UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

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P R O C E E D I N G S

(9:00 a.m.)

CHAIRWOMAN JENKINS: Good morning and welcome to our quarterly PPAC meeting. I am very pleased that we're all here and we're going to have a great meeting. I'd like to welcome Director and Undersecretary Michelle Lee, she's joining us and will be providing some comments. She has another engagement so I am going to immediately turn the floor to her.

DIRECTOR LEE: Thank you very much, Marylee. Good morning, everyone. Thank you for being here. On behalf of the United States Patent and Trademark Office, I welcome you to today's quarterly meeting of the Patent Public Advisory Committee.

This continuing collaborative working relationship between USPTO and PPAC is more important than ever. The Committee's insights and guidance on a number of issues have been extremely helpful and will continue to be helpful as we write the next chapter of the Agency's history in this new

administration.

As you can see from today's agenda, we have a full program scheduled to bring you up to date on the latest issues and most pressing issues that we are facing at the PTO. But right now, I want to take the opportunity to speak with you about what we can do to support you, the American Innovators. I want you to hear and understand that the Agency exists to serve our innovators, from individual inventors and small businesses to universities, from startups to our largest most sophisticated companies. We exist to serve all sectors, from biotech to high-tech, from industries creating plant patents to these creating design patents. And, of course, we exist to serve the American people and the entire innovation economy.

It's my firm belief that we best serve all of our stakeholders in three important ways: by ensuring that we issue the highest quality patents and trademarks, by ensuring that we issue those patents quickly and as efficiently as possible, and by

ensuring that we do all this for the lowest cost to our filers. Let's break that down.

First, quality. As you've heard me say many times over the past several years, patent quality is a top priority of ours. At every stage of the patent process we are committed 100 percent to providing the best quality work product and services possible. We understand that higher quality patents provide patent owners with more valuable and more certain patent rights, which will help attract more investment dollars enabling the creating of more products and services that increase the quality of our lives while also creating more economic growth and jobs for our economy.

So, I want you to know that we are committed to issuing the best quality patents so that our patent owners get accurate, clear, and certain patent rights that they deserve. Fulfilling this commitment is a continuous process, one that requires constant investment in training, tools, resources, and the leaders who will build and implement a quality process

that will endure well into the future. While there is more to be done, I think we are well on our way.

Our second goal is to issue patents quickly and efficiently. I'm proud to report that we've reduced our backlog by almost 30 percent from an all-time high in January 2009. We've brought down our first action pendency from 28 months in 2011 to 16 months today. We've brought down the total final pendency from 35 months in 2010 to 26 months today. And we will continue to drive those numbers down.

We are also working diligently to ensure that every application conforms to our patent term adjustment requirements. We want inventors to have a consistent experience in terms of pendency across all art units for all applicants.

Third, low cost. We understand our inventors do not have unlimited funds. We understand that a dollar spent on one part of your business is a dollar less you have to spend on another part of your business. So,

we take our use of your fees and our ability to set your fees very, very seriously.

Over the past two years we've cut nearly 400 million in planned expenditures for fiscal year 16 and 17 so that we could continue to focus resources on examination of our patent applications. We are using the President's executive orders on reorganizing the government as an opportunity to review which activities of our agency are mission-critical and which can then be consolidated, streamlined, or eliminated if need be.

Many of you have asked what does this mean for hiring? We are looking at our entire agency to make sure that every employee and every new hire is engaged in or supporting mission-critical endeavors. As you know, to reduce costs we are also taking a fresh look at the regulatory burdens we place on our filers. Due to the President's executive orders on regulatory reform we are giving even greater attention to how the Agency can be more customer-friendly, how to make our

paperwork less burdensome, where to cut back or scale back on regulations that no longer support our agency mission.

In addition to having a representative on the Department of Commerce's Task Force on Regulatory Reform we have put in place our own working group to review and identify regulations that are outdated or unduly burdensome. We welcome your suggestions that you may have on reforms we can make. And, of course, we won't be removing any regulations without seeking your input.

Changing gears for a moment in terms of the substance of the USPTO's fee rule, although it is not final I can tell you that the proposed fee increases are relatively modest. They were carefully considered and reconsidered again based upon input from all of you and from PPAC. Being sensitive to the impact of a fee increase and its impact on smaller entities, and recognizing the critical role of individual inventors and small businesses that they play in terms of our

country's continued economic health, we even investigated if we could expect them from any fee increases. Unfortunately, we are prevented from doing so by statute. However, eligible small micro and small entities can take advantage of the 75 percent and 50 percent respectively discounts that are available, not to mention perhaps our pro bono services and our pro se services.

Further, we provide small and micro entity discounts for hundreds of our fees, and the number of fees or discounts in the new fee role proposal will only increase.

There is one exception to the modest fee increase, and that is in the area of PTAB fees. We believe there should be full cost recovery for all costs associated with PTAB trials as they were intended under the AIA. We have done a good job over the past several years ensuring that our fees generally covered costs. But we do need to raise the PTAB trial fees to ensure that these trials are self-funding on a going forward basis.

Finally, while we are on the topic

of PTAB, as you know, Congress mandated the USPTO to implement PTAB trials to provide the public with a faster, less expensive way to test the validity of a patent compared to district court. We've been hearing that these proceedings are a great source of concern to a number of our stakeholders in the patent community.

Through the PTAB Procedural Reform Initiative I and other leaders throughout the Agency are working together to review these trial procedures from top to bottom. The purpose of the review is to ensure that the proceedings are as effective and as fair as possible to both petitioners and patent owners.

Why now? With five years of experience we can better evaluate the potential changes based upon a wider range of user experiences, and we have significantly more data to identify trends. We welcome hearing your input on what's working, what's not, and how we can do better, including on such issues as multiple petitions, motions to

amend, decisions to institute, and claim construction.

So, please take the time to give us feedback on our PTAB trial procedures on these topics and any other topics you may have. We have a mailbox set up to receive the suggestions and we check it daily. The address is ptabproceduralreforminitiative@uspto.gov. We will use your feedback to help shape our proposals and make recommendations in the new administration.

So, I hope this is a helpful overview of where the Agency is today and some of the issues that we are addressing. There are many other important topics that you will also have an opportunity to learn about today. We have Andy Faile and his team to update you on Patent operations. Nick Oettinger from the Office of General Counsel will update you on the Agency's working group on regulatory reform. Frank Murphy and Tony Scardino will provide finance and budget updates. Shira Perlmutter and Mark Powell will provide

international updates. John Owens, David Landrith, and Debbie Stephens will provide IT and an update on patents end-to-end. David Ruschke and Scott Boalick will talk more about PTAB. And Valencia Martin- Wallace will talk more about our efforts to continue to enhance patent quality.

So, thank you again. If there is anything that I or we at the Agency can do to better serve you please let me know or let any of the PPAC members know. With that, I'll turn it back to Marylee Jenkins. Thank you.

CHAIRWOMAN JENKINS: Thank you, Director Lee. We appreciate all those comments. We appreciate the updates for the Office. We look forward to working with you on all of these many initiatives.

DIRECTOR LEE: Thank you.

CHAIRWOMAN JENKINS: Promise to keep her on time.

DIRECTOR LEE: Appreciate it, thank you.

CHAIRWOMAN JENKINS: Okay. So, I would like -- what we normally do is make an

introduction around the table. Pam, I think I'm going to start with you, if you would.

MS. SCWARTZ: Pam Schwartz with POPA and the PPAC.

MR. SEARS: Jeff Sears, PPAC.

MS. CAMACHO: Jennifer Camacho, PPAC.

MR. LANG: Dan Lang, PPAC.

MR. THURLOW: Peter Thurlow, PPAC.

MR. WALKER: Mike Walker, PPAC.

CHAIRWOMAN JENKINS: Marylee Jenkins, PPAC.

MR. HIRSHFELD: Drew Hirshfeld, PTO.

MR. FAILE: Andy Faile, PTO.

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

MR. KNIGHT: Bernie Knight, PPAC.

MR. BAHR: Bob Bahr, PTO.

MS. MARTIN WALLACE: Valencia Martin-Wallace, PTO.

MR. POWELL: Mark Powell, PTO.

MR. RATER: Marty Rater, PTO.

MR. DWYER: Jim Dwyer, PTO.

CHAIRWOMAN JENKINS: Have to get

used to these microphones. Thank you all.

Today one of the things that we're trying to do in this session is give a little bit more time to some of these topics so we can have more discussions. So, I encourage each of the PPAC members to ask as many questions as you'd like but let's stay on time. (Laughter) I knew Mark was looking very suspect of that comment.

So, we're going to start -- and we have no break in the morning, so sorry. But I will feed you. We will have a break for lunch. Let us get started with Quality updates from Valencia Martin Wallace, Deputy Commissioner for Patent Quality. Thank you.

MS. MARTIN WALLACE: Thank you, Marylee. Let me start by saying we're still on the same trajectory where we're running fast and we're talking to all of the IP community to better enhance our quality here.

Today I decided to really focus on the quality metrics in MRF. There's a lot being done in that arena so we'll leave some time to get your questions as well as

hopefully a lot of feedback in the direction that we're going in. So, we'll talk about the Master Review Form, get you a little bit up to date on where we are with that. And as we promised, more in depth results based on more reviews that we're doing and the more comprehensive review.

So, I'll start here by introducing my two presenters. First, Marty Rater, a chief statistician. And I just want to say to Marty a huge thank you. Marty just ended his acting position over at the Office of Patent Quality Assurance, and I can say honestly that the last year the time he spent as the director and moving forward in EPQI as a whole was pivotal to the success that we've seen so far. So, thank you so much for stepping in and doing that.

And also presenting is our new Acting Director over at the Office of Patent Quality Assurance, Jim Dwyer. A huge thank you for stepping in and doing that. Jim actually retired as an assistant deputy commissioner at Patent Operations a couple of

years back and I begged him to come back and work with us on quality. So, he's now a senior advisor over at Quality. I can say honestly probably the number one reason why I felt I was prepared to take on this role is the work that I've done with Jim when he was my boss and we had hours upon hours of talking about what quality assurance should be. So, he's the perfect person to act in this position.

So, with that I will pass it on to both Marty and Jim.

MR. DWYER: Good morning, it's a pleasure to be working with you too. What I want to talk about is the Master Review Form because that's the collection of the data for the quality metrics that Marty is going to go over. I think we've talked about it before, about the Master Review Form that it is so comprehensive in that it covers all of basically what an examiner should do. So, we have now 10- or 11,000 reviews done and hopefully 18,000 by the time we're done. And what's exciting about this is that we finally

now have the numbers in a comprehensive review form that we can start to look at that compared to other data that we have. We have the QIR data which is kind of more process so we can look at quality versus process. We can go down to the TC and Art Unit work group levels to make decisions. And I know the TCs in their action plans for quality this year, they've taken data from the Master Review Form and now smartly have applied to towards training and enforcement or whatever they need to do in order to improve their quality specifically.

The other thing that it's allowed us to do is to take the time that's already been spent and use it for case studies, ad hoc case studies. I know Marty and I have been playing around with a plurality of different things that are kind of interesting to look to see the quality of using the Master Review Form data of folks that have been here a short period of time, medium, long, what grades they are and so forth. So, we can parse out the data with some level of confidence that allows

us to better understand where our issues are, where our concerns are, and even more so maybe where the good is happening regularly and try to use that to spread that around.

So, with that I'm going to turn it over to Marty and he's going to talk about the quality metrics.

MR. RATER: Thanks, Jim. So, like both Valencia and Jim said, I am back to my old job, I guess, so now I get time to play and dabble in all this data. So, it's a good day. What we hope to do is just kind of show you the tip of the iceberg, if you will, because we're just really now getting into this data where we can move on.

As Jim mentioned, we've got over 10,000 reviews right now. These are our random reviews, the random selection of work product. They're non-finals, finals, or allowances. So, we've got numerous data points at the TC level already, so we're looking at a pretty high level. A lot of our staff in OPQA and within the technology centers are doing their own data analyses as

well and that's one of the things -- we've basically given that charge to everybody that's involved in the quality area. Be courageous, be creative, and look out there and explore new data points.

Where we're at is we established some correctness targets, and we'll show these targets in a minute and I think we presented that last time, we kind of talked about the idea that we established some targets. Now we're starting to put some numbers to that. And keep in mind that these targets -- it's a little bit of setting, it's an art more than a science sometimes of setting these outgoing year targets.

What we did is we set targets and we set a target range for this fiscal year only. Obviously, we're going to continue to set fiscal year targets to advance towards, as well as some out year stretch goals. And right now, we've primarily focused on the correctness because that was the data we were most comfortable with at the end of FY16. We're just kind of getting into some of the

clarity data so we can set targets on those as well.

Let's take a look -- what you'll see on the right here -- and, again, we've mentioned in the past that we're really looking for primary compliance targets for this year. We've got 330 data points in the Master Review Form. We continue to review the quality under just about every statue, Title 35.

So, we picked 102s, we picked 103s, we picked combinations of 112 issues as well as 101 issues for our primary targets. We don't necessarily -- we want to share data on every statute, we want to share growth and improvements in every area, but these were our primary things that we wanted to at least communicate out initially.

So, this is where we're currently sitting with respect to 102 compliance. And you'll see we had a target range of somewhere between 90 and 95 percent. What we're showing you here is how that varies based on non-final finals and allowances. Overall, we're sitting

at 94 percent right now.

Now, we want to mention that when we're talking compliance we're talking about the lack of an omitted rejection as well as when that rejection was made was it done properly. And we base this on an entire case -- on our entire review sample of let's say 10,000 cases. We might have 4,000 of those cases with a 102 rejection in them. We looked at that 102 rejection, whether or not it was proper. The other 6,000 cases in addition to the 4,000 that had the 102, we looked at those for the presence of an omitted 102 as well. And at the end, if there was no omitted and/or if it was made and it was correct then we determined that as compliance.

We plan to share data eventually as well. What is the compliance just when it is made? So, how many times do we do something correct, and we'll do that.

Interesting thing here is -- and this will kind of speak to why we set ranges -- we set ranges for a couple of reasons. Primarily, it was we weren't quite

sure how much sampling variance there was going to be in our data. There is a plus or minus sampling error. There is also a huge non- sampling error that it was a new metric, a new standard, a new Master Review Form in FY16. We've got 65 reviewers doing this. We've got some inconsistencies that we're trying to correct. And we're trying to establish more of a consistent process before we can tighten up this confidence interval in this target. So, that's where we are.

The other reason we set a range is because, obviously, we have different data points that can operate within that range. We did not want to set a range so high or so tight that 60, 70 percent of the metrics we have going towards that, whether it was by examiner level, whether it was by TC level, where it was not an attainable. If that range is so far out of target for some people we were afraid what would be the incentive for them to work towards this target if I'm not going to reach it this year anyway? So, we kind of have to balance that as well.

The one thing I would take out of here is -- again, based on reviews through April 26, but the nice thing this is off the bat, okay, we've got a 92.6 percent compliance at the non-final. At least it looks like we're getting it right or at least closer to being right as we get closer down the line at the end of prosecution. So, there are little tidbits like that that we'll look at.

In the world of 103s you can see we don't quite have that same priority. Where you see that 89 percent, you see that white bar, that is the confidence level of that data right now. So, there really is no significant difference between the finals and the non-finals at this point, but you can see that we're at the closer -- more at the bottom end of that range.

Obviously, the allowances where we're only looking for the presence of an omitted -- or the lack of rejection, the omitted rejections -- were about 98 percent. And overall a combination of all of the Office actions going out there -- our sample is kind

of weighted so that roughly 50 percent of our sample are non-final rejections, about 25 percent are final rejections, and 25 percent allowances. And that kind of matches the total work product going out the door in a given year.

This is where we get to 101s. This is where everybody goes, okay, great, we're at 97 percent compliance in 101s. I know that's exactly what Peter was thinking right now.

So, this is where you start getting into the different areas. 103s, that's in 70 percent of our non-finals and finals. So, that's a pretty consistent thing that we can kind of grab and look at, and it works across the board. What happens in the 101 arena is you get in certain areas where 101 is not even an applicable type issue. So, again, keep in mind these numbers are based on what's happening for the core as a whole.

The value for a lot of people that are interested in the 101 will be how does this data look at the discipline level, maybe a technology center, or what is the difference

between how often do we omit a 101 versus when we make a 101 what is the correctness rate of that? So, those will be data points that come out. That is our next step, really publishing some of this data and those details you can look at.

This is where we're at in 112s. Right now we have the 112 category. We look at 112A enablement, we look at written description. We're looking at 112Bs. All of these are coming into this overall 112 metric. So, what we will do as well is provide this metric breakdown by those particular 112 categories.

MR. THURLOW: So, Marty, just a question on 112. How do you do it? I mean, did you go through each feature of the claim and question it? Like, there are always concerns about how the definition of substantially, about words that there's no clarity. As part of your review are you looking at the claim and saying was it defined in specification and so on? Because I think many practitioners will like to see it, that

issue come up during prosecutions so that later on whether it's a PTAB proceeding or litigation it doesn't kind of nip them in the bud. So, how is 112 dealt with?

MR. RATER: I'll kick this to Jim just because Jim has been reviewing a lot of these cases that come back from there.

MR. THURLOW: You get the hard part. You have to answer the questions. Marty just does the presentations, right? (Laughter)

MR. DWYER: In the Master Review Form it specifies those particular areas of 112 where you have the (inaudible) and definite and how did it come. So, again, it's a data point for us. But the answer is yes, the reviewers who look at the claims go through them, and just from what I've seen in the process of where we send work back to the TC and there's a discussion or rebuttal of that. 112 comes up a lot with respect to language, like you said, substantially, you know, whether there are limits, is specification defined enough, where one with ordinary skill would know that range.

MR. THURLOW: So, the only thing I'm going to say is that since the last meeting we get a lot of feedback from the public and so on. The reason why this is important is because if this is going through the examination then going through review, then those words are being questioned in PTAB proceedings and they're being questioned sometimes in the court. So, we would like those applications to have some clarity of the record, as Drew has said over the years, early on so that there's no issues later on. If there are issues later on then the value of the patent is really put in question and that's why this review, you know, a lot of people outside don't know much about the Master Review Form, but they do know that the examination is critical and it would be helpful to be done right up front so it's not an issue later on.

MR. RATER: So, on that front is that one of our upcoming case studies is actually looking at cases after final, what happens to those. So, what we're going to use

is we're going to use the Master Review Form and do a massive review of a bunch of final rejections to see where. And, obviously, if we look and we see we've got 112 issues in those finals, right, then we have the ability to look back even further and look at our final or the non-finals to see what this an issue present earlier, where, so we can start to identify those earlier.

But I would encourage everybody too to go out and look at that Master Review Form that we have on the EPQI page because you're going to see there is an entire section devoted to every 112 category including an entire page about 112F related issues.

MR. HIRSHFELD: Peter, if I may, and Marty, if I can just chime in. As Marty said, the Master Review Form is available for everyone to take a look at. What is of particular interest, especially with regard to your question about clarity is we asked questions in there not only about correctness but about clarity also to make sure that we are doing the requisite clarity. And that's

something new to us that we haven't always done in the past, but it is our attempt to be able to capture numbers about how clear we are being in our Office actions and be able to know where we need to make improvements.

MR. THURLOW: Great, thank you.

MR. KNIGHT: With respect to the compliance rates, congratulations to the patent examiners and Patents management for having a 90 percent compliance rate. I think that's terrific.

The one question I have is with the PTAB instituting about 65 percent of the petitions, finding that at least one of the claims is arguably unpatentable, what is the disconnect between what you're finding here in the data, Marty, and what the Patent Board judges are finding when the petitions come in and they're actually looking at the patents?

MR. RATER: So, to be honest, this is really the purpose of this next case study, right, because what we realize is that you only have 2 or 3 percent -- and I'm not quite sure of the actual number at this point, but I

don't think it's far off from that -- that ultimately end up at the Board from these 1.6 million Office actions that are taking place any given day.

So, that's really what we want to do, is find a root cause. So, what we've done -- historically we've not been able to say, you know, we were sampling maybe half a percent of our cases. What's the likelihood that in any given year we would have had one of our quality reviews at the same time there was a case that was decided by the Board, let alone there is a three or four-year lag by the time it gets there and a lot of things happen.

