

UNITED STATES PATENT AND TRADEMARK OFFICE

PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

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- 7 STEPHEN M. PINKOS
- 8 CATHERINE FAINT
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1 P R O C E E D I N G S

2 (2:00 p.m.)

3 MR. FOREMAN: All right, if everyone's  
4 ready? We'll go ahead and call this meeting to  
5 order, the public session. I guess the first  
6 order of business is for Peggy?

7 MS. FOCARINO: Right, okay. I'm going to  
8 start off by giving you the usual operational and  
9 pendency quality initiatives that we're currently  
10 doing. And I'll turn it over to John Love, who  
11 will talk a little bit about some policy updates.

12 So here's where we ended up at the end  
13 of the Fiscal Year, we had a little over 450,000  
14 applications filed; Utility Plant Reissue  
15 Applications, and almost 28,000 design  
16 applications. We talked a little bit about our  
17 filing growth, we had anticipated a 5 percent  
18 filing growth rate over '07, and we actually  
19 realized 5.7 percent growth rate.

20 Our attrition rate, right there 9.5  
21 percent, but that also includes promotions and  
22 retirements. So if you back those out we

1 experienced a little under 8 percent attrition  
2 rate for examiners who left the agency.

3 And then just to give you a look at our  
4 examining staff, almost 6,100 examiners currently,  
5 414 SPEs, we have 100 Quality Assurance  
6 Specialists, we have a growing number of trainers,  
7 speed type trainers in our Patent Training  
8 Academy, so we have 48 of them.

9 MR. PINICOS: Does that attrition come  
10 with the one that you talked about, John, that's  
11 here on this factoring out promotion, retirements,  
12 etcetera?

13 MR. DOLL: The 7.9 percent below  
14 estimate takes promotions and normal retirements.

15 MR. PINICOS: And so the 9.5 includes  
16 the promotions and retirements?

17 MS. FOCARINO: Yes, right and basically  
18 that represents a loss in production line  
19 employees. So then just to give you the filing  
20 trend over the last dozen years or so. We had a  
21 growth rate of 5.2 percent last year, and then  
22 this year, I said we just had 5.7 percent growth

1 rate. If you want to take a look --

2 MS. FAINT: Do you know if more recently  
3 there's been a different filings?

4 MS. FOCARIO: We are -- we don't know  
5 that right now, but we're looking at it and we  
6 have our forecasting office that's currently  
7 looking at that to -- for any tie to the economy.  
8 Trademarks definitely has a more direct link to  
9 the economy and their filing trends then we have  
10 experience in patents.

11 But this just gives you a look at our  
12 filings. Our filings continued to grow, first  
13 actions are increasing in our backlog if you take  
14 this out to the out years you will actually -- the  
15 lines will actually meet at some point and cross.  
16 So we are hopefully by the next couple of years be  
17 going to be into our backlog. So getting a little  
18 better on that.

19 Here's a look at the Pendency. The  
20 first action pendency, as well as total pendency  
21 in each of the technology centers. So we have  
22 quite a range from a low of 19.5 months to first

1 action in 2800, to a high of 20 -- 32 and a half  
2 months in our computer or communications area and  
3 the same thing for total pendency. High total  
4 pendency, again in the communications area and the  
5 lowest first action pendency in 2800.

6 We had a hiring goal for the last 2  
7 fiscal years of 1200 examiners. We exceeded that  
8 hiring goal in '07 we had 1215 hires. In this  
9 past year we've brought in 1211 hires. And then  
10 you can see the attrition rate though this past  
11 year was 583 examiners. So we see a continuing  
12 improvement on our retention rate and obviously  
13 that's important for us as we look at reducing the  
14 backlog.

15 We had a three and a half percent  
16 allowance error rate in 2006 and 2007. This year  
17 in 2008 we had a 3.7 percent allowance error rate,  
18 that's the end checking. The statistical validity  
19 of this is plus or minus a half of a percent so  
20 we're still -- all those three numbers there are  
21 basically within the same statistical error rate  
22 range. Our in-process compliance rate continues

1 to improve. We had 90 percent in 2006 and we  
2 finished 2008 at 92 and a half percent. And if  
3 you go back and look at our baseline year, which I  
4 think was 2002 we had an 82 percent in-process  
5 compliance rate. So we've put a lot of initiative  
6 in place to try and improve the in-process  
7 quality.

8 The error rate has been all over the  
9 place as you can see. But lately from 2005 on you  
10 can see the trend downward and hopefully we can  
11 continue to improve on that. And this is the --  
12 we've had this historical measure for the last 30  
13 plus years, and this is the end checking of the  
14 work.

