
21 effort. We do mostly level of effort here because
22 we have not defined the discipline of actually

1 doing those steps, those early steps in design,
2 architecture, code requirements and then
3 evaluating based on metrics the returns from the
4 contractors.

5 The good news not only did I identify
6 that in the roadmap, but I identified it in a way
7 that allowed me to address some of that. We've
8 put in a process this year. We're starting to do
9 baseline metrics because we didn't have metrics
10 last year in many instances and we're starting to
11 write the discipline. This data dissemination
12 will be a fixed-price contract for a fixed
13 deliverable with written requirements in a written
14 architecture and will be the first of the four to
15 go. I'm leery about doing that with too many
16 things at once not knowing how it will work, but I
17 think it is very important to look at how this is
18 going. I might do several of these in parallel,
19 but one of the first things that I think we could
20 do here is if we define the online look and feel
21 that we want, I would certainly take that user
22 interface --

1 MR. ADLER: Is that the pair thing?

2 MR. OWENS: Pardon?

3 MR. ADLER: The pair project separating
4 from the examiners? Is that what you mean?

5 MR. OWENS: No, I mean more along the My
6 USPTO, my custom environment. I'd like to take
7 that and say here's another one. We've clearly
8 defined due to comment what we want. I'll pay
9 someone a fixed price, go build it given the
10 infrastructure that's available, the combination
11 of public pair which is part of data
12 dissemination, or we could talk about the
13 combination of east/west in a completely Web
14 interface. That would be another one that is
15 possible in this environment.

16 MR. ADLER: When you described these you
17 didn't really call it pilot for anything. You
18 called it a new initiative. Maybe if you're
19 thinking of it as a pilot you should talk about it
20 that way. In other words, there's an opportunity
21 here to change the way he's doing stuff. He's
22 already talking about doing it.

1 MR. MATTEO: He's actually already doing
2 it.

3 MR. ADLER: He's already doing it.

4 MR. MATTEO: I have the benefit of
5 having gone over this with John a great number of
6 times. That was part of the genesis of the plan.
7 I'm going to speak for you for a second here and
8 oversimplify. It's sort of a double duty.

9 MR. OWENS: Yes, I could use that.

10 MR. MATTEO: Double duty from the
11 initiative so that you do accomplish the data
12 dissemination task, but you're also trying to
13 flesh out a potential vehicle and hopefully learn
14 from it so that you can roll out new things. Part
15 of the problem is a lot of these systems, there
16 are so many linkages and dependencies and,
17 frankly, just lack of clarity around what the
18 linkages and dependencies are, having been in this
19 world myself, bringing in an outside company to I
20 want another one of those, fix it, is not exactly
21 reasonable, not exactly possible.

22 MR. ADLER: We certainly want another

1 one of those.

2 MR. MATTEO: I was oversimplifying.

3 MR. ADLER: We want that works. I
4 didn't mean that in that way. I mean just a
5 better way. We don't want to have to jerry-rig.

6 MR. MATTEO: That's exactly right, but I
7 do think, Marc, your point is well taken. I just
8 want to give John and his group credit for having
9 completely thought through all of this and having
10 actually done all of that. In terms of messaging
11 purposes it wouldn't necessarily be a bad idea to
12 get credit for the strategic thinking that went
13 into this, talking about it just as you did as a
14 pilot that we can use as a vehicle, a proof of
15 principle, a learning vehicle that still
16 accomplishes a goal.

17 MR. ADLER: I think that would be a
18 better message. It's the same work, just a
19 different label. That's all.

20 MR. MATTEO: But it's also a detriment
21 because I know it so well, it's just engrained. I
22 didn't even think to make it explicit. You're

1 right.

2 MR. ADLER: I didn't hear it that way,
3 so if it is, great.

4 MR. MATTEO: I've been living it with
5 him.

6 MR. OWENS: I will tell you I certainly
7 will take that under advisement and try to bring a
8 highlight to that fact. I can tell you the reason
9 I have particularly not used the word pilot. At
10 least among technologists, when you use the word
11 pilot or beta or attempt or try, there is already
12 a predispositioned mindset to say it doesn't have
13 to succeed. I don't want to provide you another
14 thing that doesn't work.

15 MR. ADLER: I don't interpret it that
16 way.

17 MR. OWENS: I know.

18 MR. ADLER: That's okay.

19 MR. OWENS: And that's okay, but this is
20 an educational for me too because now I know that
21 the public doesn't interpret it that way is very
22 important. What I wanted to do is say I am going

1 to provide to you a new method by which we will
2 disseminate all of the publicly available at the
3 USPTO, it will be separate, it will not impact
4 examiner systems, it will be redundant, and this
5 is the way it will be built. Of course, I
6 consider everything that we do here a learning
7 experience. We are just now getting internally
8 the knowledge of what it is like to manage an
9 Apache server which has been in existence 15 years
10 plus. We are now getting into what is virtualized
11 clouded type technologies, what are the
12 intricacies of the technical details that we need
13 to do, and this is another experience that we will
14 learn from hopefully and improve upon and improve
15 upon working with not only a zero-cost with
16 certain types of technologies but also writing a
17 complete fixed-price contract here, fixed price at
18 the price of zero in this instance, but a
19 fixed-price contract with all the results and
20 managing it by doing all of the important due
21 diligence up front. Part of the problems that I
22 believe that we have sustained here by observation

1 only is that over years things have just been
2 developed and things just kept getting added and
3 added and added and the foundational levels of
4 those buildings that we were adding floors to just
5 were never built to handle that.