So, what we're going to do is try to tighten up that window where we're only looking at cases that maybe were through the FY 2016 window where then we're going to look and see why they even went to appeal, pre-appeal, why maybe something was reopened earlier. And then for those cases that ultimately end up at the Board continue to track so that we can find that root cause.

And in doing so, we've also got to

take into account the applicant's response or whatever else was introduced other than that, than what that examiner had available to them at the time of that original non-final or original final so we can look at cases that RCEs in them prior to -- whatever it is.

So, really, we don't have an answer for that, and that's exactly what we're trying to find is that disconnect.

MR. LANG: Isn't the most likely explanation for the disconnect that a lot of the work that's being done with the Master Review Form and looking at 102 and 103 that's based on the art of record rather than a new search? Whereas an IPR, you have a petitioner who is putting considerable resources in finding prior art that may not have been readily available to the examiner.

MR. RATER: True. And what we try to do is -- how we try to measure some of that within the use of the Master Review Form and the OPQA reviewers is every single reviewer that we have of the 65 reviewers has the option to research a case if they deem it's

necessary based on their looking at the search. And they can say, hey, something just doesn't feel right here, let me go out there.

We actually flag 10 to 15 percent of our cases, and our reviewers actually do a research in about 40 percent of the cases. But we actually mandate that they do research in some of these cases to try to catch just that.

MR. LANG: So, to be clear, you're doing a new prior art search in 40 percent of the cases now?

MR. RATER: Yes, roughly. Obviously, most of the reviewers will side with when they see an allowance to kind of research that, or they kind of base it on how well maybe the search was recorded. Again, we give them flexibility. They're limited on the time that they can use to perform a review when they're in a production environment as well.

MR. LANG: That was going to be my next question. If they're redoing the search, is the time they have to do it comparable to

what the examiner had, is it a multiple of that? Because in an IPR situation there is --

MR. RATER: Unlimited, exactly. And we do not do certain things like that where we'll just spend how much ever time it is to tear apart a case and find every time where some potential thing went off the rails, no. We're in a three or four-hour window. Again, it takes a lot of time to get to these 18,000 reviews.

Now, I think where we do that a little bit more is when we've got the resources and time in a particular case study. And I know we did a case study -- back to Bernie's question -- three or four years ago in conjunction with the Chief Economist's Office where we actually looked and said, what happened? Board reversed this or reopened this, and where did we miss the art? Was it something the examiner did and why? Kind of that root cause. And on those reviews we did; we spent eight, ten hours on trying to find where something went off the rails.

MR. LANG: It seems also relevant to

the examination time analysis discussion because if you're going to -- at some point between the amount of time that the examiner takes now and the amount that a petitioner would spend, there is probably a function you can graph out about where you get the highest level of accuracy but at an optimal cost.

MR. RATER: And so that's one of the things which will be great here, we'll get through these couple of slides, where we're talking about how can we take this data, merge this in with what we're learning for some of the examination time analysis. And you're absolutely right: what is the most efficient? I know everybody wants it faster, better, and cheaper, right? Pick two. And we're doing exactly that, trying to find that happy medium. Great point.

MR. LANG: Okay, thanks.

MR. HIRSFELD: I'm going to chime in again to get to Bernie's question. I also just want to reiterate the fact that petitioners, as we all know, aren't bringing petitions in cases they don't think they're

going to win. So, there is a significant amount of self-selection that goes on.

And as Marty said, I think you said 2 or 3 percent - - I don't know the exact number either. My inclination was that it was actually well below the 2 or 3 percent are actually going to the PTAB. So, they're not exactly apples to apples.

But that being said, what the PTAB trials have afforded us is another way to take a look at the work that we're doing. And we are trying to increase the ways that we look at the decisions from the PTAB judges to be able to see if there are teaching points, learning points for us that we can have to be able to feed back to examiners.

And it's been a challenge, to be honest with you, because since it's such a small percentage of cases that actually end up at the PTAB, they're usually one-off issues that don't have larger teaching points, but that is something that we're evaluating.

I'll also just point out that there have been many instances of law changes. So,

take 101, for example. A lot of cases have been addressed by PTAB where the examiner was examining under one standard.

So, I think it's just a very complicated issue. It is something, of course, as you point out and highlight, that we should be focused on and we are focused on getting that. But I think a straight-line comparison of what may or may not be being done at the PTAB with what may or may not be being done in quality of patents is a difficult line to draw. I think it's very complicated.

MR. LANG: I absolutely agree on the self-selection point. There is a considerable amount of resources that have to be put into an IPR and it's not done unless there is high perceived probability of success.

MR. HIRSHFELD: Correct. And Marty is also correct that we do have reviewers who are searching, but they're searching on the order of two to three hours to check a case, not what is being put in for a PTAB --

CHAIRWOMAN JENKINS: I get to jump

in. I'm calling Chair. Sorry, Peter. As some people know, I have set up that you can email me questions, so I want to be mindful of the user community. I do not ask all of you to start emailing me right now with questions please. And bear in mind I will try to do this as best I can, but for those in the audience you can see how enthusiastic the PPAC is. I even have to call Chair's moment in order to get a question in. (Laughter) Which is great.

So, I think just a couple of -- I'm trying to summarize the multiple emails I have gotten. I think the important thing is to pick up on -- and I appreciate Drew's comment of how quality is being done in lieu of IPRs. And obviously, this is a very sensitive issue in the user community that in order to properly respond and do the many tasks that we have to do in order to protect our clients it's important to hear the quality and what you're trying to do between the entities not look like separate bubbles, so to speak.

One question that was raised is, so,

you have this concept of quality, is it comparable to things in the industry such as a Six Sigma or any other type of quality standards? I think for the user community it would be helpful to know generally, not in huge detail, how you're exactly doing this. And that this is comparable to something else they can relate to and that they're aware of.

MR. RATER: I think what we've tried to do between our dabbling in the ISO arena, some of the procedures that we had and established a quality control -- quality management system, if you will. We still have a lot of those procedures. As we have looked at Six Sigma we have looked at some of the other assessment systems like Baldridge, we try to take some of the best practices from each of those. And really, I guess in simple terms, we ideally would like to be in some sort of statistical process control, right? Sure, we'd like to shoot for 100 percent compliance on every single thing we do, but maybe these target ranges are that start of this. What, where, and why do we go out of

control, or how do we get out of the norm?

And we're really kind of starting to do that right now, not only with our own reviewers, it's like what do you see, how do you act in finding these issues? So, we've started there with getting consistency amongst our reviewers. We're getting there with the examiners and where we can provide that data to them, but it's going to take more reviews. It's really kind of hard to say an examiner is out of the norm when you only grab two or three of their 200 office actions that you're doing in a given year.

So, we've got to look at a little bit higher level of maybe a work group or a TC, but absolutely we're looking at some sort of process control where we can sit there -- and I think one of the additional challenges we have as opposed to an assembly line or something else is that we're cruising along, think we're in the norm, and then bam, all of a sudden here is this new case law, or here is a new pilot program we decided to do that may be related to pendency and it has an

impact on quality.

So, again, back to the other thing, we really need to kind of balance our process control with everything: cost, pendency, and quality all at once. It's one thing -- we could ratchet up the controls and make sure quality is always right, but what would we be breaking somewhere else?

CHAIRWOMAN JENKINS: I think it's a good point to mention as well that Apple can spend -- based on some of the emails I've gotten, they spend hundreds of thousands of dollars to do portfolios. So, they want to have some assurances that all the money that they've spent on that side of the house is not going to all of a sudden be taken away from them with an IPR.

MR. RATER: Absolutely.

MR. THURLOW: Just to express some frustration from the public. Appreciate that there has been a big change with the AIA. I've been doing this for 20 years now and under re- exam the standard was substantial new question, and new was a big emphasis. It

had to be something for the most part that was not before the examiner. Under the AIA everything is open for review including those references that were before the examiner.

So, after having a patent, after being excited and so on, to go through another proceeding by the same patent office, just a different group of art that was previously before the examiner and so on is not really what many consider is the best procedure for the Patent Office. So, that's why what you're doing with Jim in the Office and Drew explained and Valencia is important. I want to get it right first so there is not an issue later on. If there is an issue later on then the whole system is in trouble.

MR. RATER: And that really is one of our goals -- and I've had this discussion with Marylee -- is that we want to identify probabilities, likelihoods. If we do this what is the potential impact on that outcome, right? So that not only you have tools that you can work with and say, okay, we go this way we -- there's always going to be potential

issues. We're not perfect. But if we can sit there and say when we do this we know we're giving this. And we'd actually like to do that where we can start looking at we do this, applicants do this, and it results in this, right?

So, we definitely want to get there and that's why I'm excited to be back as the statistician instead of -- we'll let Jim sort it out. (Laughter)

CHAIRWOMAN JENKINS: Just to allude to what he mentioned, it was about how is the data that they're doing helpful on the applicant side? So, how can we use that with respect to examiner allowances, interviews the examiner has done? More data that we can help the user community with. That's what we were discussing.

MR. RATER: Absolutely. I just want to do a quick jump here just to show

that, hey, we can break this down by discipline. I want you to kind of do a quick memory there of what that 102 looks like. It looks like the chemical areas were a little

bit higher, kind of very similar to what we're seeing in the mechanical areas, TC36- and 3700. Maybe a little bit lower performance in the 102 arena for the electrical areas, the 21,

and 24 and 28. I don't necessarily do numbers in order, Andy knows that. So, again, it kind of speaks to why we had a range because different people operate in different environments.

Same thing here, you look at the 101s and you see the chemical, where we mentioned earlier. Maybe not quite so much is the primary interest over there right now, 98.9 running. They've got other things that they need to focus on. 101s for the electrical areas is about 94 percent compliance. And, again, this is the overall compliance, not the actual correctness there.

And I want you to remember that because I think this is actually one of the coolest things we've found so far. And when I say cool remember I'm a statistician so it's always relative. (Laughter) And Valencia

warns me of that all the time. She goes, you know it's relative.

Look over there on the left, the perceptions versus reality. What you have on those three sets of bars to the left, the 59 percent, 44 percent, and 56 percent. This is data we have obtained from our external quality survey where we sample -- our frequent flyer customers will be glad to talk about that all you want -- where we asked them, hey, rate quality over the past three months in how you're following practice procedure, overall quality. This is the percent of customers that rated quality as good or excellent versus poor, fair, or very poor.

And you can see our customers that dabble in the chemical world, in the mechanical world are kind of very similar and they have a little bit lower perception of quality in the electrical arenas. When you look at the three bars on the right, those are our percent cases total in compliance. Keep in mind I showed you a bunch of numbers, 95 percent compliance, 95 percent compliance in

this statute. Overall, about 20 percent of the cases have something considered not compliant. They have one of those issues. A 101, a 102, a 103, or whatever.

And you can see, now, we're kind of nearing that a little bit better. And that's exactly what we want to do: our internal quality and our perceptions of what internal quality is should not vary that much from what the external perceptions are.

Now, different data points not compared apples to apples because we know in the customers' perception we're asking you to evaluate your entire body of cases, you're taking other things into account such as pendency, you're taking into account things that aren't in our compliance metrics like restrictions, double patents, things we're measuring but maybe not in our compliance metric.

But if you look at the bars over on the right, at the end of FY15 before we moved to this Master Review Form, if we did a quality review of products and using the old

form, we were coming out and telling you that 95 percent of our cases are okay. But at the same time only 47 percent of our customers were saying quality is good or excellent.

When we look at where we're at right now we know and we're indicating that 20 percent of our cases have some sort of non-compliance and about 50 percent of the customers are saying quality is good or excellent.

Now, the fact that we've aligned our perceptions a little bit better is a good early indication. We don't want to make so many errors that we align with you at 50 percent. But we should be able to track the external quality survey and all of our internal reviews to the point where now when I get the external surveys back and start looking at the data, there re no surprises. I should already know that we should see a perceived improvement in 101s in the chemical area or in the electrical areas because our quality reviews have reflected that.

So, I think this is a very -- again,

I'll use the term cool number that we're kind of doing better in terms of - - at least of anything we've gained out of the MRF so far it's an alignment better with customer perceptions.

MR. LANG: What is the definition of a customer for this purpose?

MR. RATER: Our customers are applicants, agents, attorneys, the customer of record, or who is prosecuting that patent. So, what we've done is identify -- basically, we take all the patents in a pipeline at a given time and create a sample frame and, you know, get your name and say, hey, okay, Dan's been affiliated with 52 patents over this period of time.

I think our definition is any registered agent or attorney -- or it could be a pro se applicant -- that has six or more cases in the pipeline at any given time. So, not necessarily issued patents but actually an application in the pipeline.

MR. LANG: But when you're talking about patents that were issued that perhaps

shouldn't have been or should have been issued not as broadly, I think you need to look more broadly than that community. I think you look at, for example, the senior technical talent, fellows of the IEEE, members of the National Academy of Engineering, senior business people in the technology industry because I think those are the people who are really very key to forming a perception of the performance of the Patent Office more broadly than the people who are actually applying for and getting patents.

MR. RATER: Sure, great point. That's actually one of the clarifications I make. So, back to the old quality arena of little Q, medium Q, and big Q.

When we developed this survey back in 2006 it really was to say we want this survey to be able to help us identify things that we can improve on the pipeline. So, very little

Q We're currently renewing that survey contract with how we do it. And I think you're right; if we want to get to more of

that medium Q or big Q we've got to expand that perception of quality and define that.

This really is geared more towards what is the examination quality and how well are we doing the process. But definitely I think that's a good recommendation or suggestion to explore. I think we're at a point where we could maybe go that medium Q or big Q type environment.

MR. LANG: Thanks.

MS. MAR SPINOLA: I have a comment and a question. First, my comment. Thank you for liking what you do. (Laughter) It's something that I don't do well but I appreciate.

A question, I think, because we're talking about quality, I think it would be helpful to see or to compare your reality metrics with the results in the challenges. For example, the results from the PTAB because if you're 80 percent in compliance, I would assume that the results from PTAB would reflect that. So, that would be, I think, an important metric to compare.

MR. RATER: Go back to this case study we're looking at, that's exactly what we want to do. And if it does not compare, if we can't look at the cases that ultimately ended up at the Board and we can say aha, here is where it went off the rails in the final rejection or we were able to indicate that the probability of this thing ended up the Board was increased because it was there, we've got two things to do.

First of all, a little more root cause and identify, and then it's add whatever factors that we think is causing that back to this Master Review Form so that we can start identifying these are leading indicators. Absolutely. And that's exactly a goal of what we want to do with this next case study that we're hoping to -- we're going to start -- we've actually already kind of kicked it off when hopefully at the end of this fiscal year we've got some results on that.

MS. MAR-SPINOLA: I think that would be well appreciated. Thank you.

MR. RATER: We're finally at the

last slide so then you can ask Jim all your burning questions that I didn't answer.

So, where are we at? So, one of the huge things we've done is we've actually got an internal dashboard now that has given managers, quality personnel, throughout the organization access to the data so they can do their own exploratory analysis. They can look and say what's impacting me? And we've given them links to the actual review forms of actually a completed review.

And this is something that we've never really done before. It's always been kind of an end of year. We give them a little summary. It was based on so few reviews and it was like already in the wind. Now they have real-time data where they can say what is happening to me? What is happening to my neighboring art unit? And where can we go with this? Jim will talk maybe a little bit about that if we've got questions.

We're going to publish these stats on the USPTO website. Very much on our dashboard, we're looking at how the best to

provide, again, 10,000 reviews, 330 variables. We know some people want just the 4 big ticket items. Some people want those big-ticket items broken down by TC. And then there are other people like my cohorts that want to be given the data and let us know everything that you've collected to date.

So, that's where we're currently balancing. We're trying to identify that, you know, not everybody is a statistician but everybody should be able to understand the data we publish. And that's where we're at.

MS. MARTIN WALLACE: Just to interject that at the moment we're working with the Quality Subcommittee to gauge what the external IP community would want to see out of those metrics.

MR. RATER: So, we have ten managers in OPQA. There are managers throughout Operations. And I think everybody has been kind of tasked with do your own data analysis, do your own exploration, come find the chief statistician and the statistician people when you need help analyzing data or understanding

it. But we have a lot of really good people that understand data and a lot of really good -- they understand the process to the point where they say I want to explore this. And we're given them access to the data where they can do that.

One of the things we've looked at initially is -- and this goes back to what can the customers do, what can we do? We know that if a case has got good clarity in it and we've not -- because, again, we're measuring clarity of rejections as well in our review form -- if there is nothing wrong in terms of clarity on that, that case is three times more likely to end up being compliant by our standard.

So, again, clarity is a two-way street. So, if this is something we want to look at -- those are things that we're kind of finding and this is what we really want to give you. If we do this, this is the outcome. We don't necessarily want to invest a lot of resources if it's only going to move the dial this much or it's only going to impact a

one-off type situation. We want to identify things where we can go back to the core or a substantial group of employees and say if you do this, this is the outcome, this is the impact.

The other thing Jim mentioned that we're looking at a lot is what are some of the examiners characteristics for sample lines? Do we have pockets of quality out there that was based on something as seniority? What training did they give? What patent training or class did they come through? Where did they sit? What's the ratio of supervisors to examiners? What are things that we can maybe modify or look at?

And, again, even just looking at these, if we don't find anything that in and of itself is a finding. We know, okay, we've looked under that rug, nothing there, let's move on here, and let's do this. That requires a lot of people. And we would like to actually eventually get to the point where we can have this data out there for not only that, the public can help us look at some of

these things. And if we don't have the data, we look and see what it would take to collect that extra data.

So, in doing so I think we're leading a lot of the core-wide studies and evaluations. After final rejection analysis kind of that case study I've mentioned a couple of times, search enhancement, clarity pilot. We're heavily involved in the clarity pilot. What were the impacts? What did that clarity pilot find? What can we put in the Master Review Form? Where the clarity pilot is, how does it match with what we're finding in our Master Review Form now?

And definitely one of the things right now is we've got the data supporting this examination time analysis. So, we're taking all of our Master Review Form data and we're looking at the quality data and we're linking it up and saying, well, this examiner had this many hours per BD. Do we see impacts on quality between this and this group?

Anything that we can provide back to the ETA team that says, okay, we know we're

trying to fix everything all at once with the adjustment of time, here is its impact on quality. Or if the priority is for this to improve quality, where in that process can we add time? Do we add it to the search? Do we add it to the after-final? Do we add it to something in the special programs?

So, we're doing that. And we continue to support several -- about 20 percent of our reviewer activity is actually working with the Technology Center, and working with Operations, and meeting their individual quality needs.

There we go. Now, questions for Jim?

MR. WALKER: I do have a comment, Marty, because Julie raised a question about PTAB proceedings and things. And I went back and looked at the report out from the Post- Grant Outcomes pilot from last year. You know, it's very interesting because in that case there were only 285 surveys reported, but only 10 percent of the examiners issued a new rejection based upon the data

that was made available to them based upon the PTAB proceedings. And presumably a lot of new art coming in there, others have mentioned that.

So, it's an interesting point, so we'll see what it looks like. Because if it's only 10 percent issuing a new rejection -- I was really surprised by that number, I remember that last year. So, we'll see what the data will show going forward.

CHAIRWOMAN JENKINS: Something for Valencia that she mentioned, and I just want to remind the audience, the Committee of PPAC are nine members and each member has a subcommittee. It's on the website, that's something new. So, you all never knew who were the subcommittee chairs, so it's all out there. And I'm going to try during our presentation to tell you who everyone is, but Jennifer is our Quality Subcommittee chair.

We're really trying as best we can to recognize the stakeholder community and have them communicate with us. And we're trying to make sure that we hear what you're

saying, we're getting your questions, we're getting your comments, and we're really working with the Office to get that information and questions to the right folks in the Office.

I want to strongly point out to the user community that the Office listens. I will say in my practice, when I first started many, many years ago, it was a very different Office. Now you have an Office that truly listens. They may not listen as quickly as you want them to, and I'm trying to keep up with all your emails today, but I think you really need to hear that. They're committed and they work very, very hard and they're trying to deal with a lot of multiple issues the user community is also struggling with.

So, quality goes to Jennifer.