15 MR. DOLL: That low point in 1981 is  
16 when Peggy and I were examiners.

17 MS. FOCARINO: And then the allowance  
18 rate. And you can take a look at this, the  
19 allowance rate has gotten as high as 72 percent  
20 back in the late '90s and we finished 2008 at 44.2  
21 percent.

22 MR. FOREMAN: How is it trending --

1 MS. FOCARINO: Right now first quarter  
2 to date we typically experiences a low allowance  
3 rate at the beginning of the fiscal year. So it's  
4 around 40 percent and looking back at last fiscal  
5 year that's where it was also. So we experienced  
6 a gradual increase.

7 This just shows the two together, the  
8 two previous lines. They track pretty much  
9 together, the error rates and the allowance rates.

10 MR. WITHERSPOON: May I speak?

11 MS. FOCARINO: It's up to the chair.

12 MR. FOREMAN: Oh, please don't ask me.

13 MR. WITHERSPOON: Could you back up?

14 MS. FOCARINO: Sure.

15 MR. WITHERSPOON: One more.

16 MS. FOCARINO: One more, okay.

17 MR. WITHERSPOON: What do you attribute  
18 this to?

19 MS. FOCARINO: The sudden decline in the  
20 allowance rate? I would say there's a lot of  
21 quality initiatives that we put into place over  
22 the last few years and I think that they have had



1 an impact on the allowance rate. There's no doubt  
2 about that. You know, some would look at the  
3 quality of the incoming application also, but we  
4 really don't have an objective way of measuring  
5 that. But --

6 MR. WITHERSPOON: Okay. Thank you.

7 MS. FOCARINO: I keep going back. You  
8 don't want to go back. Okay. Let's talk about  
9 some of the initiatives. Really focused on  
10 recruitment and retention efforts. We've got our  
11 Training Academy, which is modeled after a  
12 University style training. We've expanded  
13 telework in various ways, we've got pilots going  
14 on that are looking at alternative approaches to  
15 examination, and we're working with our  
16 stakeholders and a lot of these efforts. We have  
17 our Peer Review Pilot; we've got an accelerated  
18 exam program. We began a first action interview  
19 pilot this past year, we've experienced an  
20 increase in our electronic filing, and we are  
21 doing a lot on a work-sharing front with other  
22 patent offices around the world.

1           So I mentioned our hiring previously  
2       1211 examiners in our strategic plan we anticipate  
3       hiring that number for each of the next several  
4       years so we would have an examining corps of 8400  
5       examiners by 2014. So that's a lot of examiners.

6           We've really put a lot of effort into  
7       our recruitment. We've got television ads, we do  
8       newspaper print, magazines, we've got radio ads,  
9       we've got Internet things initiatives going on.  
10      If you go on our website and click examine the  
11      possibilities you'll see quite a nice little video  
12      of you know the career opportunities here as a  
13      patent examiner. We've had a lot of career and  
14      job fair participation and really gone out to a  
15      lot of different venues this past year to try to  
16      reach out to every segment. From college students  
17      to second and third career types, to downsizing  
18      private industry, so.

19           And another thing we've been doing is  
20      partnering with universities. We go to  
21      universities before we actually do interviews and  
22      we have a lecture that's given to students to give

1       them a really good idea of what a patent examiner  
2       does. And then what's also helped us in our  
3       recruiting efforts and why we've been able to  
4       achieve our goal the last couple of years, is we  
5       have recruitment incentives in place, which is a  
6       monetary recruitment bonus, and I think this has  
7       really helped us get good, very good quality  
8       candidates. Vince?

9               MR. GARLOCK: Sorry to interrupt, but  
10       you could just -- if I can take this slide back.  
11       I have a question for you.

12              MS. FOCARINO: Okay.

13              MR. GARLOCK: The exploratory of  
14       alternative approaches to examination in  
15       collaboration with stakeholders. What does that  
16       entail?

17              MS. FOCARINO: Well, we've had -- we had  
18       the PPAC effort this past year, where we had gone  
19       out and had focus sessions. I think there were 10  
20       different focus sessions, and we solicited input  
21       from various stakeholders, including our examiners  
22       of what does the IP system really need, and what

1 would you like if you would have alternative  
2 approaches, or alternative products, or anything  
3 that would change the IP system. So, we have  
4 complied the list and cooperation with it was a  
5 PPAC effort and probably the next steps will be to  
6 decide you know, what to do.

7 Some of the things that are around there  
8 that are in the fallout in the top 10 suggestions  
9 we are currently doing or have done pilots on.