6 MR. ADLER: I understand all that. I
7 can live with that. I'm just trying to get you
8 out of continuing to do that.

9 MR. OWENS: And that is my goal. I want
10 you to understand that it is my goal. I think
11 that publicly calling it a pilot of learning is
12 something that I will pay attention. It could
13 bolster support.

14 MR. MATTEO: In the interests of time
15 unless there is something pressing, I'd like to
16 wind down the conversation.

17 MR. ADLER: Thanks.

18 MR. KIEFF: The companies that are
19 providing the zero-cost contract, what are they
20 getting?

21 MR. OWENS: I don't know. We have an
22 RFI out now. We're going to write an RFP. One

1 company out of those who provides an answer to the
2 RFP which doesn't exist yet, mind you, will be
3 awarded the zero-dollar contract. They will get
4 the data on bulk after the system is built first.
5 They will have to provide it in the form of the
6 system here that they're going to build for us
7 with our guidance and architectural principles.
8 They will be able to get it first but must
9 disseminate the information in the exact same
10 format with the exact same security measures we
11 put on it to the public before they deliver any
12 other project with any enhancements that they so
13 desire to sell or otherwise for free, and in a
14 timely manner.

15 MR. KIEFF: Thanks. I was just curious.

16 MR. OWENS: The RFI is up there and
17 available. If you look at the federal government
18 Website, you'll see the USPTO section. It is
19 spelled out there. There are a couple dozen
20 comments and answers, and if you have any, please
21 it's still open and you can comment.

22 MR. MATTEO: I think that brings to a

1 close the presentation. Thank you everybody from
2 the PTO and for your kind attention and guidance.
3 What I'd like to do is wrap up the public session
4 with a few housekeeping issues. I did want to
5 call everybody's attention online and in the room
6 to the PPAC Annual Report. This is a bit of a
7 teaser. It is coming. I want everybody to be
8 aware that the annual report is a statutory
9 requirement of the PPAC and it provides our
10 thoughts and perspectives on the operations and
11 strategies and direction of the PTO. The delivery
12 date is November 3. I suspect it will go live
13 online sometime there after. I don't know the
14 specifics, but we'll be keeping you posted on
15 that.

16 In line with that, I had mentioned
17 earlier in the presentation that each of the PPAC
18 members has aligned themselves with a particular
19 topical area and they are the go-to people. I
20 thought it would be interesting just to go around
21 the table to have everybody to tell us their name
22 and what are the typical topical areas in which in

1 which you're the go-to person. I'll start. I'm
2 Damon. OCIO not surprisingly is the one that I've
3 been working most closely with. Louis?

4 MR. FOREMAN: I'm working on the
5 Outreach 2008 Report along with Andy Hirshfeld.

6 MR. ADLER: I'm Marc. I'm working on
7 the quality initiative and the pendency actions.

8 MR. PINKOS: This is Steve. I'm working
9 on the legislative section of the report reviewing
10 legislative activity over the last year and how it
11 impacts the PTO, as well as internal processes of
12 the PTO with a particular focus on the Office of
13 the Chief Performance Improvement Officer.

14 MS. TOOHEY: I'm Maureen Toohey. I'm
15 working on human capital and on international
16 efforts.

17 MR. KIEFF: Scott Kieff, finance.

18 MR. MATTEO: Thank you everybody. What
19 I wanted to do is put that out there for PTO
20 information purposes but also for general public
21 consumption purposes. Please consider these
22 people the go-to people. Of course you can come

1 to anybody with particular areas of interest.
2 Finance for example, Scott, OCIO, myself,
3 outreach, Louis, et cetera. I want us reaching
4 out to you and facilitate your reaching in to us
5 and make us available as possible and hopefully
6 guide you a little bit.

7 The only other thing I did want to chat
8 about very briefly is to throw out some very
9 potential meeting dates for our next PPAC meeting.
10 We have just to pick 3 months as the boundary,
11 tentatively January 14 or January 21, both
12 Thursdays. I don't expect anybody to respond to
13 me now, but I want to throw those dates out, and
14 if people can start getting back to me with their
15 initial availability, hopefully we'll be able to
16 hone in on a date pretty quickly. That works at
17 about the 3-month boundary. It also puts us
18 hopefully beyond the holidays.

19 That brings to a close the public
20 session of the PPAC. What I'd like to do is call
21 for a roll vote as to whether or not we should
22 enter into executive session. A show of hands for

1 executive session. It's unanimous. That
2 concludes the public session. We'll proceed to
3 the executive session after we make the
4 appropriate logistical changes. Thank you.

5 (Whereupon, at 2:30 p.m., the
6 PROCEEDINGS were adjourned.)

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