MS. CAMACHO: Thank you. And I'd like to reiterate that I really would welcome anyone in the public or anywhere to really contact us and let us know what's on your minds as far as the quality initiative goes and things that we can do better, things that

we're doing well. We'd really appreciate hearing from folks.

And I do have a question. Marty, I think all of this is cool as well, but I'm a patent lawyer so take it for what that is. Question for you. On the last slide you were talking about supporting the various initiatives, and that's where I think it's really interesting.

So, I'm curious as to where we are as far as the analytics and the software tools that you might have at your disposal to take this to the next level. We have the baseline, we know where we are today, but what's really interesting is whether we can take that data and design training programs, other initiatives, pilots, to really, again, take us beyond the target and into the goal. The goals I always going to be 100 percent. And then also to be able to analyze what we've done and whether we're really getting some return on investment there, and whether it's something that we want to expand or discontinue based on that.

So, where are we as far as putting the data that we have into practical use for the Office?

MR. RATER: So, first of all, it's great. You've got a great number of examiners that are just crazy smart and have these skill sets that we're just starting to tap into, and offering details and opportunities for these folks to come over and show us what they can do.

We built a dashboard, right? Everybody's comfortable in the Office using Excel and we're using analytical skills there, but there are a lot of people that had these stat classes or had their stuff through college. We've got people in the Office that use R, they're using Python to scrub data and to do all of these things.

We're currently looking at all of the big data tools that are out there, whether it's some -- whatever business analytics tool. Anything that allows us to kind of do this, you know, slice and dice on your own without coming over there. I've used a statistical

software for 20 years and that's my comfort zone. But we've given different tools to the different statisticians.

And like I said, we built a dashboard and it was largely based off of dashboard that a supervisory patent examiner over in a TC had done to massage their own data to understand it. So, we're begging and borrowing from anybody that's got a particular tool that they have developed. We've developed some in-house.

We've been talking -- and you guys can sign up -- but we've actually been talking about a statistics class because anybody can crunch and look and compare data. So, one of the things we've talked about is offering to certain managers or the data people in the various TCs. Before you go up, what do you look at? How do you look at this data? So, it's a little bit more of developing their personal skills as much as the software right now.

Ideally, we'd give something actually out on our website that allows that

and it might be under that big data environment, those of you that have visited the big data portal and some of the other data. We would like this just to be another data point that's out there available so now you can link this to whatever else is out there in the big data world.

MS. MARTIN WALLACE: Also, I'd like to add onto what we're doing with the data. I don't think there's a single imitative program study that's happening in my area that is not partnered with Patent operations, Policy, International, what have you. We have members on those teams. So, we're getting not only this diverse point of view of how to address the program or the analytics, but we're also having that information going back in real-time into these different divisions that's affecting the training.

And as Marty had mentioned with our dashboard, the dashboard is not only for the supervisory patent examiners, it's for all managers. So, everyone in my division has access to that as well so when they're looking

at the next training or process improvement they have access to this, and to his chagrin, access to Marty to ask any kind of questions or help in developing that analysis into the next training or the next lecture. So, we're doing that now.

MS. CAMACHO: Great. And it's good to hear that on a personal level people have access to data and can look at it and derive their own take-home messages. But I do think it's important that on an Office level or department level that the data is being looked at on a consistency level.

MR. FAILE: Jennifer makes a great point. Let me jump in here and talk a little bit about the nexus between Ops and the Quality shop.

Marty talked about collecting a vast amount of data, 18,000 different reviews. And the data has a couple of different uses. One, obviously, is a report out to see how we're doing, what's our compliance rate. The more data we collect, the more precise we can be in that, number one. Number two, the more

granular we can use that data within a TC. We just don't have TC level data now. Now we can go into workgroups and potentially even beyond that to look at trends.

So, one important use of the data at least I think is the reporting out and letting everyone know kind of where we are in a kind of a general look in four different statutory provisions now whereas before it was a little bit more at the aggregate level. So, I think we're getting a little bit more specific.

But I think even more fundamentally more important is how do you use that data to feed it back and learn from it in operations so what you're producing on the front-end benefits from that and becomes better. That's a lot of the discussion we've been having with the Quality shop as of late.

With the data, our first look at that is when those reviews come back into the TC historically we would go through a process of sorting out ultimately who was right or wrong in the position they took, either the reviewer or the examiner and we would make a

decision. Sometimes we would have an appeal-type process that would go up to Valencia and she would decide this person is right, this person is wrong, et cetera. We're learning pretty quickly that coming to those very granual decisions on right and wrong doesn't really do much with the data and help us improve.

So, what we're doing now is we're working on a process where the data comes back to the TCs, the TCs take a look at the data and they make some comments. And where we have disagreements we're capturing where there have disagreements between reviewers in positions taking the TC and we're looking at trend lines on those disagreements. We can find out, oh, with this particular area of OPQA sending cases back to this particular area in a TC potentially under Section 101, there is a lot of disagreement about whether we're in steps to early compliant with respect to this particular claim in this case or not.

So, when we see that we know there is a fundamental disagreement there and we

need to go in and look at that. And how we're using that is there may be a practice in a TC that needs to be looked at and refined, there may be a practice in the reviewing process -- Marty mentioned there are 65 different reviewers taking a look that needs to be refined. Or potentially there is such an unclarity here we need to be looped into Bob Barh in DC PEP and we need another memo and guidance and more training on that.

So, I think one of the great uses in the data in my opinion is not only the reporting out and the precision level we can get in the reporting of that data, but how do you feed it back and then try to improve the front end with 8,300 examiners making hundreds of decisions every day, turning out work products? If you can get that moved up a little bit based on this data I think you've accomplished a lot more.

So, we're constantly looking at ways we can feed that data back into operations and actually start moving those levels up.

MS. MARTIN WALLACE: I'll just add

one more thing based on what Andy was saying that I think we overlooked a little bit. Quality assurance is absolutely about making sure that everything is done right and that we get that feedback of what isn't done right back to the TCs. But it's also what's done correctly. We have examiners who just diamond level quality in their office actions and OPQA identifies that as well and sends that fee back to the TCs, puts it in our database, so that's used for training as well.

OPQA isn't just about hitting someone over the head. That's not our purpose there. It's to make sure that what the TCs, the workgroups, the examiners, are doing that's pushing us forward in our enhancement of quality is also recognized and shared with everyone.

MR. THURLOW: Just to give you external perspective on that. Everything that you're doing that makes a lot of sense internally it's just from the public we question it because, as Bernie said, when you see the numbers on the institution rates even

though they've come down and when you see the numbers when they go up on appeal and 30, 40 percent of the cases get reopened. So, although the numbers -- we just question it. I'm not saying that the Patent Office here is patting themselves on the back and stuff, it's just that we see different numbers and we see things from a different prism. And we see our own cases of what's going on.

So, Drew was up in New York, we were attending a CLE function in New York of 350 people. I asked them some very basic questions about the Master Review Form, what do they think about the Patent Office is doing on the Patent Quality Program. And unfortunately, a lot of them, no surprise, were not really familiar with it. But what they are familiar with is what's going on with their cases, how are they doing during the interviews, what are the examiners doing on their Office actions. And then, surprisingly, there are a lot of people -- well, maybe not surprisingly, just once they get the patent, what's happening at PTAB is they're

really -- is the patent of value? So, there may be a disconnect in that.

MS. MARTIN WALLACE: I understand completely, Pete. One of the best parts of the last two years for me has been going out and getting that feedback because that's helping us to calibrate on our side as well. So, we welcome that type of feedback and we will consider everything that we hear. Keep it coming, we want to hear it.

MR. RATER: I would just mention on that, Peter, I think that goes exactly to what Dan was saying earlier. Our program right now is very process-oriented and we need to be that bigger Q. All the quality things and touchpoints that the public is seeing in this Office and how does that feed into the overall outcome.

So, I think as we get this process quality piece in, that's where I think definitely everybody in the Office wants to get to. What are the other quality touchpoints that we can really explore so that we've got a true quality system throughout

USPTO? That goes from the day you march in the door with that application to the final, final, final thing down the road.

MS. SCHWARTZ: From the examiners' perspective, we're getting three times as many cases reviewed now and those cases do come back. My concern is that for them really to be a training tool for the examiners, for them to look at what comes back and evaluate what the reviewer said, and to have a discussion with their supervisor about what the result was and maybe what the result should have been, the examiners really should be given time for reviewing what they get back in detail so it is a training experience for them.

Right now those are coming back, examiners are not given any time. It's very disruptive to the cases they're working on when suddenly a case comes back from quality review and their supervisor asks them of their opinion or to let them know what they think about it in a short time frame, without any time for doing that. I think it would be of

more value to the examiners if they were given the time to look at it and to learn from it.

CHAIRWOMAN JENKINS: Okay. Are we good with Quality? Yes?

I echo the comments and I echo Peter's comments, and I appreciate the Director's comments about the importance of individual inventors and small entities and the focus that the Office is having, particularly in that area. But, again, for us it's always about results and outcome and good patents. And we appreciate that you're listening.

So, let us move on. Andy, are you carrying the ball for -- Andy Faile, Deputy Commissioner for Patent Operations, are you carrying the ball for this?

MR. FAILE: Sure, I will carry the ball. Team, up to the table. Where is the team? Dan Rinaldi and Don?

For the Ops update today, in talking to Jeff -- and Jeff is our PPAC Subcommittee Chair. Thanks for all his efforts. Jeff is brand new and he's dived right into the world

of pendency and numbers. He's been very helpful in giving us some input from his perspective.

So, what we thought we would do today in the Ops update is kind of look at it in two pieces. The first Dan Sullivan, TC 1600 Director, is going to walk us through a lot of our baseline information stats on filing rates, what are we seeing in filing rates, how are we doing in pendency, how are we doing in backlog, the usual data that we bring to a lot of these PPAC meetings.

We'd welcome any input that you guys have on any trends that you're seeing. We're always, always interested as you guys know, I'm always asking about filing rate trends, whether they be serialized filings or RCEs, what are you seeing, what are you hearing? As much as we can get that guesstimate right in the incoming trends that helps set a lot of our parameters in the Patent model's terms of workload and resources, as you can imagine. So, anything on that would be really appreciated.

So, we'll work through that and then kind of the second half of the hour we'll talk a little bit about patent term adjustment, particularly patent term adjustment within the statutory categories of 14/4/4/4/36. Bob Barh is going to talk a little bit about the high level and kind of give us a baseline of patent term adjustment within that framework. We'll go through a little historical data for the last 10 to

years of how we've been doing in patent term adjustment, and then talk about some next steps within the five different categories.

So, we'll start with Dan. Are you ready? Dan will lead us through some stats.

MR. SULLIVAN: As Andy said, I'm going to take you through a brief presentation to update you on some of our basic operation stats. So, we'll look at how things are trending with filings and with inventories, look at turnaround times. And I'll also give you an update on our track 1 proposal and then we'll open it up for your questions and

comments.

So, this first slide shows our utility plan in reissue filings and you can see that they've been trending up since 2010. They did decline just a bit in 2015, our overall filings did, but they were up again in 2016. That was driven by about a 13 percent increase in our RCE filings and about a 1.7 percent increase in our serialized filings.

So, from what we've seen so far, we do expect overall filings to be just slightly this year. We expect the serialized filings to be up about the same amount as they were last year, but we expect RCEs to be down just a bit relative to what we got last year.

MR. SEARS: Dan, a question for you, just a nomenclature. When you say serialized is that an application that gets a serial number?

MR. SULLIVAN: Gets a new serial number, yeah. So, in RCEs the same serialized with new prosecution.

In spite of the upwards trend in filings, the unexamined application inventory

has been trending down since fiscal year 2011. There was a bit of an interruption here in 2014 as we transitioned to CPC and invested time in training examiners on CPC. But that resumed again in 2015 and continued down through 2016 where our inventory decreased by about 2.8 percent. We do expect to continue a downward trend in Fiscal Year 17, but it's going to be shallowing a bit we think.

You've probably seen this graph before. This is our RCE inventories beginning in 2010 when we took the RCEs off of the examiners, amended the docket and put them on to a new case docket. And that resulted in a dramatic rise in our inventories that peaked in the spring of 2013 at nearly -- or a little bit above 110,000. So, we're starting from around 20,000, got up to 110,000.

In 2012 and 2013 we began some initiatives and reorganized the incentive structure for RCEs and that turned that increase around and headed it down until in 2015 we started averaging between 30- and 40,000 RCEs in our inventory.

We expect at the end of 2017 to have around 31,000, which is obviously larger than the 20,000 or so that we were averaging back in Fiscal Year 10 but we have a significantly larger work force now than we had back then. So, carrying a larger inventory may not be an issue for us. We're more focused on pendency for RCEs right now and I'll show you another slide that looks at RCE pendency.

But, first, this our first action pendency and total pendency for the serialized applications. You can see that it's been trending down since Fiscal Year 11, 12. Again, the first action pendency was interrupted by our transition to CPC but it has continued down in 15 and into 16.

In 2016 we decreased our pendency from 17.3 months to 16.2 months in the first action pendency, and total pendency decreased from 26.6 to 25.3 months. We do expect to continue this downward trend in Fiscal Year 17, although it's going to be a modest decline is what we're expecting.

MS. CAMACHO: On this slide you're

including RCEs' pendency so that the filing of an RCE is --?

MR. SULLIVAN: This is only the serialized.

MS. CAMACHO: Just serialized.

MR. SULLIVAN: And the next slide is RCEs.

MS. CAMACHO: And only RCEs?

MR. SULLIVAN: Yes.

MS. CAMACHO: Thank you.

MR. SULLIVAN: Here are the RCEs. Again, we're going back to 2010. You can see the rise and fall that follows, the rise and fall of the inventories that we saw. WE peaked in 2013 and timed the next action of nearly eight months on average. That came down dramatically in 2014 and 2015. We continue to trend downward in 2016, but we seem to be levelling off now at around 2.8 months to next action for RCEs.

This graph is showing the UPR examiner attrition rate. We're going all the way back to 2001 here, but you can see that since 2011 it's been quite low. Right now

we're at just over 4 percent total and less than 3 percent if you subtract out transfers and retirees. So, this is quite low. We're happy with our attrition rate and it's been quite stable at that level.

Now we'll look at design applications. Design application filings have been increasing steadily since 2010 at a rate of about 5 percent year over year. This year, as of midyear, our filings are flat relative to where they were last year. So, we'll have to wait and see where this is going over the second half of the year.

And as you'd expect with the increases in filings, our application inventory has been increasing for designs. However, there has been a substantial number of design examiners hired over the last few years and it does appear that the rate of rise at least of our inventory is beginning to shallow out.

And this is looking at first action and total pendency for the design applications. Again, there is an increase

here for both first action and total pendency. But in 2016 our pendency did not increase. It seems to be levelling off. And for the first action pendency it may be declined just a bit. It started a trend downward. So, at least for now our pendency is stabilizing around 19 months, total pendency around 13 months for first action pendency.

MR. THURLOW: Dan, just from my perspective, there has been -- sometimes my job it goes up and down with respect to designs. And lately there has definitely been more of an interest and you see the uptick in numbers and lots more discussions at Bar associations and CLE events and how to maximize protection with designs.

My question is with the new hires we've heard at the past meetings about the hires specifically to the design examination group. How long does it take for a new hire joining the Patent Office and then actually having an impact as far as getting a caseload and reviewing cases and so on? I mean, they have to go through months of training and so

on before they can get their own docket, I imagine.

MR. SULLIVAN: Yes, they begin an examination within a month or two. Now, their output is pretty low at first, and it's heavily supervised. But they can be -- they're starting at a low GS level typically, too. But they should be within a year producing at 100 percent of their goal. So, that's what we're looking for. So, it takes them a year to get up to speed based on their GS level.

MR. THURLOW: And if you get the answer to this question you get a gold star, so are you ready? For the examination time analysis, I know you were involved in it with Valencia and so on. I think the ranges for utility applications ranged -- and correct me please -- from maybe 13 and 14 hours to 13 hours per application?

MR. SULLIVAN: That's at the very low end. You mean expectancies?

MR. THURLOW: Overall time to review the initial application that is filed.

MR. SULLIVAN: So, that's the very low end so it's a big range. Those 13 hours, that would be for --

MR. THURLOW: Well, my point is, say it was 13 to 32 hours. I'm curious in the design how much would they get for a design application coming in?

MR. SULLIVAN: Andy is holding up seven fingers.

MR. THURLOW: Andy gets the gold star, I'm sorry.

(Laughter)

MR. FAILE: Just a ballpark, Pete, designs are literally half of the lower end of that scale. So, they're somewhere around the 6 to 7 range.

MR. SULLIVAN: Okay. Now we'll take a quick look at the Track 1 program and how things are going there.

Our Track 1 filings have increased steadily since the program was launched at the end of Fiscal Year 11. We reached our cap of 10,000 granted petitions for the first time in Fiscal Year 16. The filings are down a little

bit these year relative to where they were last year, but we do expect to be up close to the cap again this year.

We've done very well at meeting our goals for processing Track 1 applications. The average time for filing to granting a petition is 1.4 months, and then the first action on average goes out within 2.6 months of that petition grant. We'll reach a final disposition within 6.5 months of the petition grant. And then if that final disposition happens to be an allowance it's even quicker. Typically, on average around 5.2 months. So, the vast majority of our applications do reach a final decision by one year, which was a goal.

MR. THURLOW: Dan, did we go over the cap last year? Did we hit more than 3,000?

MR. SULLIVAN: Well, this is a little bit deceptive because this is petitions received. So, these 11 guys would be at the very end of the year so they wouldn't be granted until the next year.

MR. FAILE: We didn't actually see the cap because the cap is on the number that we can accept, and a certain number of these are not grantable. So, we didn't grant -- we didn't go over the cap that way and we didn't have to turn anybody down because of that. But we are starting to approach the cap. Not today, but getting to the point where we're going to have to make some decisions.

MR. THURLOW: And I know Andy is going to chime in because this came up at an earlier meeting. So, we want to make sure we make contingency plans if we reached a cap this year, I guess.

MR. FAILE: For PPAC, any input on Track 1, again, to try to guess. We think we're getting close to the cap again this year, but is there anything you guys know about whether Track 1 seems to be picking up, leveling off, trending downward, et cetera, would be helpful to know from your perspective.

MR. THURLOW: I think Drew mentioned in a CLE meeting in New York -- and Drew,

correct me please -- I think

percent of them were submitted by independent inventors, small entities. So, for that reason there is a big support for the program, and overall, it's a really good thing. So, yes, we're going to use it and use it more.

MS. MAR-SPINOLA: I want to say to Andy and his team that I miss being on that subcommittee. But I do want to input on the Track 1 filings. I think it's a very valuable opportunity for any stakeholder of perspective stakeholder. I think the trend that I see is that more people want to use it. And as Pete mentions, the small entities are the ones who get the most value out of it, I think. So, I would encourage making this a permanent option if it hasn't been already established as that.

CHAIRWOMAN JENKINS: Just a question somewhat related to the two topics. When they do quality review are they doing Track 1 quality review too?

MR. FAILE: I believe they are randomly sampling from all -- potentially for

first actions to Track 1 would be in that sample rate. Keep in mind that that's kind of a small drop in the bucket. Maybe the chances of it getting sampled are not as great as any other non-Track 1 case. But they are in the sample rate as far as I know.

MS. MARTIN WALLACE: Yes, they are part of the sample rate, but as Andy said, it's a very small portion of what we're looking for.

CHAIRWOMAN JENKINS: I just want to support the other comments of the PPAC that the user community seems very supportive of it, still it's an expense. Even with the discount it's still expensive to do. But I think one of the nice things of how practice has changed, it makes it more complicated for us to have to explain it to the client, but really you have more options to give to a client. If a client wants to move something forward they can do Track 1 very quickly. If they want to slow it down. There are lots of different ways.

And a lot of it is very money-based.

So, it's good that the Office is listening to that and offering those different solutions.

MR. THURLOW: It's going to be a leading question, I'm an attorney. So, the support for the Track 1 program, that's in the AIA, right?

MR. BAHR: Yeah.

MR. THURLOW: Is it? Did it say something about limiting the number of petitions, Bob?

MR. BAHR: Yes. In the AIA it says that the number is limited to 10,000 until we establish due regulations setting it differently.