10 MR. GARLOCK: Thank you.

11 MS. FOCARINO: University outreach, done  
12 a lot in this area. We have a couple of our  
13 PS-15's; some of our best -- that we took offline  
14 to just travel around to different universities.  
15 To educate students on intellectual property and  
16 to really get them thinking about careers in  
17 intellectual property and understanding the  
18 impacts of intellectual property, from downloading  
19 music illegally and that kind of thing. And then  
20 just getting our name out there, the sort of the  
21 branding of us USPTO and some of the good things  
22 that we have to offer.

1           So we've been partnering with NC State  
2           and we're trying to develop a curriculum, so that  
3           students can actually take certificate courses in  
4           IP and hopefully this will be a potential pool of  
5           future hires that would come to us with a  
6           knowledge -- a pretty good knowledge of the patent  
7           process, and IP when they come in the door.

8           And then we're currently working with  
9           MIT to develop some courses that again would  
10          prepare students to be patent examiners or to be  
11          functioning in the intellectual property  
12          environment. And then Eastern Michigan University  
13          has also had an interest in partnering with us, to  
14          develop programs.

15          So there's a lot of potential here and  
16          we're pretty excited about it and also getting  
17          university professors, experts in certain  
18          technologies to come in and train our examiners,  
19          because we really need people to come in and help  
20          us train, and to keep examiners abreast of what's  
21          going on in the field.

22          This gives you sort of an idea of with

1 all the hiring what's happening to our experience  
2 level. The first and the left shows you the  
3 average grade of our examiners is currently just  
4 over grade 11, but then the years of service you  
5 can see that on average, examiners have less than  
6 six years of service in the office, and by  
7 Technology Center if you look at the lowest; the  
8 yellow and the sort of the light blue lines, those  
9 are the computer, architecture, software,  
10 communications, multiplexing area that we've done  
11 a lot of hiring. High growth areas and very low  
12 seniority level, so that presents some management  
13 challenges as you can imagine.

14 We've really focused a lot in the last  
15 couple of years on retention. Also, I think over  
16 the years we've been really good at setting a  
17 hiring goal and meeting it. But then we didn't  
18 put a lot of resources or really think a lot about  
19 how to put initiatives in place to retain good  
20 examiners and to really be an employer of choice.  
21 So we've focused a lot on flexibility, I think we  
22 have some extremely flexible programs.

1           We have telework initiatives, which  
2           allow our examiners to work from home one day a  
3           week, and then we have a hoteling program where  
4           we've allowed our GS-12 examiners and above to  
5           actually work from home four days a week. And  
6           it's -- we currently have about 1500 patenting  
7           examiners in our hoteling. And then we have very  
8           flexible work hours; examiners can come into work  
9           anytime between 5:30 a.m. and 11:30 a.m. in the  
10          morning, and most of the new examiners come in  
11          about 11:30 a.m. in the morning.

12                 And then recruitment and retention  
13          bonuses, the recruitment bonuses are paid out over  
14          the first four years of and examiners employment  
15          here. So really after the first couple of years  
16          it functions as a retention bonus. And we only  
17          have two years worth of data right now, because  
18          the recruitment bonuses have only been in place  
19          for two years. But we're really anxious to see  
20          the data as we get to the third year and beyond  
21          that, because what we've seen historically is if  
22          we can keep examiners after the third year, then

1 our attrition rate goes down to less than 4  
2 percent.

3 And the higher general pay refers to a  
4 special pay scale that we're currently on and we  
5 hope to get approval for another 2 percent,  
6 special pay request from OPM. Bob?

7 Yeah. The Training Academy was begun in  
8 January of 2006. We've had over 2000 examiners go  
9 through the Academy. It really is an efficiency  
10 of scale economy of scale force. We have more  
11 consistent training to larger groups of examiners,  
12 and we continue to refine the curriculum and the  
13 Training Academy will not only continue to improve  
14 it. And I think that we've gotten some very good  
15 results out of it, but as I said, we continue to  
16 improve that.

17 And then last year we had a foreign  
18 examiner training class, where we trained I think  
19 6 -- was it 16 John? Sixteen foreign examiners  
20 from 6 different countries put them through pretty  
21 much the same curriculum as our U.S. examiners and  
22 that was very successful. And then the Chief



1 signed his position as -- and currently we don't  
2 have anyone in that position, but it looks like  
3 we're about to fill it with someone. So that  
4 we'll have a full-time person here to train our  
5 examiners in some area of technologies, probably  
6 going to be like multiplexing. We have high  
7 growth, a lot of new hires and we need someone in  
8 here that can really focus on heavy technology  
9 training. And free up our SPE's, to train more  
10 examiners that have gotten out of the Training  
11 Academy already, but still need oversight.

12 So this is our you know part of our  
13 effort and part of our strategic plan initiative  
14 to bring in people or resources from the outside  
15 to help us train our new examiners and our  
16 examiners who are already here.