MR. THURLOW: Okay. So, the reason to the question is going to lead into PTAB discussion later on. Certain programs with Track 1 you limit the number of petitions to 10,000. P3 program you limit that to 200 per group art unit. And there is a feeling, at least by patent owners, that maybe one of the changes we do later on in PTAB regulatory reform is to somehow limit the number of petitions instead of continuous attacks. So,

I don't know if there is legislative support for that in the statute. I don't think there is. But that's why I was curious about the AIA and the Track 1, whether there is legislative statement.

MR. BAHR: Yes, it's in the AIA for Track 1.

MR. FAILE: And, obviously, Pete, just keep in mind P3 was a pilot. Those numbers were just what is a good sample rate to test the premise of the program. And in talking to the union, negotiating kind of how to implement that. So, that's completely separate. It's just a pilot that we tried and the numbers just came from us figuring out a way to execute --

MR. THURLOW: The thinking, Andy, is that port overall and the Patent Office rules and procedures for limiting some petitions as compared to other petitions, so use analogies and so on where we want to have some consistency.

I know it's going to be a debate, I'm just trying in my mind to frame the debate

and impart the discussion with some of the concerns on the PTAB side.

CHAIRWOMAN JENKINS: The P3 brings to mind -- if you weren't tracking the page that was showing you how many had been taken for the P3, it kind of snuck up on you a little bit because all of a sudden you still thought you had P3. And then, oh, no, it's closed. So, I hate to have that sort of same issue for Track 1. Something to keep in mind for the Office.

MR. FAILE: That's a great point. When we put out P3 we had the 200 per TC or 1,600 cap. So, we were struggling with how do we keep people informed whether we're at a limit in any given TC, not just overall but any given TC. So, the information link up on the website being updated was what we came up with.

We're certainly open to a better way to do that. We're certainly open to what would be the best way to keep abreast of that information. The way we came up with it in P3, so far luckily we've been okay with Track

1, but as you can see in the numbers in the totals we are consistently punching toward the limit. So, some kind of alert system may be helpful here as well, and we'd be open to any ideas you guys have about how to do that, other than just put it on the website and keep updating it as filings come in.

CHAIRWOMAN JENKINS: Maybe Jeff has something for the Committee?

MR. SEARS: I definitely underscore the benefit of Track 1. From the university perspective, it's been fantastic. And the feature we especially like -- again, we're a small entity, we're potentially micro -- not having to submit or comment upon any prior art. It's purely fee-based, which is, you know, a fee is a fee, but the no estoppel is really fantastic. So, we definitely like the program.

Can we shift backwards a bit to the RCE slides? The pendency from RCE filing to next action. I really would like to commend the Office on this incredible progress. I think this is an outstanding

achievement over the last few years. And it looks like pendency is really leveling off at about three or four months, which is great.

Can we also go back to the RCE inventory slide? Again, I'd like to commend the Office on reducing the RCE backlog. Fantastic progress. I'm curious about the changes in March 2013 and October that appeared to play a great rollrole in reducing the backlog. Can you tell us a little bit about what those changes were?

MR. SULLIVAN: The RCE count change -- so, actually one of the changes that happened back in 2010 was that the count value for RCEs was reduced. For the first RCE it was a quarter count. The change that occurred there in March or April was that the third or fourth RCE done in a quarter got the count credit raised back up to what it was prior to 2010. And there are a lot of details that go into why it's configured that way, but it did encourage examiners to do more than that threshold number in a quarter. And then once they had crossed that threshold to do as many

RCEs as they could during the quarter. So, that was that change.

The ABC docket. So, in docket management there are certain incentives associated with new cases. There is a clock on their oldest regular new case and a clock on their RCEs. And there are also additional cases that are eligible for docket management credit. What the ABC docket did was when examiners cross a certain threshold, the value of RCEs, the credit on the regular cases moved over onto the RCEs, so all of the docket management incentives were associated with the RCEs.

The C level docket, once an examiner got up to that level the regular new cases were taken off their docket. They really didn't have an option but to work on RCEs. And, of course, as the RCE inventory on each docket declines, that credit reverses and we end up with more examiners over in the A level. So, that was that change.

MR. SEARS: Are those changes still in effect?

MR. SULLIVAN: Yes.

MR. SEARS: Thank you.

MR. SULLIVAN: Okay. So, I just had one more slide, and it was to show you the final disposition of Track 1 cases and how that's distributed. The vast majority of them are either allowed or they reach a final rejection. There are a small number that are abandoned and there is a small number that are appealed because these also include RCEs.

The number of allowances and final rejections is about equal. There are slightly more allowances. And this is going all the way back through the beginning of the program.

So, that's all that we had for the updates. Are there any more questions or comments?

CHAIRWOMAN JENKINS: Yes, we had a question about breakdown for Track 1. I know we had done this before. I know we had done breakdown for technology, art unit. I think we did that in one slide. But the question also was the breakdown percentage-wise between large, small, and micro. So, we're trying to

get the answer while we're sitting here. Andy?

MR. FAILE: So, I don't have the breakdown for TC with me. I don't remember those trendlines. I don't remember there being a hugely over-representation of one TC versus another. It was relatively flat. I'm going from memory here.

The breakdown in large, small and micro. Small and micro, I believe, are about the 50 percent mark added together, just a little bit more. The balance would be large. So, if you add small and micro together, compared to large it's roughly 50/50. We can get more precise numbers, but that's a pretty good ballpark.

CHAIRWOMAN JENKINS: Any other questions?

MS. CAMACHO: Just a quick question about what you just, Andy. How representative of the population of patent applications overall is that 50 percent small/micro versus large? Is it representative of what you see overall?

MR. FAILE: Good question. I think I have that here. It's roughly 75 large, 21 small, 3 micro across the whole spectrum of cases. So, it's overly represented in the small and micro in the Track 1 population.

MS. CAMACHO: That's good to know.

MR. GOODSON: A question regarding Track 1. Is there anyone in the Office -- that's a poor question. How is it perceived in the Office in terms of negatives of Track 1? Is there anyone downplaying it or saying it's something bad or causes problems, anything like that?

MR. SULLIVAN: Pam may have an opinion on that. (Laughter) But my experience, you know, Track 1 and all the special type cases can be problematic for an examiner if a whole bunch of them hit their docket at the same time. But that hasn't been the case except for maybe rare circumstances. And really the prosecution isn't that different for the examiner except that they're picking them up earlier. So, I haven't heard a lot of negative comments on Track 1.

MR. GOODSON: Thank you, sir.

MR. THURLOW: The challenge sometimes is that if you file after someone that filed before and they're examining, you may not realize the priority date and the difference until later on because of just the sequencing and the filing. So, that's something from a practical standpoint. You know what I mean? So, if you and I had the same invention, you filed, and I come back two months later and I do a Track 1, same invention, then I think that the examiner's interference starts but sometimes that's not foolproof. And the real priority date information, who is the first one to file, doesn't come out until later on. That's happened in a few cases.

MR. SULLIVAN: You're thinking of the Crisper case?

MR. THURLOW: That was even first to conceive, first to invent. But, yeah, who is the inventor? But that doesn't mean I want to change Track 1.

The other issue is Track 1 only gets

you to the front of the line for the first part. When you submit your response you have to wait four months. So, one of the things we discussed is possibly considering changing that where the examiner puts it on the docket and you have to wait four months. That somewhat -- I don't want to say --

MR. SULLIVAN: So, you mean on the response to the non-final action?

MR. THURLOW: Exactly.

MR. SULLIVAN: There is an incentive for the examiner to pick it up and it goes on the regular docket, but there is an incentive in that if the examiner moves it I think within 30 days they get zero credit. So, the docket is structured to give them incentive to move the case earlier.

We also, as managers, track the Track 1 cases. We know what the goals are. So, we'll work with the examiners and that incentive on their docket to try and get the entire prosecution finished within a year. And we do that in probably 98 percent of cases.

MR. THURLOW: Obviously, you have mixed results on that where some examiners tell me we have 30 days to move it, I don't say anything, I say, great, look forward to hearing from you. Other examiners say they have four months. And then I say, well, I think you have 30 days. But it's a trick.

MR. SULLIVAN: Well, I think the response would be there are advantages to moving it sooner, earlier.

MR. THURLOW: And I apologize, I stepped out. What wsa the serialized and RCE filings that you said were up? The numbers?

MR. SULLIVAN: You want both serialized and RCE. Okay. So, for this year the trend is up for the serialized, down for RCE. So, the overall filings we expect to be up maybe half a percent, so just barely. But that will be driven by the serialized -- an increase in the serialized.

MR. THURLOW: Great. Thank you very much.

MS. MAR-SPINOLA: I was really hoping that Pam could respond to Mark's

question.

MS. SCHWARTZ: I'd be happy to. Dan was pretty accurate. The examiners don't like specially dated cases. It's disruptive to the examination, you have to make special arrangements to do them sooner. Also, as Dan said, because the prosecution is pretty much using the regular process it's not as disruptive as a lot of the other special program. So, while it has the faster timing, that's the only difference. So, it's not a particularly problematic special case, however, in general examiners don't like to have too many special cases.

MS. MAR-SPINOLA: Thank you.

CHAIRWOMAN JENKINS: I think one thing that would be nice for next time in August would be a slide -- going back to Track 1 -- a slide on the different entities, what the filings are for that. And then also the perception sometimes is micro entities are independent inventors and Jeff is clearly bringing up the point that it could be a university. So, it would be

interesting -- can you parse down the data?

MR. FAILE: That would be small. Small entity. Bob, do you want to run through the entity status?

MR. BAHR: A small entity (off mic) --

MR. THURLOW: So, all universities are micro? Just to be clear?

MR. BAHR: I don't want to -- there is certain language. But if you're an institute of higher education and you are also a small entity you can claim micro entity status as a university, yes.

MR. THURLOW: Okay. Now, what about the restriction with the four applications? Because most universities --

MR. BAHR: That doesn't apply to universities. That's for the -- there are two separate ways you can claim micro entity status. One is as like an independent inventor, and there is the four application limit. And then there is a second one for universities where you simply have to be a university of higher education in the states

and also be a small entity.

MR. THURLOW: Okay. Thank you.

CHAIRWOMAN JENKINS: You just reminded me too. One kind of odd thing I know -- and I believe I'm correct on this, is that, for example, say if you file as a large entity and you realize you really should have been a small entity, you can get a refund for the difference in that fee if you submit a request for it.

My understanding is for micro you cannot do that. So, if you filed the application as a small entity, or even large, and then you realize that you were a micro after the fact, you can't then ask for that money different -- it can only go for going forward.

MR. BAHR: Right, and let me explain a couple of things. First of all, to be a micro you must also be a small. So, if you file as a large you pay the full fees and you claim small entity status within three months, you can request the fee differential back from large to small. But you can't request -- if

you file as large or small -- well, if you file a small you cannot get the difference between small and micro back. It's the way that the statutes are written as you can be a small entity and then there's a way to tell us you are a small entity.

But for micro, you're telling us makes you a micro entity. You are not a micro unless you make the certification to us. So, you're not really a micro until you first tell us you're a micro. So, you paid the right fee if you paid it as a small or large before you claimed micro entity status.

CHAIRWOMAN JENKINS: It's interesting because it's a way to save money. And I think if you're following the rules and if you filed a small you should still get a refund. Is that something at all that we're considering legislatively? Or should I ask that to Dana?

MR. BAHR: You could ask Dana, but I'm not aware of any proposal to change the micro entity statute.

CHAIRWOMAN JENKINS: I think one of

the things that the Committee is considering is how can we look for ways to help the independent inventor, the small business? It's a focus of the Trump administration. So, these little nuances that we come up with, you know, we'd like to have consistent application across the Office. So, it was just something I noticed recently.

Okay. Mark?

MR. GOODSON: One last question. If I remember right, patent applications where one inventor or more is age

or over, they get essentially an accelerated examination. Is my understanding correct?

MR. SULLIVAN: Yes, if there is a petition to accelerate.

MR. GOODSON: But other than the fee difference they're essentially handled the same way as Track 1?

MR. SULLIVAN: Actually, they go on a special docket, the same docket, a special docket as Track 1, but I believe that they go on to actually a special amended docket rather

than going on to the regular amended docket. They have an accelerated amended docket status.

MR. GOODSON: Is this anything like double secret probation? (Laughter)

MR. SULLIVAN: No. Nothing like that. Much better than that.

CHAIRWOMAN JENKINS: I'm watching the clock, so let's take a break here.

(Recess)

CHAIRWOMAN JENKINS: Ready to start? Who is presenting on patent term adjustment? Are you doing it Bob? We're going to go ahead and start. Jennifer is pointing at me. Andy? We need Andy. Bob is presenting. Andy is presenting. I will try to talk into the microphone.

So, we're doing patent term adjustment now, and Andy are you presenting?

MR. FAILE: Yes.

CHAIRWOMAN JENKINS: Thank you.

MR. FAILE: For portion two of the Ops update we thought we'd talk a little bit about patent term adjustment. When I say

patent term adjustment it's really within the confines of the 14/4/4/4/36, which we'll get into the categories if people need some kind of background on that. What we thought we would do -- I'm going to ask Bob Bahr to walk through patent term adjustment just on a high level to get baselines so we're all on the same page.

I'm going to show basically just some historical data in each one of the categories for patent term adjustment, kind of a 10- to 15-year trend of where we've been. And then the later part, to the extent we have time, Marylee, would be a discussion picking up where we left off in the Subcommittee about what are some things we can do. Everyone obviously has an interest in reducing patent term adjustment in the 1444436, so the extent we can do things to further those aims we'll have a discussion about what those things could be.

So, Bob, if you could start out just laying down the groundwork of PTA.

MR. BAHR: Sure. Patent term

adjustment is provided for in Section 154B, Patent Code. Basically, the way it's set up is there is a set of positive adjustments that are set by statute. We can't give positive patent term adjustment just because we feel sorry for an applicant.

And then the statute provides for one situation where it's an applicant reduction, and then provides for the PTO to prescribe regulations saying other things that could result in reductions. So, it's a system of positive patent term adjustment and then some reductions and then you get a net patent term adjustment for the application.

So, what are the positive patent term adjustments? There are three provisions, we call them the A Provisions, B Provisions, and C Provisions. The A Provisions are in 154B1a, so you can figure out why they're there. Those are the 14444. So, basically you can possibly get patent term adjustment if you take longer than 14 months to issue a first office action in the application or issue a notice of allowance. We have to do

one of those two things to meet the 14-month clock.

Then the second one is for acting on replies to office actions, which includes the reply files with a request for continued examination or RCE. And we have four months to reply to appeal briefs. The second four-month clock is for acting on cases after a Board decision where there are allowable claims in the application. And the last four-month period is for issuing and application within four months of the date the issue fee was paid and all of the other requirements were satisfied.

The second provision, the B Provision, is the three year or 36-month period where we have to issue a patent within three years of its filing date or commencement date in any PCT Application. Now, certain time periods are not counted against this three-year period. RCE time, also secrecy order, derivation or interference time, and any appellate review time. It doesn't count against the PTA 36- month provision.

These 14/4/4/4/-36 are three-year. We call those basically examination delays. There are also PTA under the C provision for delays caused by interference or secrecy order or successful appellate review. Now, under the C Provision the case doesn't have to have been pending for three years to get these. If there are any delays through the secrecy order being imposed, whether or not overall pendency goes over three years, the applicant could get paten term adjustment as a consequence of that.

So, those are the plus patent term adjustments. There are some negatives. The most significant one is, like I said, there's one statutory provision that says that there is a reduction if an applicant takes longer than three months to respond to any office action. Others -- there is another provision that says that we prescribe regulations and we prescribe a number of them. Things like abandonment of an application, requesting suspension of action, taking longer than eight months to put an application in condition for

examination after you initially file it. There are a number of things that can result in a reduction against the patent term adjustment.

And I should explain how it works. Basically, when the patent term adjustment is calculated you add up all the plus adjustments, the A, B, and C, and you exclude any overlapping periods of adjustment. And that gives you one overall plus. Then you add up all the minuses and you subtract that from the plus and you get patent term adjustment.

The reason that's significant is because sometimes people will ask me, well, how much patent term adjustment do we get as a result of us missing the 14-month period? And I can't really answer that question because there's not necessarily a requirement that there be a causal relationship between the application reduction and the plus patent term adjustment.

I'll give you a very simple example to illustrate this. Let's say we take 15 months, or roughly 30 days over the 14 months

to initially act on the application. As a result of that, the applicant has 30 days in the plus ledger. It could be later in examination or prosecution that the application gets a one-month extension of time, so the applicant takes more than three months to respond to an office action by exactly 30 days. And assume there is nothing else in that case that pertains to patent term adjustment, those 30 days would cancel out the plus 30 days even though they didn't occur before the case was examined, even though there wasn't really any causal relationship.

So, you really can't say what's the -- we can tell how often we go over the 14-month clock, but we can't tell how much patent term adjustment will result from that until the application is finally issued and we know all the pluses and all the minuses.

Any questions? Yes?

MR. GOODSON: Somewhat related, perhaps not. I'll listen for the explanation. What seems to be difficult -- or maybe it's just not done, or you tell me that I'm wrong

or something, that's fine too -- when you go to pair it shows the patent term adjustment, things like that. What it doesn't show is, assuming a patent owner pays all their fees for maintenance, when the patent expires.

MR. BAHR: I believe we have online a patent duration calculator that can be used. The problem for that is there are other variables such as terminal disclaimers filed on an application. It's hard to map up what expiration date that causes in that patent as a consequence of that.

The patent term adjustment itself is an easy number to calculate. The 20-year term is slightly less easy because we have to go back and calculate for all of the continuity claims that an application has that affects the term. And, so, from that you can calculate an expiration date but there are other things like terminal disclaimers that impact the expiration date that make it a little dicier. But we do have a calculator that's available.

MR. THURLOW: And the calculator is

pretty good.

MR. BAHR: I have to find the link for it but we do have a tool that can be used to calculate the expiration date.

MR. GOODSON: That can't be something that's pro forma, put in pair? What I'm hearing is it's extremely difficult or unwieldly or something.

MR. BAHR: Yeah, it really requires some inputs from the applicant because there are some things that you sort of have to fish through the file and read and see. It's not something that's easily automated.

MR. GOODSON: That sounds a bit spooky.

MR. SEARS: It can be spooky at times, and it's something that sometimes we get into long conversations with our outside counsel over; exactly which regulation applies and figuring out the right term.

CHAIRWOMAN JENKINS: Mark?

MR. GOODSON: I just thought you might be interested to know that in the context of our global dossier initiative, what

we call Legal Status of Patents, is something that the international stakeholders have been asking for. In other words, is a patent in force or not.

And, of course, in addition to what Bob mentioned, you had mentioned paying maintenance fees, we also have a system here where somebody could pay their maintenance fee late or -- I won't get into the legal parts of that. You know, patent can go out and come back in so it makes it very difficult for us to keep up with that. But we're trying to find ways to meet the request that the applicants have there.

MR. THURLOW: Two quick questions on PTA, and this came up in a PTAB discussion yesterday, so I just want to confirm it. Now that the numbers -- the timelines on the ex parte appeals to PTAB have been coming down there may be more appeals coming in the future, at least in some group art units. My understanding is you get PTA if you're successful if at leat one of the claims gets reversed?

MR. BAHR: Right. If all rejections against at least one claim get reversed it's considered a successful appellate review.

MR. THURLOW: Okay. Then the other issue where it gets a little trickier with PTA is that if you file a continuation to get over -- normally you have to do a terminal disclaimer for any continuation and so on. If you get PTA in that continuation that does not apply because of the terminal disclaimer. So, the parent actually may have a longer term than the continuation.

MR. BAHR: That's right. Well, if you file a terminal disclaimer there is no patent term adjustment beyond the date specified in the terminal disclaimer. And that's where it gets a little dicey because if --

MR. THURLOW: Spooky.

MR. BARH: Or spooky. Because you could have the patent to which the terminal disclaimer links that patent could get patent term adjustment. This patent could get potential patent term adjustment but it's the

patent that's identified in the terminal disclaimer acts as sort of a cap on how long that patent is staying for.

MR. THURLOW: So, in those situations the parent actually has a longer term because of the PTA then a continuation.

MR. BAHR: It's possible.

MR. THURLOW: And that's where it does get a little dicey, I think, as you said. Thank you.

CHAIRWOMAN JENKINS: Andy, are you next?

MR. FAILE: So, in the next seven minutes I will attempt to go through some historical data and then, Jeff, to the extent we have time for discussion I'll try to move fast.

So, what we thought we would do would be to talk about each of the categories in and of themselves distinct from one another. As Bob said, obviously, at the end of this you do kind of a tally sheet, pluses and minuses. We're just going to look from an operational point of view at each one of the

separate categories, see what the historical performance is and then see what we can do about some of the issues.

So, the first one is the 14-month category. And this is where a case comes into the Office, did we mail an action out within 14 months. You can see the historical data on the very left runs from 2002 all the way to the end of Fiscal Year 16, at the very end on the right. There is a little bit of a kind of a trend upwards and then a trend back downwards. We're currently right around the 50 percent mark of cases that go over the 14-month part.

Keeping this in context, remember in Michelle's original discussion, original opening remarks, at one point in time we were at 28 months to first action pendency on average. We brought that down to 16 months on average. At a 16-month average you're still going to be over the 14 months for PTA in the first action category.

So, we brought first action pendency down remarkably. We're still at 16 months on

average, meaning we're going to have cases to go over. That's why you kind of see the trend line at one point we were close to 80 percent, a little bit over 80 percent of the cases going over and we had that real high pendency. The movement in pendency down has the effect of bringing this down as well. And, obviously, there is still some work to do here.

The next category is four months to respond to an applicant's response. We just charted the amendments here. You can see kind of a lot of different activity going on within the amendments. Currently we're just a little over 5 percent. A lot of the right half of that graph has been attributable to some of the recent activity in our workflow system in kind of dialing that in. So, we're doing pretty well in PTA with respect to responses within four months. Again, we just graphed amendments here just to kind of -- they're the biggest wave in that category.

The next one is responding to an appeal decision from the PTAB within four

months. Here you can see a general trendline downward from 2002 to the end of last fiscal year. We are now under 5 percent, I believe we are about 3 percent of those cases that go over. So, the workflow system as it's dialed in with respect to responding to an appeal decision in four months, we've got a pretty good response there, again, in the low single digits.

Another one of the four categories is percentage of issues that go over four months. This is probably the best performing category where we're probably just a little bit over zero. We're probably -- I think it's about at 1 percent now. As you can see, a giant trendline that was way high a little while ago has been brought down. That's to a lot of the great work done in the PUBS organization by Debbie Stephenson. Really a lot of efficiency gain there and we're down at the 1 percent or so level.

The last one is the total pendency of 36-months. Again, it tracks a little bit -- it's a little bit more pronounced than

the shape of the 14-month, the first action goal. Currently we're riding just under 20 percent of that particular number. As Michelle discussed in her opening remarks, at one point we were at 35 months on average. We're down to about 25 months on average now. So, we're well under that particular number. The 14-month goal feeds into the 36- month goal. So, improvements in the 14-month goal will reflect in the 36-month goal.

So, that's a quick review of where we are historically. To sum it up, on the fours I think the progress is good. I think we had that dialed in. The 14 is the point to talk about. We're bringing pendency down pretty dramatically over the last seven or eight years. The 14-month trendline follows that. There's still some work to do there. The 14 feeds into the 36, and at the 36 we're about 20 percent over so we want to bring that down too.

So, in our discussion with the subcommittees we've talked a lot about the processes that underlie some of these

different district timeframes. So, I'm going to send it to Jeff to kind of pick up from there. And I believe we still have a couple of minutes, Marylee? Is that correct?

CHAIRWOMAN JENKINS: Sure.

MR. SEARS: Andy, thanks very much for that presentation. I'd really like to commend you and your team in the Office again on the fantastic progress you're making on hitting 4/4/4. It's really commendable, really outstanding.

Just an observation I'm making based on the statistics we've seen today and discussed previously in subcommittee. As we observed before the break, the Office has made great progress in reducing the RCE inventory from 2013 and keeping it very low. The Office has also made great progress on RCE pendency to next action, keeping it very low and very steady somewhere below four months.

And as we learned before the break, potentially a very significant contribution to that RCE trimming was an adjustment of the examiner incentives in 2013, to incentivize

examiners to pick up RCEs. And those incentives are still in place.

So, the question I have is, is now the time to potentially focus some attention on 14? Is it time to maybe relax some of the incentives on RCEs and put them on 14? Just an open question for discussion.

MR. FAILE: Sure. I'll start and then the team can jump in.

So, looking at the 14, we're actually doing a deep dive with respect to the processes that are at play within the

months. And you basically have two different phases that are at play. One is the case comes into the Office, there's a pre-exam processing timeframe for that case. To put it in very, very high level terms, that case gets processed when it comes in and if it goes into missing parts of that process then applicants can buy extensions of time there, you have some extension there. So, you're anywhere from the two- to three-month timeframe up to the seven-plus timeframe depending on any particular case. That's kind of phase 1

moving through.

Phase 2 is when that case gets docketed to an examiner or goes on to a master docket that a supervisor would hold that eventually goes to an examiner. The case gets queued up in that particular phase 2 part of it in an examiner's docket and basically takes its place generally at the last part of that docket. And an examiner has to work through the cases they have to get to that particular case to work. So, that can take some time too.

In looking at both of the phases very high level, there is some leaning to do in phase 1 with respect to the missing parts process potentially. I think the real gains are more in the queueing and acting on the case within the phase 2 process from docket forward. We've been looking at the docket management system, the way it queues cases up, the incentives that are present there, or potentially lack of incentives there, and I think that's a good area of focus for us to look in a little bit further. That phase 2

part feeds in, I think, to the bigger portion of what we'd want to look at.

Long answer to your simple question: should we be realigning resources to look at 14 to the exclusion of others? The nervousness there is we're doing well on RCEs. I would be reticent to remove resources that would have the RCE backlog where pendency starts to balloon up. So, we'd want to be really careful in what we're doing. I think we could potentially do both. I don't think that there's -- I think that they are mutually exclusive to some degree.

Keep in mind in phase 2 when a case is teed up to an examiner there are a lot of variables at play. The size of that docket, the examining hours the examiner brings to bear on that work the fact that the examiner is doing a lot of other work in addition to first actions, are handling amendments, et cetera.

So, I think that's the point to look at and maybe refining in the phase 2 part. But I'll ask the team if there is anything

else to add. And there is a transfer process we probably won't get into here that affects 15 percent or so of the cases in there that's going to add some time in there as well.

MR. RAMIREZ: I think one of the key factors in tackling this issue is to understand the nature of how an examiner manages a docket. So, if you look at an examiner docket with two huge groups of cases, one of them being new cases, the other one being all their dated work, you know, amendments coming back, special cases, that sort of thing.

On that second group, every single one of those cases has a clock associated with it. In other words, they have established deadlines in which to turn in those cases. So, they naturally turn towards that group first and they determine what is it that I need to get done this bi-week? And they try to accomplish all that. And then they turn to the other group in which they have a whole bunch of new cases, one of them has a running clock on it and the rest of them do not. And

they supplement their production credits with that group of cases.

So, I think you got the second group kind of driving what gets done on a biweekly basis, the first group supplementing that and that's where you have the issue. You're not moving a whole bunch of new cases all the time, you tend to move a lot of the pipeline of cases that you've got pending.

And in order for us to kind of focus on the first group we probably have to make some changes to the way we use the system today, the docket management system. And there are some options for us to explore, but none of them are necessarily easy to implement.

CHAIRWOMAN JENKINS: Drew, do you want to say anything on this point? No?

MR. HIRSHFELD: No, I was actually going to say what Andy did say, so I stopped. The question from Jeff was should we divert focus from one area to another, and as you asked the question the thought I had was, well, I'd like to hear from the public and the

practitioners if they would want us to do that because my impression would be that it would be very much as Andy articulated in that the general feeling would be to continue with the progress on RCEs and continue the focus on RCEs. We do hear very often that that's a stress point and something that we should continue to move in the direction that we've been in.

But also, our goal is to -- the point of this whole conversation is to show you that while we've been historically focusing on getting our first action pendency down we'd like to add an additional focus to try to minimize any adjustments under these 14/4/4/4/36 timeframes. And we think that will add a lot of certainty for applicants, competitors, et cetera. So, our intent is to really focus on both of those.

CHAIRWOMAN JENKINS: Anything else? Okay. Thank you. So, let us move on. We are going to talk about USPTO Working Group on Regulatory Reform. Jennifer is coming at me. Oh, you're good. She's not coming to me,

she's going to Andy. (Laughter) Changing of the guard, please. Nick Oettinger. Hi, welcome.

MR. OETTINGER: Good morning. Thank you for having me.

CHAIRWOMAN JENKINS: Pleased to have you here. You are senior counsel for Regulatory and Legislative Affairs, the Office of General Counsel. And you are going to touch more on the points that Director Lee raised earlier during her presentation about the Working Group on Regulatory Reform.

MR. OETTINGER: Yes, thank you. So, as I'm sure everyone is aware, there were two executive orders signed early in the administration concerning regulatory reform. In late January Executive Order 13771, directing agencies to remove two regulations when issuing a new regulation, and to ensure that regulations that impose costs are offset by cost savings. About a month later another executive order was issued, 13777, directing agencies to establish regulatory reform task forces to follow through on that regulatory

reform priority.

PTO is complying with both of these executive orders. The priorities here of seeking improvements and refinements and reform of regulations is something that the Director has placed a lot of emphasis on. And we are at work on these priorities and seeking public input and feedback on that.

For both executive orders OMB has issued some public input and feedback on that. For both executive orders OMB has issued subsequent guidance that has told us more about what implementation looks like. I wanted to talk a little bit about that, but in part to just note that overall PTO is definitely complying with and following both of these executive orders.

The first one applies to all rulemaking that agencies do consistent with both the executive orders as well as OMB guidance that has been issued since it came out. And for the second executive order on the regulatory reform taskforce, for that order the Department of Commerce has

established a taskforce as required by the executive order. PTO participates as a member of that taskforce, I attend those taskforce meetings as a representative for the PTO.

But that is one where our compliance is through the Department's taskforce, and what we have established here at PTO to assist with that work and to support the work of the taskforce is a Working Group on Regulatory Reform that we have assembled from subject matter experts from across the business units of the PTO who work on regulations, members from Patents, Trademarks, and other groups who handle all the parts of the regulations that are in Title 37 of the Code of Federal Regulations. I lead that working group. We have met weekly to talk about a review of our regulations, the ways that PTO can further these priorities to streamline and improve regulations.

We're in the early stage of this. PTO has not had to issue any rules yet that have been directly impacted by this. We haven't sent up a rule to OMB for their review

since these have come out, but all of our future rulemaking will comply with the requirements of the executive orders and the taskforce.

What we have done in the working group is begun an in-depth review of our regulations, looking for places where to support the taskforce can we identify regulations that can be improved. Maybe there are things that are duplicative, maybe there are places where burden is imposed by regulations and we can improve or streamline that.

To that end, there is a brief webpage on the public site that describes a little about the working group. We have established an email address where we seek public input. We are working on a request for comments where we would through a Federal Register notice further kind of describe these efforts and seek public input.

The email address is live now, and I know certainly for my part and for the working group it is helpful for us to hear from the

public, from our stakeholders, on their ideas for regulatory reform. An outside perspective on our regs and how they work is certainly valuable to us in these efforts. My contact info here.

We will be doing further public outreach but I wanted to briefly talk about how we're complying with these and what would be hopeful to us. I'd be happy to answer any questions if anyone has any.

MR. WALKER: I have one question. And thanks, Nick for presenting this and good luck with the effort. It doesn't sound like an easy one. But the PTO has been really good about putting out a lot of pilot programs. We talked about some of them earlier today and they've been very helpful. I guess my general question is, this pilot program, would this have -- or do they come at a rulemaking and would these executive orders have a chilling effect on the ability of the Office to put out additional pilot programs to test various new proposals?

MR. OETTINGER: I don't think there

would be a chilling effect at all. The scope of a pilot program might determining whether there is actual rulemaking involved, but I think in many instances a pilot program would be established through providing notice and describing its contours to the public, but would not require us to do rulemaking to change regulations.

The focus of the executive order with much more detail provided now in this OMB implementation guidance -- I did not provide a link here but it's public through OMB's side if anyone wants to see it. It gets very down into the weeds of rulemaking. The executive order is focused on when you are issuing rules that are going to change regulations, and when you are going to be doing that and imposing costs that you offset, that you kind of look for places to improve.

When we are doing what I would describe as sort of sub-regulatory things, when we are seeking public comment, holding roundtables, piloting things that do not involve revision of regulation, we're not

within the realm of the executive orders directing us to do removal. Those are things we would certainly proceed with, and I think particularly where those efforts are aimed as they are to improvements and things that we're looking for that are helpful to the public.

You know, there is a broad policy goal behind the executive orders of improvements and refinements and I think pilots are part of that.

MR. WALKER: That's fine, I understand that. But a pilot presumably would be intended to be undertaken with a potential rule change. And so that's where I thought it might get caught up.

MR. OETTINGER: Well, the executive order directs you to consider these priorities of removal of regulations consistent with OMB guidance on it. I don't think that will chill us from doing rulemaking and adjusting regulations that are useful, and that a proceeding will comply with OMB's direction when we come to that point of issuing regulation. Much of this depends on their

determinations about your rules, which you know when you present it to them. I don't anticipate there would be a chilling effect on that.

MR. KNIGHT: Hey, Nick, a question. Is this two- for-one rule applied at the Department level or does it apply at the PTO level, so that if the USPTO wants to issue a new rule it has to get rid of two? Or if the USPTO wants to issue a rule, does it have to go to the Department of Commerce and say, okay, well, we want to issue a new rule, maybe get (inaudible) to get rid of two of theirs?

MR. OETTINGER: So, OMB guidance on implementation of the executive order describes that these savings and reductions could be across Department. I think in a particular instance what that would mean for rule would depend in that moment in that rule talking both of the Department and OMB. So, the guidance describes the potential for that. I think what it would mean in a given instance would depend on the details of that rule. Is that helpful to you?

MR. KNIGHT: So, probably you're going to have to get a greenlight from the Department to make certain you're not violating this executive order, right?

MR. OETTINGER: Well, we work with the Department, as you know, on all our rulemaking. And we'd be getting the greenlight as we work with them and with OMB whenever we do rulemaking. I mean, OMB is the keeper of these requirements in the sense that whenever we issue a rule we're drafting it internally but we send it to them for their determinations and their ultimate clearance. They will be ensuring our compliance with this.

MR. KNIGHT: One final question, if you can answer it, is if you go out with a final rule with the new fees does this two-for-one apply to the fee rule or is the fee rule exempt from this executive order?

MR. OETTINGER: That's going to depend on OMB's final determination when they review it. The rule is not complete here and OMB hasn't given us a call, so we don't know

what the answer will be on that until OMB has completed review.

MR. KNIGHT: Okay, thanks.

MS. MAR-SPINOLA: I have a question if we have time. First, I want to thank you for what you're doing. Like Mike says, this is going to be hard to tackle but nevertheless very important to the stakeholders.

I wanted to ask you, since the implementation and the email, what has the response been to date from the public?

MR. OETTINGER: We've received only a handful of emails to the address, and we're doing more and the working group will be doing more. I have a draft I'm working on to further outreach that hopefully will allow us to receive further comments. In part, we hope outreach efforts like this will allow us to receive further comments.

We've received a handful of emails suggesting regulations that we should look at and consider for removal. Our working group meets weekly and we're looking at those emails. We're also sort of looking on our own

to what are things we have heard about in the past from the public where people have said, oh, this is one that could be better and you could improve.

So, since the working group has been established and the email address has gone up we have received only a handful. We are certainly hoping for more. And we would sort of encourage further contact through that email.

MS. MAR-SPINOLA: Right. I would agree. And I would say to the stakeholders, now is your time to speak your peace here, otherwise hold it. Right?

My last thing is, I think it would be helpful maybe for the next meeting to have a timeline of this whole process as the Patent Office envisions it, and include some milestones so we can measure against that and the stakeholders can see how it's tracking and whether there's progress. Maybe with that information it could also incentivize people. If they see deadlines maybe they'll submit their ideas or their comments or challenges to

the Patent Office in a timely manner. But, again, thank you.

MR. OETTINGER: Thank you.

CHAIRWOMAN JENKINS: Peter, just one second. I was thinking exactly that, that we would also have him come on a regular basis to report to us. And I was thinking, too, do you have any idea what your timeline is? Are you going to be in this position for a month? Two months? (Laughter)

MR. OETTINGER: I'm happy to come whenever is helpful. I can tell you that through the Taskforce, the executive order that created the Taskforce directs a report on progress to be prepared. That will be a report from the Department incorporating the progress made by all the bureaus including an element for PTO that is anticipated to be for the Secretary later in May. The work we have done to date will be described in that. Any reduction or refinement or removal of regulations would be done through rulemaking, so that would certainly be something where notice and comment, kind of public rulemaking,

would be done. I anticipate that report will describe in part our efforts to date, what we have reviewed, how we have thought about rules that might be candidates for removal, things like that.

And these are -- we anticipate this is sort of the future of rulemaking unless these executive orders were to change, that we will in any given moment as we are doing rulemaking be thinking of these priorities and thinking about how they impact things that we will do. And we'll be more broadly looking for places we can improve and refine. Stakeholder feedback is invaluable to us; an outside view of how the public uses our regs and how they see them is very helpful to us in this work.

MR. THURLOW: So, Nick, we had a chance to talk and I appreciate everything you're doing. I'll also offer good luck. This is your first time at PPAC so let me just offer some help to you to an extent.

We've been active over the years and we've helped the Patent Office when they go

out, they do the outreach, have roundtables around the country, and so on. We've helped in different programs, whether it's RCE, PTAB, examination time analysis, patent quality, and many things, to the extent you go out like myself, Marylee, Jeff are in New York, Julie, and Dan are in northern California. I'm going to leave somebody out. Jen's in Boston, Mark's in Dallas. So, we can be of assistance in setting things up and helping getting the public together on some of those issues.

And then other than that, one of the interesting things at the Bar Association in New York, we've raised this topic, and just something to plant the seed now, considering all the countries don't have an IDS requirement, and maybe that's one area to consider. I know that there is a statutory component to that, of course. But there is a real question especially in life science and biotech where boxes and boxes and hundreds of references are being submitted whether the examiners are using all this information. And it's something that growing up -- and I've

been doing this for 20 years -- the IDS is ingrained in our system, but maybe other countries aren't doing it, how do they -- like Europe, how do they have an effective patent program without having an IDS program? Are there things that we can learn, things that we can consider, and so on? So, I thought that was interesting that came out of this discussion.

MR. OETTINGER: Okay, thank you. I appreciate that offer. What you just described certainly sounds like something valuable for us to receive as a comment, certainly those of us who are patent experts will look closely at that. Thank you.

CHAIRWOMAN JENKINS: Any other questions or comments? I wish you luck.

(Laughter)

MR. OETTINGER: Thank you. I appreciate it.

CHAIRWOMAN JENKINS: And thank you. So, let us know segue to the Finance Budget Update. Frank? I think I saw Frank. There he is. Frank Murphy, Acting Chief Financial

Officer.

MR. MURPHY: Well, thank you. Let me make sure you can hear me clearly. One of the things that we were asked to do this quarter is before jumping into the status of our budget for '17, '18, and '19, is to take a step back and give a bit of a background on the processes that we go through in establishing the budget.

There are four pillars or four main concepts that we have in our budget development. One of the first keys is that we are demand-driven. The USPTO's size is ultimately determined by the demand for our products and services. And you can see on the chart the list of a number of the factors that help us determine what the demand levels are going to be.

The chart to the right, the imbedded chart, shows you the trend for the last 20 years or so. You can see that the workloads have significantly increased over that time, and our staffing levels have largely mirrored that workload.

Another element is that the American Invent Protection act of 1999, they mandated that USPTO adopt several key tenants of a performance-based organization. So, that requires us to operate within a performance-based process. It includes quantitative and qualitative measures. We track a number of detailed performance indicators, but the ones that are most often cited are pendency and backlog. As we formulate our multiyear budgets with annual targets, that lays out a path for achieving those longer-term performance goals.