17 MR. PINICOS: Speaking of what you just  
18 mentioned Peggy, how does that transition with the  
19 thousands of new examiners going the Corps? How  
20 do you see the high level of training -- how's  
21 that -- how's the -- tapes supervision working  
22 out. That there's I imagine a challenge when you

1 have a certain number of SPE's and mentors that  
2 come into facility growth.

3 MS. FOCARINO: Right. And what we've  
4 developed is a transition team, so each technology  
5 center has a transition team, and they work  
6 closely with the Training Academy to assimilate  
7 the examiners once they get out of that eight  
8 months training, into their technology centers and  
9 continue to be trained and mentored, and so it's a  
10 continual process. And as I said, we continue --  
11 it's trying to -- I guess there's some feeling on  
12 the part of some of us, and I probably would have  
13 had this feeling too that no one can train an  
14 examiner better than I can. So we get an examiner  
15 out of the training academy, and you know, I think  
16 what we're seeing is, the training and the academy  
17 is getting better and better, so that they -- when  
18 they come out, the examiners come out of the eight  
19 month program, they're very -- much more  
20 independent, and the supervisors are pleased with  
21 the level of competence that they're getting from  
22 the examiners for the most part.

1           So it seems to be the transition team,  
2           in working -- in reaching out to those examiners  
3           when they're still in the academy, seems to be  
4           working well, where you develop the relationships  
5           earlier and you don't wait until they get to the  
6           technology center. So we're doing a lot more of  
7           that, it seems to be helping. Robert.

8           MR. BUDENS: There's two sides of this  
9           position, Peggy. Are you having one of those for  
10          each tech center?

11          MS. FOCARINO: No, we're not. And, you  
12          know, we currently have one person it looks like  
13          that we will bring in. And we have had people  
14          function in this position, but for a very short  
15          term. We had a nano tech boot camp and we had a  
16          couple of other types of sessions like that that  
17          were very technology specific, where we brought in  
18          an expert for a period of time, had them teach a  
19          course. This idea really is to have someone in  
20          here as a full-time employee that can continue to  
21          train. But there's not a need in every  
22          technology, so we're focused first in the areas of

1 the greatest needs, and I believe that this  
2 position that I'm talking about, that it looks  
3 like we're ready to bring someone in, would be the  
4 multi-plexing area, so --

5 MR. BUDENS: What's the criteria for  
6 this position? I mean does this person have to  
7 have some intellectual property experience out  
8 there or is it purely a --

9 MS. FOCARINO: It's purely --

10 MR. BUDEN: -- technology --

11 MS. FOCARINO: -- purely technology.  
12 We're looking for PhD's that, you know, that are  
13 experts, and whether it's multi-plexing or  
14 cryptography, some of the areas that we have a lot  
15 of newer examiners and we need to train large  
16 numbers of them. And then we have -- and I'll  
17 talk about this in a little bit, we have a new  
18 technology center that's focused specifically on  
19 networks, multi- plexing, cable and internet  
20 security, and we really wanted to bring people in  
21 from the outside to help train that group of  
22 examiners.

1           Hoteling program, I think it's -- right  
2       now we have about 1,500 that are participating in  
3       it. Examiners can work from home, as I said,  
4       almost full-time, four days a week. And our goal  
5       for each year until 2014 is to add 500 examiners  
6       to the program. We have a lap top program where  
7       we allow examiners that have been here for one  
8       year and that are grade nines to have a lap top if  
9       they're performing fully successfully. And the  
10      idea here was to have them have the ability to  
11      work overtime from home. It's a very successful  
12      program. We've gotten gains in production, and  
13      also increased examination time, and obviously,  
14      improved job satisfaction.

15                So these types of programs with  
16      increased production and increased examining time  
17      will definitely, you know, work towards that,  
18      getting into that backlog issue.

19                We started a hoteling pilot program the  
20      year before last and it was very successful. So  
21      now we have a program where we have almost 90  
22      technical support staff hoteling. And they have

1 very objective productivity and quality measures  
2 also.

3 And we have our new tech center, 2,400  
4 is supported totally by a virtual technical  
5 support staff, and so that's very interesting.  
6 Some of the examiners didn't even know that their  
7 technical support staff was not located on campus  
8 here.

9 MR. FOREMAN: The same rules apply for  
10 them when they -- out this?

11 MS. FOCARINO: Right; this is the  
12 outreach project with the focus sessions.  
13 Interviews were conducted to get feedback. We got  
14 over 1,000 comments, and we tried to hit every  
15 segment of our stakeholders. There's a lot of  
16 suggestions, from deferred examination to, you  
17 know, different levels of examination, interviews  
18 early on, very early on with the examiners, that  
19 type of thing.