One point that I'd like to make -- because you see that I talk patent pendency and backlog, but the chart shows patent pendency and patent inventory. Because a lot of folks will refer to the backlog and it's truly not a backlog in the purest sense of the word. We consider the applications in the queue to be our inventory. And the goal is never to get to zero because examination involves a good bit of back and forth between the patent examiner and the filer. We want to

make sure that we have an adequate inventory of work to maintain full productivity for the patent core. And that's a ballpark 10-month inventory that's the target. So, when you look at the chart you see that we're probably about 200,000 above the optimal level for our inventory.

One of the other aspects in the build of the budget is that most employees are under a production-based performance management system. And that's measured objectively by comparing the amount of work an employee produces in a given period of time to the amount of production that was expected to have been produced.

And those amounts are adjusted based upon things like experience level of the employees, the amount of overtime claimed, the amount of non-production time that's approved. So, as an example, if an examiner were to claim an hour of overtime, they're production target is increased accordingly.

They're also adjusted depending upon the complexity of the technical area within

which they work. Those individual performance requirements feed into complex production models. And those models determine the level of budget and staffing resources that we need to meet our annual performance targets.

So, the model itself considers factors such as the projected incoming workload, employee productivity, attrition rates. A change in any of these types of model assumptions is going to impact the ability for PTO to meet its annual and long-term performance goals.

And just as an aside, if you go to the PTO internet there is a simulation model that you can look at and put in various variables to see the kind of impacts that a change in the number of hires, as an example, or the number of hours, how that would impact the production goals.

And the final key tenant for hour we're building the budget is that as a fully fee-funded agency, USPTO does not utilize taxpayer funding, nor does our spending contribute to the federal deficit. We are a

revenue-generating business. Our funding is derived primarily from the patent and trademark user fees. You see the chart embedded to the right, the two pie charts. It's roughly a 90/10 split, varies by a percent or so every year, but 90 percent of our income is coming on the patent business line and 10 percent on the trademark business line.

There is a two-way fence with that as well. No fees collected on the patent side can be used for any trademark operations, and likewise no trademark fees can be used to support any patent operations.

So, everything we've talked about in those previous slides, the overall performance, the production elements, the demand, they all affect the budgetary resources that we have available for meeting our performance goals in the five-year horizon.

And we talked about this in prior PTAB sessions. The USPTO is operating like a business, but it's important to note that we

are still within a government environment. We talked before that we are completely funded by user fees, and demand for our services drives both our revenue and how our workload requirements and how much money we need to spend in order to get the job done.

We build multiyear budgets, performance budgets, based upon the input we have from the production models to make sure that we have the right staffing, the right resourcing, for those organizations to meet their goals. And we have the ability to use certain business-like tools, such as the operating reserve, that helps us manage through the variability and demand and funding and budgetary requirements.

But even though we're operating like a business with all of those variables, we are still within the government confines where you operate as a government organization. So, while we have user fees as our funding source we still require an appropriation from the Congress before we can spend our fee collections. And we're still subject to

certain government- wide spending policies and restrictions. And instead of simply concentrating on simply the financial and operational risk in the bottom line, like many private sector entities our fee schedule incorporates public policy considerations.

But I do want to take one step back to talk operating reserve and patent and trademark fee reserve funds. I want to highlight this because it is an ongoing source of confusion with many folks, so this will be a good opportunity to put the data out there so that we can all reference this in the future.

We refer to our annual carryover as our operating reserve. The America Invents Act created the fee reserve fund. They are two totally different things. The operating reserve is the share of our appropriated funds that were appropriated to us but unused and we carry those funds forward at the end of each fiscal year.

On the other hand, the patent and trademark fee reserve fund is a share of a

separate Treasury account for which money that we've collected in excess of our appropriation goes into the Treasury account for the sole use of PTO operations, but we need to request a reprograming at the start of the next fiscal year from the Congress for us to access those funds. When we've received that it comes into our account and in essence goes into our operating reserve.

So, all of that -- because of our workload, our performance, our funding, are so inextricably linked, formulating our budget, as you can imagine, is a very complex and very drawn out process. We're constantly reassessing and adjusting our plans for the current and upcoming years based on the information that becomes available. And we rely on our experts, internal to the PTO, to be aware of the environment and the changes in operations. And these experts in turn feed that information into our budget process.

Input from the PACs, from the public advisory committees plays an important role in that because throughout the year the USPTO

receives input and advice from PPAC, comes in through formal channels like your annual report or the fee- setting reports. It also comes through conversations that happened in these quarterly public sessions and at each of the subcommittees. And that feedback informs our internal business unit conversations as they start to develop their budget proposals.

It also informs our internal Financial Advisory Board as they evaluate all of the budget requests and make recommendations to the Undersecretary on how to prioritize USPTO's spending and ensure that we're focusing on the mission-critical needs and appropriately balancing between the short-term mandates and the long-term strategy.

So, the PPAC's feedback over the course of the year is an important consideration for the Undersecretary who ultimately determines the USPTO's budget priorities.

This was not intended to make you all budget experts, but we did want to give

that foundational information so you understand some of the complexities that go into the budget process and the role that the PPAC plays, and has played, all along in our budget development process.

Talking for the Fiscal Year 17 status -- yes?

MR. LANG: Thank you to Frank and the team, thank you Jennifer for activating my microphone. (Laughter) Thank you for preparing and presenting this presentation. I really think it's very valuable for the public to have a tutorial in the operating model of the Patent Office and how the budget basically works. I mean, this information I don't think is very widely known. It's stuff that I've come to appreciate in my time on the PPAC and as being chair of the Finance Subcommittee.

I also think that it's very important context for the discussions about fee setting, to have an informed opinion about the Patent Office's need for fees. It's important to review this presentation and understand and reflect on the different kinds

of reserves there are. As we know, it's very important, for example that the operating reserve be robust and be able to protect the Office to variations in fee income that might come from different levels of filing, or even interruptions in the flow of money due to shutdowns and so on.

I encourage people to review this presentation that's online or reflect on it. If you have questions reach out to Frank or to myself, and become educated.

MR. MURPHY: Thank you, Dan. And obviously, I echo everything that Dan said. We've had this discussion in our Subcommittee meetings and it was a very conscious response to the PPAC request to share this. We found in the Subcommittee meeting that even those that are more intimately involved in the budget process still learned some things, so it would only help across the larger spectrum of our users that are not as intimately involved to get that core base built. Thanks, Dan, I appreciate that.

For the Fiscal Year 17 status, we

left that first bullet vague in terms of the appropriations status because it was a moving target when we put the package together. We are still in a continuing resolution, that was a one week extension that was given last week, that is due to expire tomorrow evening.

The House yesterday passed the omnibus budget. It's expecting a vote in the Senate today. Assuming that goes forward we'll go to the President for signature. And that will give us funding for the balance of the year.

The hiring freeze as noted, the federal hiring freeze was lifted in mid-April, April 12th. We are in process of evaluating our hiring needs in conjunction with our longer- term strategic plan to see what our requirements will be going forward.

Taking a look at a couple of snapshots for '17. This first chart shows the planned fee collections versus our year to date fee collections. You can see that we are very closely tracking to what we had planned to collect. And if you look at our spending

you'll see that we're slightly above in the spending, and that is due to the ability to use the operating reserve that we just talked about. This was intended, this was part of our plan going in. We knew we were going to dip into the operating reserve to maintain the spending levels going forward.

Our end of year projection is going to be very close, again, to our projected fee collections. And you can see that the operating reserve at the end of the year will be at about $284 or $285 million. That is less than the optimal level, less than the minimum floor level that we have. But we have a conscious decision to go forward with that based upon the expected growth in the out years.

For the Fiscal Year 18 budget, we are expecting the President's budget to be released in late May. This is the budget that the PACs received in April to look at. We're anticipated on or around May 22nd that the budget will be public and everyone will have access to it at that point.

For the '19 budget, we're actually in process of working with OMB with the Department to receive the guidance on what we will be spending going forward -- excuse me, for budget development going forward. We would expect that to be coming to us in the May/June time period and we will be back on regular order, meaning we'll be submitting our budget to OMB for their initial review in September. And PPAC will receive a summary of that information concurrent with that submission.

For the fee rule, I know that we had some introductory comments on this earlier today. We're in process of finalizing the rulemaking package. I thought it important to go through some of the specifics on that to give you a little more detail than was provided this morning.

First and foremost, the most important thing to take away is that we recognize and appreciate the trust that we have gotten from the American public placed in us as a agency. And we're going to

judiciously and prudently use those user fees. We're going to make sure it's for the benefit of the users, both small and large, and the Agency.

We know that recourses are scarce. It isn't fair for us just to increase our fees without first tightening our own belt. That's why I want to take a moment to explain that before we began the fee adjustment process, we reviewed our budget plans going forward.

And we did the line-by-line review, making some very hard but prudent choices in terms of things that we were going to reduce, making sure that we focused on only the mission- critical operating requirements and targeted improvements that you, the fee payers, had been asking us to do. So, through that process we reduced plan spending significantly to provide for a lower cost target as the foundation for determining the appropriate fee adjustments going forward. After that belt- tightening, without the fee adjustment, we had estimated that our patent operating reserve would be depleted by 2020.

So, we're also listening to the feedback form our independent and small inventor community who noted that the fee increases would hit them hard. So, during deliberations we looked at whether we could carve out the fee changes so they did not impact that segment of our users. However, the fee discounts of 50 percent for small entities and 75 percent for micro entities, they're provided for in law. Therefore, when we change the fees for other than small and micro entities we have to make the proportionate changes for small and micro entities.

With this backdrop and in response to your feedback we targeted adjustments to address your concerns. For example, we mined our data and looked for fees that may have a larger number of small and micro entity payers compared to other fees, and reduced the amount of the increase for those targeted fees.

In addition, we expanded micro entity and small entity discounts to fees where there were none. We're also sensitive

to the fact that resources for small and micro entity applicants are stretched and that the USPTO fees might not be the biggest burden for independent inventors. So, with that in mind, we worked with intellectual property law associations to establish a network of independently-operated, regional patent pro-bono programs to provide inventors and small businesses who lack the financial resources to file a patent application with the legal assistance to navigate the patent process and secure protection for their inventions.

We also established a pro se assistance program pilot to expand the outreach to inventors who file patent applications without the assistance of a registered patent attorney or agent. And the pro se assistance program has two components: and assistance program for the public, and an internal examination until dedicated specifically to examining pro se patent applications.

The bottom line is that we're aware

of your concerns and are working to address them in more areas than fee adjustments. So, I can assure you that we're taking the responsibilities that come with our authority to set and adjust fees very seriously.

I also want to thank the public and the PPAC for their input throughout the rulemaking process. I believe that your feedback helped us shape the final rule in a way that provides sufficient revenue to continue operations, mitigate risks, and make the improvements that you, the pubic, are asking for.

We modified our proposals throughout the process based on the 28 sets of public comments coming from the public and notice of proposed rulemaking, and also the PPAC's report with recommendations. We estimate the overall revenue associated with the fee rule will help us keep pace with the cost of doing business and maintaining a reserve that grows at a slower pace than originally planned, keeping in mind that we haven't had a fee increase in more than four years.

So, it's a lot more background than one bullet could put on a chart, but I thought it very important to understand the context for that. And then you look at the second bullet and required by law, by the CFO Act, we're actually in process right now doing a biennial fee review.

Regardless of the fee setting status, the CFO Act requires fee funded agencies to review their fees biennially. We don't anticipate major recommendations coming from this review, but performing these reviews biennially does provide a regular process that facilitates consistent, timely, and expeditious review of existing fee schedules as well as potential revisions that might be needed.

And any adjustments that would come, if you look at that last bullet, our fee setting authority expires in September of 2018, so absent congressional action we would no longer have the ability to set fees by rule. And I believe later today you'll receive an update from Dana, Legislative

Affairs, and help give some status on what we're trying to do in that vein.

I know that was a lot of information to toss your way, but I'm open to questions.

CHAIRWOMAN JENKINS: Frank, thank you. We were trying -- and I'm going to echo Dan's comments that to do a different type of presentation from the Office on Finance, and we greatly appreciate it because I think you addressed that. And also, the insight on the proposed fees is very helpful for the user community. And we also appreciate the Office coming back again to PPAC and asking for input.

Our focus, again, for that -- and the Office listened -- was small entity and micro entity, what can we do for inventors, small business. So, we commend the Office for reaching out and asking again and again.

Questions from the group?

MR. THURLOW: So, Frank, that was great. If anybody asks me a question in the next couple of weeks I'm going to get the transcript and say read Frank's presentation

from the PPAC meeting because that was really terrific. I always say we're lucky to be on PPAC because I don't understand a lot of it but I understand a little bit more than I would being a member of PPAC.

So, with all that said, I go to these conferences and stuff and people say the Patent Office is raising their fees. So, you have still an uphill battle to make your argument and make these points as often and as calm as possible because from the public standpoint the comment is that the public are raising their fees and there are people that understand the difference between the reserves, as you've quite effectively laid out. So, I would just encourage you to keep on doing what you're doing.

And then otherwise maybe in the next meeting or so on, to discuss some more details. For example, PTAB is a very active area, and the numbers are going up, from my understanding based on Dan's help, from 23,000 to 30,000 for the initial filing. With the breakdown of, say, the 9,000 would be the

initial and 14 -- and if your case does not get instituted you get the 14,000. And it's going to be broken out to 15 and 15.

For people in the PTAB area that do a lot of practice in that, that description is important. It's not just raising it from 23 to 30. That description or understanding is important. So, even for David Ruschke from PTAB to discuss how the fee increases are going to affect the PTAB is helpful.

And then I don't really fully appreciate and haven't talked to Dan enough about all the other increases, but it's helpful to know there may be more specifics, so I can look at the fee schedule again. But thank you very much.

MR. MURPHY: You're welcome.

MR. KNIGHT: I think picking up on your point, Peter, not to answer for Frank, but one of the things that the public has to be aware of is that with respect to the post- grant trials the statute requires the PTO to set the fees to cover the costs of those trials.

So, it's not like the chief financial officer can decide to charge less for the post-grant trials than they cost. The CFO has to charge the approximate cost of those trials by statute. So, a lot of times in fee setting the agency's hands are tied with respect to whether or not they can increase fees. And in this case, they probably are statutorily required to do so.

MR. GOODSON: Frank, one thing that came up, I was present at the roundtables in Denver and in Dallas and people were very consistent in saying if you're going to raise fees you ought to raise them up on the applications that take the longest time. You know, we charge more for a number of independent claims, things like that. They felt there's got to be a better way so that the application that takes a lot of time is going to be dinged accordingly.

That's all I've got to say. I can't tell you that it's practical or doable but that was the feedback.

MR. MURPHY: I appreciate that,

Mark.

MS. MAR-SPINOLA: I want to first comment that these slides and the change in the slides is very helpful. It's easy to read, easy to understand, so thank you very much. And it's easy on the eyes, especially this pair here.

A couple of things -- and these are more just bullet point comments, more for planting seeds rather than as a comment or a judgment. In terms of the budget -- let me see, I don't know what slide it is. The one where it says budget background PPAC and USPTO budget formulation. And you have this nice circle of all the players, I guess, that contribute to determining the budget. That's it right there.

One question is -- I'm really lousy at acronyms here, so what is FAB?

MR. MURPHY: Thank you, and I should have spelled that out. That is the Financial Advisory Board. The Financial Advisory Board was established a few years ago internal to the USPTO. And it is to review all

initiatives going forward for the Agency to ensure that we are focused on the most critical initiatives that are supporting our stakeholders. So, it's a prioritization and it's a funding advisory group.

That team works internally, gathers information on new requests, gets more detailed information as needed, and makes a recommendation to the Undersecretary as to whether to go forward and approve a funding initiative or to recommend kicking it back.

MS. MAR-SPINOLA: Okay. And this is a question out of ignorance, I think, on my part which is that is POPA part of this circle of players, and should they be or not be?

MR. MURPHY: The Financial Advisory Board is comprised of the management team. POPA representation though is part of PPAC and some of the information that we are receiving via the PPAC has the input from POPA as part of that process.

MS. MAR-SPINOLA: Okay. And then on the slide that's FY 2018 budget, which is right below -- that's it. Does the Patent

Office have an expectation or anticipation of what the President's budget will be? Let me ask a simpler question: up or down?

MR. MURPHY: Until the budget is published, we're actually not able to comment on that.

MS. MAR-SPINOLA: Okay, fair enough. This one, it may sound a little aggressive so I'm going to apologize in advance. The slide that's entitled -- so, I'm going backwards now -- budget background funding model overview, and you have two sections in blue right there.

I think that this is the first time that I've -- I heard it yesterday, but here in the slides, correct me if I'm wrong, is that the USPTO is a business-like organization. And I like that, from the business sector I like that. One of the things that I think about though is if you're a business and you're putting out product I think it's important to look at, especially in terms of the fee setting, you have to look at your quality and your compliance metrics, right?

Because I'm not sure a true company -- what I'll call a true company or true business -- would do very well with 65 percent quality.

And what I mean by -- not 65 percent quality in the sense of Valencia's group but I'm looking at, for example, results from the PTAB, which I think 65 percent is confirmation I think of their -- we'll hear the metrics later. But it's a good number compared to before, but I think it needs to be a little bit better.

And then in terms of compliance we had current numbers of 80 percent in compliance. And I think, again, in a company or a business 80 percent wouldn't fly. So, that's another comment.

And then lastly, with respect to fee raising, I would say to look for the low-hanging fruit, right? Track 1 we talked about, that's popular. I would keep that going to the extent you can.

And then in terms of -- well, I think Track 1 is sufficient. But there are

other places where I think the Patent Office might be able to look at the ones where you're not going to get a lot of pushback form the external users because those are viewed as beneficial. I guess the other one would be figuring out the proportionality of refund on PTAB if a petition is denied.

MR. MURPHY: Thank you.

MS. MAR-SPINOLA: Thank you.

CHAIRWOMAN JENKINS: Another question that I still very strong within the user community is shared services. And I notice that when I was looking down Tony Scardino has joined us, Acting Deputy Director for the Office, so welcome, Tony. I don't know who is going to answer that question.

MR. SCARDINO: I'm happy to answer a question but I haven't heard a question yet.

(Laughter)

CHAIRWOMAN JENKINS: Why don't you give us an update on Shared Services.

(Laughter)

MR. SCARDINO: So, just for folks that are newer, Enterprise Services is kind of

the new name for what's been called the last couple years Shared Services. And this a Department of Commerce initiative to provide mission enabling services called Human Resources, Finance, Information Technology, and Procurement. Kind of cheaper, better, and faster. The idea was to help all 12 bureaus under the Department of Commerce by having one construct that could provide common services so they'd be economies of scale.

What's been a little confusing I think for folks maybe on PPAC is how much money PTO has paid in and to what level we are participating. So, I want to kind of walk you through that a little bit today.

To date we've paid about $10.3 million into -- I'm going to put in air quotes here for people who are listening and not watching -- into Shared Services, Enterprise Services. The reason why I say that is because 6.7 million of that was for services that we have been receiving prior to the start of this Enterprise Services initiative.

We get what's called our HR

Management System that is through this construct. In Fiscal Year 2016 and '17 we paid $6.7 million to participate. That's actually a service provided by the Department of Treasury. That's how we actually move -- it's an automated way to move paperwork around when you have to hire someone or change their grade or anything like that. It's how managers keep track of their employees.

So, that's always been something we've paid into. The reality is we've only paid the Delta. The difference is $3.6 million into what you would call Enterprise Services. And that was all paid in Fiscal Year 2016 and the beginning of '17 as well for things such as an assessment of our current services versus what will be provided to Commerce. They did an assessment of all services throughout the Department.

So, it gave us a very good understanding of where we are compared to everyone else and where we are compared to where we want to be. And to be honest with

you, we graded out pretty well. Are we perfect? No. No service is perfect anywhere. But we are interested in always improving. Taking these stakeholder fees, these user fees that are paid to us, we're always interested in improving.