20 MR. PINICOS: How about some of the  
21 comments that weren't suggestions?

22 MS. FOCARINO: Oh, some of the comments,

1 well, Andy -- I think is --

2 WENDY: He's here.

3 MS. FOCARINO: Andy's intimately  
4 familiar with the 1,100 comments.

5 MR. LOVE: Painfully familiar.

6 MS. FOCARINO: Peer review pilot, this  
7 is very interesting, of course. We began the  
8 pilot last year and was isolated to tech center  
9 2100. We only had 75 applications volunteered,  
10 and you know, ten pieces of prior art submitted  
11 per application is the max, but the average that  
12 we got was four. We extended the pilot recently  
13 to the business methods area, class 705. That was  
14 an area that expressed a desire to participate, so  
15 we're monitoring the participation rate and we'll  
16 see how that goes. But as you can tell from that,  
17 there's not a lot of participation in this pilot.

18 MR. FOREMAN: What's the overall thought  
19 on the program? I mean is it speeding up the  
20 examination process or is it really not providing  
21 --

22 MS. FOCARINO: It's not speeding it up.

1 And I think in the vast majority of those 75  
2 cases, the examiner found the same art that was  
3 submitted or they didn't think that the art that  
4 was submitted in the peer review process was any  
5 better than the art that they had found. But  
6 there were some cases where the examiner did use  
7 the art submitted, they thought it was better, but  
8 not ---

9 MS. BYRNE:: I think it's art ---

10 MS. FOCARINO: Yeah, seven, yeah ---

11 MS. BYRNE:: -- peer reviewed art.

12 MS. FOCARINO: -- seven.

13 MS. BYRNE:: Yeah.

14 MS. FOCARINO: So it's not a large  
15 number by any means. But I think our, you know,  
16 our view on this is that any time an examiner can  
17 get prior art before them and it's good prior art,  
18 we welcome that. The accelerated exam program  
19 began a couple years ago. And this is one that  
20 we've experienced an increase in participation  
21 level, but, of course, the applicant has to  
22 provide us more information up front, and they



1 have to file electronically, they have to agree to  
2 an interview, and they also have to limit their  
3 claims.

4 So we've had 358 allowed since the  
5 program began. The average number of days to  
6 complete prosecution was 182, and the minimum was  
7 18 days. A pretty high allowance rate for this  
8 program, almost 70 percent allowance rate for  
9 fiscal year '08, and it's been very, very well  
10 received. The participants feel that not only do  
11 they get a faster decision, but they have a very  
12 high quality patent.

13 MR. FOREMAN: When you compare that to  
14 the allowance rate overall of 40 percent or 44  
15 percent, why would you say that there's such a  
16 disparity between the two numbers?

17 MS. FOCARINO: Well, I think --

18 MR. FOREMAN: Is it bad comments coming  
19 in on the other side and these are the ones that  
20 are well thought out?

21 MS. FOCARINO: I mean these are the ones  
22 where the applicant has to submit examination

1 support documents. So they've already gone to the  
2 trouble of doing their own search. And what we  
3 are finding I think is that the claims are more  
4 defined based on what the art -- the art that was  
5 found in the examination support document, that  
6 the claims are more focused and --

7 MR. PINICOS: Generally the object is  
8 investing a lot of money, as well, so they're ---

9 WENDY: And they pick and choose because  
10 of that, they pick and choose which applications  
11 they want to file one of these for.

12 MS. FOCARINO: Yeah; so I think it's  
13 definitely, you know, there's a niche here for a  
14 certain segment of our users. And I just said  
15 we're experiencing an increase in this, and you  
16 can see that we've, you know, had a steady  
17 increase in the number filed, that's per month.

18 First action interview pilot, applicant  
19 has to request to participate. We began this  
20 pilot recently, and we don't take these  
21 applications out of turn. And what the examiner  
22 does is, a preliminary office action, which is

1       like a condensed first action, they mail that to  
2       the applicant, then the applicant can come in and  
3       request an interview or not, but the idea is to  
4       get the examiner and the applicant talking to each  
5       other very early on in the prosecution. And this  
6       is being piloted in two work groups in tech center  
7       2100, and Wendy is the one that started this  
8       pilot, so -- and we're currently -- it ended  
9       officially on October 31 --

10               WENDY: October 31.

11               MS. FOCARINO: -- but we're currently  
12       --- we don't have a lot -- there's application in  
13       the cue, but we don't have a lot of data yet as to  
14       the disposition of those, so we're going to be  
15       talking about what our next steps are, are we  
16       going to extend it or expand it or what we want to  
17       do. And obviously we need to talk to Robert about  
18       this, because he was, you know, agreeable to doing  
19       a very, you know, limited pilot in a limited area  
20       for a distinct period of time, so we'll be talking  
21       over that -- those next steps with him.

22               WENDY: Right; the one thing that we do

1 know is that it was very popular, because out of a  
2 fairly small targeted number of applications  
3 eligible, we received something like 430 odd  
4 requests, so it was actually more popular than we  
5 expected. But because we don't take the  
6 applications out of order, we don't know whether  
7 yet --- we don't have enough data to determine  
8 whether or not this is an efficiency for the  
9 office, or, you know, how well it's received by  
10 the examiners, how well it's received by the  
11 applicants, we don't know that yet.

12 MR. FOREMAN: What's the method of  
13 collecting that data?

14 WENDY: From the efficiency perspective,  
15 it would be similar to accelerate examination.  
16 Are we receiving fewer applications for disposal,  
17 meaning does the early meeting lead to a meeting  
18 of the minds and a patentability disposition  
19 earlier, as well as the allowance rate, items like  
20 that. We're doing a survey of the examiners to  
21 see whether they liked the process, didn't like  
22 the process. And from the applicants, it would be

1 do we continue to get -- do we continue to see  
2 increases in the number of requests, you know, do  
3 they tell us they have an interest in it.

4 The reason we did it as a pilot is,  
5 first, we didn't know what the -- what the demand  
6 would be, but also so you can find any bugs in the  
7 system before you expand it. And we did -- for  
8 now, each one of those applications requires a  
9 manual tracking by management in the technology  
10 center, because it's kind of exception processing.  
11 And because it was so popular, before you expand  
12 it, you don't want to have to do exception  
13 processing for thousands of cases. So we'd have  
14 to work out some of the bugs like that before we  
15 extend or expand it.

16 MR. FOREMAN: Is a 24 day test typical  
17 for a pilot?

18 WENDY: I'm sorry, 24?

19 MR. FOREMAN: You ran the pilot for 24  
20 days?

21 WENDY: No, we ran it for three months.

22 MS. FOCARINO: Yeah, I'm sorry. The

1 October 7 is just when we had the last look --

2 MR. FOREMAN: Oh, okay.

3 MS. FOCARINO: -- at how many, but it  
4 actually began in -- at mid year, I believe,  
5 right, Wendy?

6 WENDY: Something like that.

7 MR. FOREMAN: So you've got good data  
8 that I can utilize?

9 MS. FOCARINO: Right.

10 WENDY: Right.

11 MR. FOREMAN: Okay.

12 MS. FOCARINO: Okay. Electronic filing,  
13 a huge increase in what we were seeing in 2005.  
14 We had a very low percentage of applications filed  
15 electronically. And we finished out 2008 with  
16 almost 72 percent of our applications filed  
17 electronically. And we continue to work with  
18 firms, corporations, to try to, you know, get them  
19 familiar with the system and hopefully get them to  
20 use it. This you can't really see very well, but  
21 if you look at your handout, this is a structure,  
22 and we were piloting this this past year in

1 patents, and I showed you how many examiners, we  
2 had almost 6,100 examiners, but yet we continue to  
3 have the same structure and operations in terms of  
4 oversight.

5 So we piloted having a layer between the  
6 Deputy Commission for Operations and the group  
7 directors in each of the technology centers, in  
8 having one person per discipline as an Assistant  
9 Deputy Commissioner. And although for the  
10 electrical area we have two because they're so  
11 large. And basically -- so they're in those red  
12 boxes down there.

13 And we got final approval for the  
14 structure, so we'll be permanent now. And I think  
15 it's working out very well, because as the  
16 operations continue to grow and grow, it's harder  
17 to manage. It's also hard to be consistent, and I  
18 think it's good to have discipline focus at the  
19 Assistant Deputy Commissioner level. Robert.

20 MR. BUDENS: Peggy, in this chart, I'm  
21 starting to see something crop up in the  
22 organizational pages, and I haven't figured out

1       what they're doing. And the position is called  
2       work group managers?

3                   MS. FOCARINO: Right.

4                   MR. BUDENS: I'm trying to figure out  
5       what they are and where they would fit in these  
6       charts and what their duties are and what have  
7       you, because this is -- this is another whole new  
8       -- looks like a whole another level of, you know,  
9       layer of management again now and -- being added  
10      in.