So, Director Lee has always articulated to her counterparts we're interested in seeing what you've got. One of the challenges is we don't know what they've got yet. They're still building the Enterprise Services. So, we've not been participating in anything beyond what I told you and some limited funds for something called strategic sourcing, which is a way that PTO may benefit.

Strategic sourcing is basically taking advantage of volume buys. So, if we buy laptops it makes sense for PTO to buy off of a larger vehicle so we can get discount pricing. And we're done that actually buying off of a NASA vehicle just last summer.

So, we've taken advantage of things called Shared Services in the past. Right now

our relocation services are given to use through EPA, Environmental Protection Agency. Our payroll is paid through the National Finance Center, which is part of the Department of Agriculture.

So, PTO has a history of participating in Shared Services when it makes sense. Right now we're not participating actively in any new services of Enterprise Services but we'll continue to consider that if it makes sense.

CHAIRWOMAN JENKINS: Other questions from the PPAC members?

MR. WALKER: Not a question but a comment. Thanks Tony, because I tell you, it was not clear before not because of a poor explanation, I just didn't understand that even if there were no such thing as Enterprise Services, the Patent Office would continue to pay millions of dollars to another government agency as part of obtaining services that they can provide at a more cost-effective rate.

Director Lee, when she started off this morning talked about how important it

was, one of the kind of pillars of the Patent Office was doing things that at lowest cost that they can possibly be. So, this is very good information to know that you're always out there looking for where you can get better services, whether it's from EPA or Agriculture or whatever. So, thanks for that explanation because I don't think people really understood that. I certainly didn't understand that. So, it's very helpful.

MR. SCARDINO: Well, thank you. I'm glad. If we can ever help you understand it better that's what we're here for.

MR. THURLOW: And just to echo Mike's points, again, we're lucky we understand it but for a lot of the public it's a new form of diversion that the Patent Office fees are being used to provide services to other government agencies. And even for PPAC members when we're out there at these different functions, we try to explain it to the best of our ability. Nothing close to what you're referring to, but we try. So, this information is helpful.

But it's just an uphill battle. For some reason this topic, Shared Services overall, gets people fired up. But this information is helpful.

MR. SCARDINO: It's also helpful for us to hear your feedback. We are always looking for better ways to communicate what we're doing. And in the interest of full transparency, and also just to get ideas of the ways other people do things or see things, we'll certainly consider it. Just like we did with the fees, the new fees.

MR. KNIGHT: And also, I would just say in the interest of full transparency, the Agency did buy $6.7 million of services that it would have bought otherwise. And I totally think that's great. You know, we want to be able to take care of economies of scale, buy things lower for the PTO.

There is also $3.6 million which was used as sort of seed money for Enterprise Services where I don't believe the PTO has received anything for that 3.6 million. And that's to stand up this Enterprise Services.

I'm not saying it's money that wasn't well spent, maybe we got some value from it, someone assessed whether or not we're doing a good job and maybe that was a good value for it.

But the slippery slope for the PTO on this is that the PTO's autonomy could be taken away long term if services like Human Resources, services like IT, are purchased from the Department and the Department takes control over those operations instead of the PTO having independent control.

So, I just want to make it clear that there is more at issue here than just buying computers at lower cost. The other part of the issue is really the ability of the PTO to control its own operations and to do independently what's best for the Patent and Trademark systems. And what's best for the Patent and Trademark systems may not be the best for NOAA, and it may not be the best for NIST. And that's why the PTO director needs independent control and autonomy over these decisions.

CHAIRWOMAN JENKINS: Tony, do you want to respond to that?

MR. SCARDINO: I know I speak for Director Lee when I say she has no interest in whatsoever in ceding any kind of autonomy over the operational management aspects of PTO. We do rely on the policy advice of the Secretary of Commerce, but when it comes to operations the director of the USPTO does have autonomy over things such as budget, HR, procurement, et cetera. That doesn't mean that Michelle and any director is going to continuously look to ways to save money.

You're trying to get services better, faster, or cheaper. The nirvana is when you get all three, right? But usually you can get two of the three. So, it would make more sense sometimes to pay more money to get better service. Sometimes it makes more sense to pay the same amount of money -- or less money, I'm sorry, for the same amount of service, same level of service. It's just that measuring quality is always difficult, as we've discussed in many facets here.

But trust me, we are on this. Michelle wanted me to actually push this point forward that we know we are the stewards of user fees and we are responsible in that. We will always do the best thing that we believe for PTO customers, and that's internal and external. Shared Services actually supports mostly internal customers, internal employees of USPTO. Our ability to hire helps you, absolutely. But procurement of goods and services, that helps folks that work here as well. So, we're on this. Trust me.

CHAIRWOMAN JENKINS: Any other questions from the members? No. Now I'm behind schedule. But that's okay. We're going to break now. So, just for the PPAC members, some housekeeping. We have to do a photo and there is no -- we cannot eat in her. So, we'll have to eat out in the cafeteria which is right outside.

And I guess the positive is unfortunately we don't have a lunch speaker. We were planning and they could not make it, so we have a little bit more time. But we

will start up promptly again at 1:00 o'clock. Thank you very much.

(Recess)

CHAIRWOMAN JENKINS: Starting a little late. Who is up? John, you are up. You are with us. It's all about IT. It's yours.

MR. OWENS: I'd like to think that it's all about IT. I know that it's really not. My wife reminds me that it's not all about it, just so you know.

Well, thank you for having us. We're happy to advocate all of our time if you'd like or we can go. I'm just teasing. Well, thank you for having us today. Of course, I'm just going to hand it right over to Mr. Landrith and Debbie Stephens. I'll chime in as appropriate. So, thank you for inviting us today.

MR. LANDRITH: Thank you, John. This is a high- level review of the four major projects. With the Document Application Viewer we've had some issues with count Mondays and we've talked about that at length

in the last PPAC. I have the next slide covering that.

With official correspondence we have released product that we've already started training on. We've completed training for the OPESS group and we are beginning training this month for the patent examiners on a tech center by tech center basis.

For the examiner search we've been deploying bug fixes. Right now it's deployed to approximately 15 examiners who are on compensated time for using it. We're looking at a release on June 30th that would be a candidate to begin training on.

The cooperative patent classification. This is a mature product. We continue to release enhancements, and I have a detailed slide on these at the end.

So, with account Monday status, the Document Application Viewer ran for about 18 months alongside eDAN without any major issues. Then after we retired eDAN we had outages through the end of February. That was created by high loads from complex queries.

So, many of these were from features that the Document Application Viewer has that eDAN doesn't have. So, we're a little surprised by how that panned out. But due to improvements in the database configuration, actually at this point we have six count Mondays. That's a little bit less than three months of consecutive count Mondays without issues.

What we've done is the database support teams, performance teams, and programmers have worked together to improve the performance and increase the query processing capability. We've been successful there, but we continue to monitor all aspects of performance every count Monday.

We're working to resolve the core problems causing the outage by replacing the current infrastructure with a clustered hardware solution, and then continuing to optimize the queries that generate the reports.

MR. OWENS: I'm going to just chime in here. So, out of the bi-weeks that have

gone very well over the last few six or so, we did hit an end of the quarter which always puts a stress on the system. I'm happy to say that it looks like these things are well in hand.

I want to remind everyone that we went with a very simple database structure solution at first that we thought would scale but the reality was it didn't scale enough. So, the clustered environment gives us unlimited very quick scalability, whereas today the system is not as quickly scalable as we'd like. And, of course, it will be deployed in two locations for high availability as well.

At this point I am very confident in DAV, and I apologize again for those issues that we experienced. I did want to tell you all that we learned from this and have looked at OCEST and CPC and those database structures to make sure that this error, this mistake, didn't get repeated ever again. And I do think that that's an important lesson.

In my line of work there will always

be a problem that is detected. It's how quickly we recover and the fact that we don't make the misstate again. So, I did want to remind everyone that we did do that.

MR. LANDRITH: With the training, as I mentioned earlier, we trained the OPESS staff. We've also trained the examiners that were in the pilot program, as well as their managers. This month -- I believe it's going to start the third week of this month -- we're going to begin training the patent examiners on a tech center by tech center basis, and that will extend through December of this year when it reaches completion.

With legacy system retirement, of course, we've gone over the fact that we retired eDAN in December of last year. The next steps are in FY18, we're looking at retiring IFW and MADRAS that's listed as high risk. We have a lot of data to transfer there, and that's the lawn pole in the tent. That might end up pushing it past the fiscal year just to make sure that all the data is transferred.

MR. OWENS: I did want to remind people that there are over four petabytes of data in that system. That's a lot of data. We don't want it to negatively impact the environment. Obviously that data has to be transferred around on our network and we have to be very careful to not interfere with any productivity.

So, our best estimates show that we will make FY18 but in case we do realize that we have to slow down that transfer it won't negatively impact anything other than just slow down the process.

I'd also like to point out that there's an error on the chart that we didn't get fixed in time. Where it says FY19 OACS in east and west, OACS is retiring in our best estimate in FY18, east and west in '19. So, if you just put an X through that OACS under FY19 I'd appreciate it.

MR. LANDRITH: You can see the next slide Is the OACS retirement to be replaced by official correspondence. In FY19 we plan to retire east and west to be replaced by the

PEDE search system. And also in FY19 the Classification Data System to be replaced by additional functionality within cooperative Patent classification projects.

With rule-based access control, this is what I think is referred to sometimes as single sign-on. We have implemented this in all external fee collection. The Patent Center is going to use RBAC in its July release of this year and in subsequent releases. Many of our internal systems are using it or are transitioning to use it. We're working to consolidate the processes by which the USPTO grants system access and activate components within the RBAC system in order to increase availability of it.

So, one challenge that we have in particular is with two factor systems how we get the second factor to the person using it. If you're an employee you have a card, but if you're an applicant what we try to do is contact via email or hopefully text messaging systems. We're trying to get clarity on NIST's definition of what is adequate for that

second factor.

Did you want to speak more to that, John?

MR. OWENS: Yes. Today SMS is allowed. SMS, by the way, is the text message -- if any of you have ever used your bank or another online service and you go to log in and it sends you a text message and provides you a number, usually between six to ten characters, and then you type in that number to prove you are who you are because you're second piece of authentication is the fact that you have the device.

There are other ways of doing it. There are voice calls, there's an application that can run on your smart device. SMS, or the text message, is by far the most widely used.

There are some security concerns voiced by NIST, which is a Department of Commerce agency that sets the standards for federal information security management for the entire government. But today it is allowed and we are working with them to make

sure that it is allowed because we think it would be horribly inconvenient to people to not have that capability and have to rely on email or an application on their smart phone.

So, we are working through those issues. They are more policy than actual technology. The technology is there, obviously. It's a matter of federal policy and what is or is not allowed.

CHAIRWOMAN JENKINS: John, sorry, not being on the IT Subcommittee anymore, remind me what this is?

MR. OWENS: So, as part of MyUSPTO there was a desire to remove the six or seven usernames and passwords everyone had to have and a shared key, that large alphanumeric key, that everyone had to have to interact with the Office with a single sign-on. And today we have that in MyUSPTO. You all use it for FPNG when you pay fees, or one of the people that work for you do.

We are migrating everything to that single sign-on experience. You're going to sign on once, you're going to be given a

configurable screen, it exists today. And the MyUSPTO experience streamlines your interaction with the Office. And all of those usernames and passwords go down to one set of usernames and passwords.

The thing is, is for interactions with patents -- and this does not happen with other interactions -- there has to be what's called an authentication beyond just he username and password, or what's called a two-factor authentication. Today you use what's known as a PKI certificate, that long alphanumeric number. That identifies you as really you and not someone else trying to steal someone's ideas that you're trying to submit. That would be horrible.

So, we give you the PKI certificates. Well, that certificate system is antiquated. And today most organizations have gone to a two-factor that have -- you log in with a username and password and then a number is sent to you via a method email through an application, like on your smartphone, text message, or through a voice

phone call. They literally call you and you hear a computer read you the number. Those are the four most common ways.

The government added a fifth way for federal employees which is your badge. Oh, and I almost forgot, there are these tokens, too, as a second factor. Those are all very common.

What we want to do is replace that PKI certificate system which has its limitations, it's very antiquated, and not being supported as much, and replace it with something economical, which is a voice call or an SMS message or whatever.

But this is all for usability. People keeping lists of usernames and passwords and not being able to easily interact with us is something we wanted to stop. We want your experience with us to be completely customized and seamless, but with a very simple set of protected credentials that are easy for you to remember. Does that answer your question?

MR. LANDRITH: With Patent Center,

in our latest deployment we deployed what's called 24 Hour Reauthentication. This is a key feature. What it allows us to do is manage the session that is created by your second factor differently from your standard log-in. So, what we want to make sure of is if you leave your desk for 15 minutes, you come back, you put in your password, you're good. But you don't have to reauthenticate with something that requires that second factor, whether it's an SMS or an email or voice contact. That interval would be the next day, presumably the next morning when you come in.

What we're looking to do in July is release and alpha production release for internal use and testing. And in September to roll the work that we've done on the initial application for non-provision utility into EFS Web and private PAIR, make that live so that people can begin processing text with the existing tools while we're continuing to work on the tools that will replace them.

MR. GOODSON: David, I want to make

sure I heard you right. You mentioned you'll continue to process text. And that's what we were talking about yesterday, that text files will start to be handled rather than PDFs?

MR. LANDRITH: That's right.

MR. GOODSON: Could you explain to some of the folks here the implication of that particular move? I think it's fantastic.

MR. LANDRITH: Sure.

MR. THURLOW: You're description yesterday at the meeting was very helpful. Just say exactly what you said yesterday.

(Laughter)

MR. LANDRITH: All right. So, when we receive a PDF document, that gets resolved into the pages -- internally we resolve it into the pages that it consists of, which are images, black and white images of the text. Then we OCR those, we convert those into XML for IP. The examiner looks at those images alongside the smart tag text it has generated. They work on a Microsoft Word file in order to create their office action response. Then that Word file gets converted into a text

image which gets submitted into the file wrapper and communicated to you. Then the process starts all over again. Where you started in Word, go to PDF, go to image, go to XML, go to text.

And so, this churn continues every time that something goes in or out of the Office. And what we would like to do -- and this is one of the end-to-end aspects of Patent's end-to-end -- is to receive a document in text, analyze it and process it in text, then communicate it in text, so that there is one flow of documents through the system that are being operated on rather than continue to churn through these cycles of creating highly derivative and, from a technology standpoint, redundant or duplicative documents in order to meet the needs of an antiquated system.

MR. GOODSON: And it's not just -- it's terribly inefficient.

MR. LANDRITH: Exactly.

MR. OWENS: Very much so. Not only is there a loss, OCR is only accurate to

approximately 99.6 percent, which means that on every page there is a character that's wrong. We take in a lot of patients, right?

So, it not only adds extra work to the examiner and there's a loss every time you go back and forth, but there's also a cost of millions of dollars a year to convert images to text. And I'd be happy to re-appropriate that money if we can get all text to more IT, just in the by and by.

But to be completely blunt, it is wasteful. And we want to get to one set of documentation that it's 100 percent accurate as you meant to give it to us and not have to ask an examiner to look at both.

MR. LANDRITH: Before we had text available within the system, the examiners were simply looking at images. And so, for example, Dan, I think this would overlap with your experience, I've seen the pages where examiners would print out the abstract and count 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, to make sure that it's 150 words, whereas converting that to text allows those kinds of analyses to

be automatic as they should be; it's the 21st century.

And there are other analyses that we're able to do in terms of the dependencies of the claims that facilitate the examiner's review of the patent by virtue of the fact that it's text. But then with the 1 percent error rate, if there's 1,000 words on a page that's double-spaced, or 2,000 words on a page that's single-spaced, that's 10 to 20 errors per page.

So, there is a quality loss. I think there is an anxiety on the part of the examiner looking at the text that they don't make a mistake, so we need the image there too. Getting them in text solves that problem.

Thank you, Mark. So, with Global Dossier, right now the product we

developed in December which is a working Global Dossier document sharing system for our IP 5 partners that shares pre- publication documents with them. And then next month we will begin testing that

with our IP 5 partners to see how that works. That was delayed from April.

In August, we hope to have established a back-filed databased for DOC DB and to test EPO's open patent service, that as a kind of domino effect has been delayed from June. Then in November we're looking to implement a consolidated citation list and export of that list.

With CPC we've delivered new QA tool reports that give us more comprehensive coverage of the classifications that we're working on. In July, we intend to expand the Classification Allocation Tool, which is the key tool used by the classifiers to include combination sets. We're also looking to implement the CPC International Services, which is standard of exchange services for CPC that we've developed with the EPO. And we also are looking to further expand the QA coverage.

With the CPC-IP Office collaboration tools, these are the actual -- what I was talking about before is largely support

systems or things that are used by the patent examiner, the IP collaboration tools, the tools that we use to exchange information with the EPO. And so, we've enhanced the revision and editing control and also enhanced the dashboard for the Editorial Board. And we're looking to make further enhancements to that as time goes on in order to keep up to pace with what the Europeans are doing and what we've agreed to.

So, with the content management system, just by way of history, last year we had released it. We ran into some file storage problems in terms of high availability. So, we took it offline and have regrouped. That is kicking off and this month we are completing requirements and a prototype to satisfy the high availability needs and bring it back into production next year. This is going to be the product that will retire IFW; just to back up to the earlier slide in terms of legacy retirement.

Questions?

MR. OWENS: Now we're open to

questions.

MR. GOODSON: I think once people think about it, they'll realize that in PAIR the big delay is when you go the image file wrapper, and what I'm hearing is that's being taken care of.

MR. OWENS: We are working on it. Obviously, the new content management system will not directly affect today's PAIR, but the new version of PAIR that's part of the electronic file wrapper project that we are building will use the new content management system. And this will be the first time that we have the entire electronic file repository live in two states. Which means if something happens here, God forbid, we will have it active somewhere else live, hot, not waiting, not needing to be rebuilt.

The new system will, of course, exist in both of those areas, too. And that's one of the reasons why we didn't go with our plan last year; we realized that we couldn't synchronize all of that data at the rate we were getting it between the two locations. We

get a lot of data.

So, we are very confident that the current system that we are in prototype mode looks very good. And it will exist for the first time not just as a backup, but as a hot system in both locations. And then we can do things like distribute load amongst both of them and have even more capacity. And the new system, the new e-File, will contain a new private and public PAIR system, and they will point to those new systems.

Monumentally, that is -- I know it sounds simple but I've got to tell you, compared to what we've got today it's like night and day. And the amount of work it takes to build something that efficient with petabytes of data synchronized in real-time or near real-time is quite a bit of work. It's huge.

MR. LANDRITH: It's also going to be a data repository for more than just the IFW data. For example, the score data, which includes bio-sequences which we cannot put in IFW as well as documents that require, for

example, color will be there too. Right now, we have basically a set of siloed systems. So, when we go to create something like Global Dossier that provides a view of our documents we have to create interfaces in the multiple different systems. And we create tools that look at the documents for internal use we're creating tools that look into multiple different systems, so this consolidates that and provides the advantages for all of those that John described.

MR. OWENS: So, it won't have an immediate effect on the current PAIR, but in the future that will not be a problem.

MR. THURLOW: Just a general comment. Most of the public doesn't appreciate all of this stuff. You know, we go onto PAIR, we want to make sure we can file, we want to make sure the public/private PAIR is working. So, if there is a pause in our questions it's not because everything you're doing Is not really important and really great, it's just that on a day to day we don't get into the weeds of this stuff.

And forgive me for my ignorance, I thought -- where is Global Dossier? I thought it was -- where is it again?

MR. OWENS: Why don't you turn back to that slide for me. So, the Global Dossier, we did the work and we released in December. I was just asking Debbie, the delay from April to June in the next step was because we have to coordinate with our IP 5 partners. It wasn't directly us, it was the whole team internationally.

MR. THURLOW: We can go on and use it now?

MR. OWENS: Yeah, yeah.

MR. THURLOW: So, I guess my big question is I'm not sure how much people are using it. Can you see how much they're using it? So, when we rely on foreign agents from a practice standpoint --

MR. OWENS: We do collect that data. I think Debbie might know it more than I do. Maybe not.

MS. STEPHENS: Yeah, we can certainly get that data. I don't have it in

front of me, but we can certainly get the data of usage stats for you.