11                  MS. FOCARINO: Uh-huh, right. You won't  
12      see to that level on this chart. But what's been  
13      happening is, in order to manage the growth, we  
14      had to figure out how not to continue this. The  
15      Assistant Deputy Commissioner pilot in that  
16      position was really intended to manage the growth  
17      in the patent organization, but also keep the  
18      number of SES'ers to a manageable level. And then  
19      we looked to layers below the group director, how  
20      are we going to manage at the art unit level, and  
21      should we really have 750 -- 800 supervisory  
22      patent examiners when we have 8,400 patent



1 examiners, and what could we do below the group  
2 director level to increase the span of control.  
3 So there are pilots going on in different areas  
4 where you would have one speed that manages a  
5 larger group of people, whether you call them a  
6 work group manager. They're not SES'ers, they're  
7 speeds that are functioning at sort of a broader  
8 level.

9           You know, 2600, tech center 2600 has a  
10 structure where they have speeds that are focused  
11 on training mainly, and then those that are  
12 focused on more administrative, and, you know, the  
13 ER/LR personnel aspects, you know, those kind of  
14 things.

15           So there's different things going on,  
16 but it's an effort to try to pilot different  
17 organizational structures to manage the growth.  
18 And with a lot of junior examiners, I had showed  
19 you the experience level, we don't have the pool  
20 of candidates necessarily to move into the speed  
21 jobs that --

22           MR. BUDENS: Well, where are these

1 people now going to fit into the examiner's chain  
2 of command?

3 MS. FOCARINO: Right.

4 MR. BUDENS: Okay. I mean is their  
5 first line supervisor their speed and now their  
6 second line supervisor a work group manager, or is  
7 it still the tech center director? Have we  
8 interjected a whole new -- another layer of line  
9 management, you know, into the chain of command?  
10 And if so, I certainly haven't seen any, you know,  
11 notice of anything, the examiners explain, you  
12 know, maybe I missed them or something, you know,  
13 how they're functioning or what their  
14 responsibilities are going to be and how we're  
15 supposed to be functioning with them ---

16 MS. FOCARINO: Right.

17 MR. BUDENS: -- et cetera. This is just  
18 something that's come out of the, you know, we  
19 started getting wind of it here just in the last  
20 week or two and going, okay, what's going on here.

21 MS. FOCARINO: Yeah; well, there will be  
22 different -- it'll be different for different

1 areas. And 2600 has basically subject matter  
2 experts in those positions, so they are not in the  
3 waiting chain, if you will. So it's not  
4 necessarily that there's another person in the  
5 waiting chain. But certainly examiners should  
6 know who their rating official in and their  
7 approving official is. But we can sit down, you  
8 know, in the next couple of weeks and I can walk  
9 you through. There's a lot of different  
10 permeations, what's going on in different areas.

11 MR. BUDENS: Maybe we can talk about it  
12 at, you know, our next meeting ---

13 MS. FOCARINO: Okay, sure.

14 MR. BUDENS: --

15 MS. FOCARINO: Right; so on October 1 we  
16 created a new technology center, 2400, and it's  
17 the network multi-plexing cable internet security  
18 area. And we put 300 new examiners in there, and  
19 we put other examiners in there, too, from 21 and  
20 2600. And also, we took speeds from 2100 and 2600  
21 to form this new technology center.

22 But it was to group like technologies, a

1 very high growth area, and to allow us to focus  
2 training resources on this particular group early  
3 on in the training academy by having them all  
4 hired together and trained together and then -- in  
5 the technology center. So we're hoping to get  
6 some good results from this, too. And that's all  
7 for me. So if anybody has any questions, I'll  
8 turn it over to John Love. You don't have any  
9 slides, right?

10 MR. WITHERSPOON: Can I make a comment?

11 MS. FOCARINO: Sure.

12 MR. WITHERSPOON: And just pass along an  
13 idea.

14 MS. FOCARINO: Okay.

15 MR. WITHERSPOON: That I first heard  
16 about it long before most people, perhaps before,  
17 back in about 1965, when Ed Brenner was the  
18 Commissioner. It was very common for the  
19 Commissioner to be the luncheon speaker at the  
20 annual ABA meeting year after year. And  
21 Commissioner Brenner used to provide a lot of data  
22 and statistics of the type that we've just seen,

1 but he also made a point that a lot of the good  
2 work of the Patent Office goes unnoticed and is  
3 not reflected in these data.

4 In the sense that -- a lot of the work  
5 involves narrowing -- from their condition when  
6 they were first -- until the time of issuance.  
7 And this number such as -- and issuance is  
8 definitely -- but nevertheless, it's valuable work  
9 and it's important work.

10 And I just wanted to pass that on. I  
11 don't know if a pilot could be measured, but with  
12 the advances and ingenuity of people like you, it  
13 seems to me -- and you haven't. It might be worth  
14 -- something like that -- because I think -- and  
15 if it could be done, I think it would be.

16 MS. FOCARINO: That's a very good point.  
17 Yeah, there's a lot of good things that are done  
18 that are hard to capture in data form.

19 MR. WITHERSPOON: But it's crucial.

20 MS. FOCARINO: Right.

21 MR. WITHERSPOON: I mean I've been in  
22 this business since 1968, and I actually -- that

1 this -- so -- issue --

2 MS. FOCARINO: Thank you.

3 MR. WITHERSPOON: So, you know -- can  
4 figure out a way to do it, particularly I think --

5 MS. FOCARINO: Okay ---

6 MR. LOVE: Yeah, just a few topics I'd  
7 like to go over briefly. The oral argument in the  
8 claims and continuations appeal is scheduled for  
9 the first week of December, and I believe it's  
10 December 5. A big case that a lot of us have been  
11 waiting for has been decided, as you know, I'm  
12 sure, the Bilski Decision under 101 issue, the  
13 CAFC affirmed the office and the rejection of a  
14 process claim that the examiner had made based on  
15 the fact that it wasn't a proper process claim  
16 under Section 101 of the statute. And the CAFC  
17 pretty much adopted our position in terms of the  
18 rationale as to why that claim wasn't a proper  
19 process claim. So we have a team that's -- we've  
20 been waiting for this decision to do a revision of  
21 our 101 guidelines, and we have a team together in  
22 the office that will be making adjustments to the

1 guidelines to take into account the Bilski  
2 Decision, and also the Nighatan case, where the --  
3 that's final Supreme Court has denied seniority  
4 with respect to the patentability of the -- claim,  
5 so that issue is at least dead for now, we think,  
6 and the guidelines will be revised to take into  
7 account the Bilski Decision.

8 One thing -- I'll just make one general  
9 comment about that decision. The issue from our  
10 perspective in that case was rather narrow, that  
11 was what's a proper process claim under 101 of the  
12 statute. And the court adopted our suggestion,  
13 and we think it's founded in the Supreme Court  
14 decisions that you need a transformation of an  
15 article to a different state, or the process  
16 itself needs to be machine implemented, and we  
17 think that's the holding from the Benson -- cases  
18 of the Supreme Court, so it would be along those  
19 lines.

20 Now, there's a lot of other discussion  
21 in that case, and we're going to have to go  
22 through that and cipher through it as to how much

1 of that is going to be adopted into the  
2 guidelines, but that's our view of it. I made a  
3 gratuitous comment I guess that they're  
4 reaffirming the holding in Stay Street that  
5 business methods can be eligible subject matter,  
6 that really wasn't at issue in the case, from my  
7 perspective, but they decided that they would make  
8 a comment on that. And they made some other  
9 comments that we think were along the lines of --  
10 but should be helpful, I guess, and we'll be  
11 looking at that in terms of fashioning our  
12 guidelines. The last thing I'd like to mention is  
13 --

14 MR. COLARULLI: John?

15 MR. LOVE: Yeah.

16 MR. COLARULLI: I was just going to ask  
17 you if I could get the public input into the  
18 decisions of the guidelines.

19 MR. LOVE: To this point, our process  
20 has not been to involve the public in that. Now,  
21 it's very possible that this -- similar to the KSR  
22 guidelines, it may be considered a significant



1 guideline document that would have to go through  
2 the OMB process. It's quite likely that they'll  
3 have to go through that review process, in which  
4 case then it would be published and I think would  
5 be, you know, comments would be acceptable.

6           The other issue is that from time to  
7 time my office has been -- we've been issuing  
8 either clarifications, memos, or memos on policy  
9 issues that we direct to the core, and we made a  
10 decision a few months ago to go back and put all  
11 of these on the web page so that they would be  
12 available to the public, and we go back several  
13 years now -- internal memorandums, and, of course,  
14 they would leak out and there would be all of  
15 this, you know, is this public, is it not public,  
16 what's the big secrecy, so I said, well, let's put  
17 this all to an end, we'll just put them up on the  
18 web, and they're under -- to get to it, it's under  
19 the law and policy tab, then you click on patents  
20 and you go to the memos to the court. So we have  
21 -- we've put up several, not only the ones that  
22 I've issued recently, but some that go back many

1 years, so we just wanted to take the mystery out  
2 of it and get it all out there in the public.

3 So that's the -- that's basically  
4 updating the policy area, other than, you know,  
5 the IDS rules and the AC, I think it's been  
6 announced previously that those won't be  
7 implemented during the current administration.

8 MR. FOREMAN: Any other comments,  
9 questions? I move to adjourn. Second?

10 MR. PINICOS: Sure.

11

12

13

14

15 (Whereupon, at 3:14 p.m., the  
16 PROCEEDINGS were adjourned.)

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## 1 CERTIFICATE OF NOTARY PUBLIC

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