MR. THURLOW: The reason I'm asking is because it sounds like conceptually I think we all agree it's a very good program, especially with a global IP system. I'm just not sure how much people are using it. I rely on foreign agents to get developments to cases and so on.

The other issue, just a quick question maybe for Debbie, is how many hardcopies of office actions are going on? I know the Patent Office implemented a system where they're sending documents electronically, they're pinging you to say go to PAIR. We're aware of the use of the e-filing system and I think 95 percent plus folks are using it for application. But I'm not aware of the Patent Office in return -- how many physical papers are you sending out from an office action standpoint and how much of that is electronic?

I don't mean to trick you, I just -- given the presentation.

MS. STEPHENS: So, if the individual participates in the e-notification program, that's the program that you're talking about?

MR. THURLOW: Yes, thank you.

MS. STEPHENS: Okay. Then that participation means the transactions are both ways. So, we would then send those documents electronically, or make them available to the participant electronically, so we would not have to use a printed version and then subsequently mail it.

I don't know the exact numbers of e-participants, but I can certainly get that. And the ratio, of course, is dependent on that number, right?

MR. THURLOW: I want to save as many trees as I can.

MR. OWENS: Certainly, we would prefer everything to be electronic. And we saw this with EFS web originally. It started off slow and built. Global Dossier, for example, we're still integrating the IP 5 partners so not all of them are integrated yet. It got delayed from April to June.

I think you're going to start seeing more and more functionality there, and of course, we want to encourage people to use these and so do our IP 5 partners. So, it's not abnormal to start slow and ramp up, that's quite normal. And certainly, the Agency has gone through and helped incentivize people to use the electronics. And, of course, you all too. We do appreciate electronic processing; it saves us money and trees.

CHAIRWOMAN JENKINS: Great, thank you. I think the Global Dossier point is interesting because I did a hot topics panel for ABA with different members from the Office. And I asked the audience, do you use Global Dossier and do you know what it is? And I was surprised that maybe a quarter of the audience raised their hands. And the international team is aware of getting the message out to people.

I do want to do a shout out but he's gone. Wayne Sobin, former member of PPAC. Thanks, Wayne. And, of course, Michelle is a former member of PPAC as well.

(Laughter)

DIRECTOR LEE: Still serving.

CHAIRWOMAN JENKINS: She's back. Can we move on?

MR. OWENS: Thank you.

CHAIRWOMAN JENKINS: Thank you, John, thank you, Debbie, thank you, David.

David, it's just you? Wow, okay.

MR. THURLOW: David, did you go over to Federal Circuit today to hear the case?

MR. RUSCHKE: I actually did. It was interesting.

MR. THURLOW: The Wi-Fi case, right?

MR. RUSCHKE: Yes.

MR. THURLOW: Do you think you're going to win?

(Laughter)

MR. RUSCHKE: Too early to tell.

MR. THURLOW: It was a joke. It's the afternoon, after lunch, so I figured we needed a little fun.

MR. RUSCHKE: Are we ready? Okay. Thanks, everybody. Good to be here again. Thanks again. We had a great subcommittee

meeting yesterday and really appreciate all the input we received.

Again, what we'll try to focus on -- we decreased the number of slides significantly so that we can have a little bit more time for discussion and questions. So, you'll note that this deck, very similar to the last meeting, is much shorter than it had been previously.

Also, if you go on the website you'll notice that we still have some of our older versions of the slides which included a lot of data. We've tried to collapse that into this slide deck to make it more digestible and understandable. In particular, we've rolled out -- the last meeting, if you recall, what we've been calling the waterfall slide, which hopefully presents to all the stakeholders from the very beginning of AIA trials all the way to the present where each of those cases or petitions has been disposed, or if they're still pending and what the results were.

But as I always do when I start off,

I always talk about appeals because, again, I remind everybody the Board -- although AIA gets a lot of press, two-thirds of the Board and two-thirds of its docket is ex parte appeal work from the core.

This, again, I show as where we are in terms of our inventory for our ex parte appeals. As you can see, we added upwards of 26,000 at our peak, and we have made significant efforts particularly over the last two years to reduce our ex parte appeal inventory. FY17, of course, is partial data only through the first two quarters of the fiscal year. That is, again, trending in the right direction, downwards.

I did give a heads up to the Subcommittee yesterday that although there was a fairly precipitous decrease between, let's say, FY14 and FY16, the trend downward will be levelling off and we're doing that through workload management on the Board. The reason for that is that our goal is a 12-month pendency, future looking pendency at the Board for ex parte appeals.

We're a little worried that if we keep going too strongly with that downward trend we don't want to hit zero, because obviously from that workload and a case docket perspective for the judges that would not be particularly useful. So, we are trending towards about -- we'd like to have a 12,000, maybe a little bit less inventory in our inventory in order to achieve that 12-month pendency.

This slide also talks about pendency, but I will clarify right now the IT system that we have really only allows us to look backwards. So, this is, again, a backwards- looking pendency. So, once appeal is decided we then look backwards and see how long it was pending before the Board.

And you can see on this slide we've divided this out by tech center. And we switched the look of this. I hope it's clear this time. What we've done essentially is put FY16 data in the background and then FY17 data to date at the end of Q2 in the colored columns in each of the tech centers.

And you can see across the board we have reduced by months -- those numbers are by months, not percentages but by months -- the pendency of the decided appeals. You can see we've made significant progress in biopharma. We've also made significant progress in electrical and computer work. Less so in mechanical and business methods, and less so in chemical.

We have an overall reduction in decided appeal of pendency. At the end of FY16, the far column, was 27.5 months. We are now down to 19.2 months. So, significant reduction across the board.

You will note, though -- and we mentioned this at the last PPAC meeting as well -- it's somewhat imbalanced depending on the tech centers. We're doing quite well in electrical and computer, essentially almost hitting our 12- month pendency. We are effectively right now paneling cases as they come in when they are electrical in those TCs. We've actually gotten some stakeholder feedback saying that that's been amazing, that

they've actually gotten notices that their hearings are being scheduled and being paneled and getting decisions out very, very quickly.

But as you can see, we have some work to do in the other technology centers. So, what we're trying to do is focus our work in those, particularly mechanical and business methods, as well as chemical and biopharma, to try and bring some of those down to the levels that we want to and equalize the numbers. To, again, get an overall 12-month pendency, that's our overall goal.

Although not depicted on this slide, I am proud to announce that we actually did complete every single ex parte appeal that was docketed in FY13. Those are completely out of our books, including now we have excluded up to essentially FY14. We have only approximately 50 repeals remaining in FY14 pending on our docket. We will get those out hopefully by the end of this month, the end of May 2017. So, I'm hoping at the next PPAC meeting I'll be able to report that. That will put us essentially at FY15 and FY16 in

our inventory.

CHAIRWOMAN JENKINS: So, David, can you share briefly how you accomplished this? And thumbs up.

MR. RUSCHKE: Absolutely. So, part of it, again, is it was quite an interesting dance, if you will, during the hiring process. Obviously, as you know and we'll get to the slides, the AIA side of the board, the vast majority of those cases are electrical cases. So, we hired a lot of electrical judges for that.

You can see here that with that hiring, before any of those judges work on AIA they spend a significant amount of time doing ex parte work. That is probably the main driver as to why the electricals have come down more significantly than the other ones. So, that occurred sort of with the hiring process.

We've also kept more of the judges on ex parte appeals instead of moving them to AIA in order to bring our inventory down. And the other thing that we did is as we moved

some folks into AIA there has been a number of senior judges who were originally used for AIA trials, because that's all we had on the board, are now moving back to ex parte. And a number of those judges have what we call in our modeling extensive fire power. They are extremely efficient and they are very good at getting these ex parte appeals out. And that's how we've been able to bring these numbers down over time.

CHAIRWOMAN JENKINS: Thank you. And it's appreciated.

MR. RUSCHKE: Sure.

MS. MAR-SPINOLA: If I can add -- actually, there's another part to it that I think is very interesting which is to share the PTAB's plans on how to reduce the pendencies in the design and mechanical business method.

So, yesterday we had talked about how you were going to try to bring down the pendencies for the ones that are -- it's garbled there, so let me see. So, in the design, mechanical business methods area.

MR. RUSCHKE: Correct. And chemical as well.

MS. MAR-SPINOLA: Yes. And the plan to reduce that pendency, which might have a little bit of an impact on the electrical/computer pendencies. If you could just share a little of that.

MR. RUSCHKE: So, again, our workforce is fairly static right now. We're at about 275 judges and we're planning on still being in that general area. We're not planning on doing any hiring on the judge ranks in the near future really. Perhaps a little bit for attrition.

We will be moving some of those judges which we identify routinely who have expertise in multiple areas. So, we might hire somebody who is an electrical engineer but who might have mechanical experience. And I always throw myself out as an example as a PhD in chemistry, but I have 15 years at Medtronics so I also handle mechanical and I can also handle electrical.

So, it's that kind of mining of the

judges' expertise that we use to realign their workloads. And that's how we can take, let's say, an electrical who might have maybe a minor in mechanical engineering or who has done a number of mechanical cases, we can move that judge into the mechanical space and have confidence that that's going to be effectively reviewed on appeal.

MS. MAR-SPINOLA: Okay. Do you expect that to slightly increase the pendencies on the electrical/computer side, then?

MR. RUSCHKE: It may. It may increase them slightly. But, again, the goal here is not to equalize all the bars at a higher level, the goal is to bring everyone down uniformly to essentially a 12-month forward-looking pendency.

MS. MAR-SPINOLA: All right. And then one clarification at least that would help me. Compared to the previous slide, this slide addresses all appeals from reexams and ex partes?

MR. RUSCHKE: Correct. And thank

you for pointing that out yesterday, Julie. This slide is a standard slide that we've used where we've excluded our appeals for reexams. Again, those are significantly smaller numbers than we have for ex parte, so the data doesn't totally match from the first slide to the second slide because in the second slide we do include reexams which is 3,900. Thanks.

MS. MAR-SPINOLA: Thank you.

MR. RUSCHKE: So, I'll move on to the AIA trial side of the house.

MR. THURLOW: David, I'm sorry. To your point that you're Medtronic and so on. This is great news and all that stuff, even though I did just submit an appeal in the 3600 group art unit, so it's still three years. (Laughter)

But it's still tough, you know, even if it's 12 or months from a client standpoint. We say file an

application. If they don't get expedited review you wait two or so years, whatever, 18 months to two years. You respond to the office action to get a final and then

you appeal and you say we'll see you in a minimum 14 months, outermost it's 36 months. It's a tough point to make to a client.

So, as you're reviewing it I'd say from a practitioner's standpoint don't be maybe satisfied with the 14-month/12-months. From a real-world perspective, that's still a fair amount of time. Congratulations on going down in the area you have. A year to 14 months is a lifetime, you know, for a business cycle.

MR. RUSCHKE: I totally understand you, Pete. I've heard this from a number of different stakeholders. It actually kind of depends on the technology area, too. Some like a longer pendency and some don't, they want more immediacy.

Of course, just like in patents, we would love to be able to have a patent application come in the door, get examined the next day, have a decision on it. We would love to be able to do that. But I hear you loud and clear. Given the numbers that we have -- again, we're talking somewhere about

10,000 ex parte appeals coming in the door on average a year -- we do not know the effect potentially that if we reduced it to the 12-month pendency that we're looking at, perhaps the stakeholders that are using appeals as opposed to going back into the patent core and filing a continuation, might come back to us and that might increase our numbers as well. That's an effect that we are monitoring closely because we know that that could happen potentially.

But you're right, 12 months is our goal. We have modeled a number of different scenarios when we rbign that actually down to even 8 months or even 6 months. And that is going to be dependent upon, again, our overall intake, our fire power of our judges, and potentially if we can manage our workload a little bit tighter assuming -- which I think we actually can, notwithstanding the slide that's behind me about the spike in January and March. But when we stabilize our workloads we're much able to tightly align the ex parte versus the AIA trial work.

MR. THURLOW: Thank you.

MR. RUSCHKE: I'm glad you raised that.

MR. THURLOW: We appeal the important cases, as you know. Every case is important, but you know.

MR. RUSCHKE: Well, we also think you appeal the hardest cases to us.

(Laughter)

So, on the trial slide, this again is showing the petitions -- all petitions, IPRs, PGRs, and CBMs filed by month. And you can see that as we noted at the last PPAC meeting there was a spike in January. That was the highest number of petitions ever received under AIA, 237.

We had no idea at the time why that was. It wasn't any particular petitioner filing an enormous number of petitions or one single patent owner having a lot of patents out there that were being petitioned against. We couldn't have any correlation, we thought this was an aberration. February seemed to go back to normal amounts and then March hit.

And, again, we had almost the second highest number of petitions. So, essentially Q2, January through March, calendar year 2017, was the highest amount of petitions ever field under AIA.

Again, we looked at the March statistics. There is no correlation as to why it is happening. We've tried to look at some of the corresponding litigation data that's out there in the public to see if that's somehow driving this. Actually, the data that we've looked at seems to indicate that the litigations are actually going down, so there would not necessarily be a correlative increase in IPR filings.

So, again, all we can do right now is keep a very close look at this. What we have to do, of course, in order to meet our statutory deadlines is look very carefully at our judge pools. This actually has allowed us to move a number of the judges who have been working exclusively on ex parte appeals into the AIA trials. And as we generally do, we have a mentoring program so any new judge who

has only worked on ex parte for as long as that judge has worked on those will have a mentor as they move into AIA trials. They do not receive full dockets initially, and they're moved slowly into the system. But that's how we're going to address this recent influx of cases.

The two graphs below are showing similar trends --

CHAIRWOMAN JENKINS: David --

MR. RUSCHKE: Oh, sorry, Marylee.

CHAIRWOMAN JENKINS: One of the things I know we talked about briefly, something the Office could consider doing, is surveying the folks that filed in those months and ask them. You could do it anonymously and just get some feedback. I think it would help. It may help -- I shouldn't say I think. It may help the Office better adjust when you have those inconsistent months and help you plan accordingly. And to answer Pete's question for backlog on the appeals.

(Laughter)

MR. RUSCHKE: I think that's right,

Marylee. Thanks.

So, again, if you look at the bottom of the two slides there are two graphs down there. PGRs on the left. We're talking, again, very low numbers with PGRs. We have not seen any significant uptick. We still continue to talk at many venues with the stakeholders about why that might be. Of course, we do hear the estoppel provision being particularly problematic for a number of them.

I've always mentioned my European Patent Office experience where it's sort of de rigueur to file an opposition proceeding against patents where you are continually looking at your competitor's portfolio and seeing what's issuing. That may or may not be in the U.S. sort of practitioners book of tricks, if you will, but I think that's something that they need to sort of have a little bit of a mind change in order to get their hands around PGRs. I still think it's an amazing tool that can be used for risk management and for freedom to operate which is

what I used in my industry before coming to the PTO.

Again, it might not be applicable to all industries where it's changing a lot or where you don't know if a particular drug might be valuable at any particular time, that nine month window might be too short of a period of time.

On the right-hand side, I will mention again this is sort of a continuing trend. It's a little bit hard to see the way this is graphed, but we are seeing a steady decrease in the number of CBMs that are filed. Again, this provision is set to sunset in 2020. And, again, there have been some significant case law changes at the Federal Circuit, perhaps making this a less desirable means of challenging patents at PTAB.

But again, the scales are very, very different here. We're talking single digits on the lower two and we're talking hundreds in the upper scale.

CHAIRWOMAN JENKINS: Sorry to interrupt again. I'm trying to balance the

questions that I'm getting to the PPAC email address.

One of the suggestions is could we possibly do a slide rather than showing by number of petitions but by number of patents? Because as we know you can file more than one petition, right? A different viewpoint?

MR. RUSCHKE: Right. So, I'm glad you raised this because, again, the problem with our previous slides were that they were all based on per claim. And, again, I tried to explain that and I hope everybody understands why that was. That wasn't trying to obfuscate the data, but we institute by claim. The statute requires us to look at everything on a claim by claim basis.

So, it was natural for us to collect the data on the claim by claim; we institute claim by claim. But we have been able to then change this data to a petition. And based on the system that we now have in PTAB end-to-end, John Owens' group working on that for the last year for us, we are able to more easily get out the per petition data. That's

why I presented per petition here.

Our next step, Marylee, is to go to per patents. That requires some additional analysis. Right now we have to do some manual manipulation in order to get that data, but that is definitely something that we've heard and we would like to move towards because I know people want to hear it in different ways.

MR. THURLOW: David, just real quick with the PGR. The feeling is that you're right, if they can change the estoppel -- one thing for Dana to add to his list. The other thing is if you could do it anonymously as you can with the ex parte because the feeling is it's the first nine months, 80 percent of the IRs involved in the corresponding litigation. If you do it the first nine months from a quality standpoint it's really a benefit for the system. But once you file it it's a target.

MR. RUSCHKE: It is.

MR. THURLOW: So, it's two different perspectives. That also would be a big change because it may not be tied to litigation. So,

something to consider.

MR. RUSCHKE: And again, there is a corresponding system in Europe where you can actually file an opposition as a strawman, which is exactly what you're talking about, Pete, it's an anonymous opposition.

I'll move on to this next slide which is on institution rates.

MS. MAR-SPINOLA: David, sorry.

MR. RUSCHKE: Yes, Julie, go ahead.

MS. MAR-SPINOLA: We're not letting you go. Sorry about that. (Laughter)

MR. RUSCHKE: That's okay. Do you want me to go back?

MS. MAR-SPINOLA: Well, yes. Stay right there. It did occur to me just now that it might also be helpful to have a similar tracking of reexams because -- I think it's in your other slides too -- it's a metric I'd like to see consistency. But I do think it would be nice to be able to start tracking the reexams. Thank you.

MR. RUSCHKE: Okay. And that's helpful too. If we reduce the number of

slides too much let us know so we can always make sure that we get the data out there.

MS. MAR-SPINOLA: I'm not complaining about that yet. (Laughter)

MR. RUSCHKE: I know.

CHAIRWOMAN JENKINS: You're making me think in reissue it would be interesting to see how many patents are under IPR review, and then how many patent owners are now in reissue. So, that would be interesting to see too.

MR. RUSCHKE: And this was raised -- I think Pete -- in the first three PAC meetings this has been an issue that's been on Pete's mind and that he's raised with us. We've actually with Drew in patents and his team to try to get that data out and see what kind of correlation we have back and forth.

So, I know that we've pulled the data and hopefully at some point we'll be able to present that to the Subcommittee. But Pete has put that front and center in front of us for the last six months.

CHAIRWOMAN JENKINS: Good job, Pete.

MR. RUSCHKE: So, I'll move on to institution rates. Again, this is institution rates of all trials, not divided out. And as you can see, this is for the entire length of time AIA has been in existence. You can see that we are stabilizing at around two-thirds, 65 percent, given the partial year data for FY17.

Again, this is on a per petition basis. When we say, it's been instituted that means at least one claim was instituted. So, if there were 20 claims challenged and we instituted on one claim but did not institute on the other 19, we count that as an institution. So, this is essentially our quote unquote worst case scenario, if you will. And you can see that in our minds it seems like we're stabilizing quite a bit at around the two-thirds level.

And then moving on to what we introduced last quarter to the PPAC, this waterfall slide. Again, this is in response to instead of putting out data based on per

claim, this is based on per petition. And this includes every single petition ever filed underneath AIA from start to finish, up to today.

So, the data is actually through Q2. Number of petitions is around 6,700 total. Moving from left to right, then, in the red is in the institution phase and the blue is in the trial phase. We still have almost 938, close to 1,000, petitions that we have not acted on at the institution phase yet. Interestingly, we have around 823 settlements pre- institution, a smattering of dismissals and requests for adverse judgment, and we have approximately 1,469 petitions that we've denied.

We have then instituted 3,382. Now, if you look under the institution line I have a little mark on there that says 50 percent of petitions have been instituted. That includes the 938 that we haven't acted on. The previous slide which showed a two-thirds institution rate, that's what you would want to quote to your clients and say everything

else being equal, two-thirds of petitions are instituted on at least one claim, one-third are not.

Again, then moving back to this slide, into the trial phase. If you do get instituted on about 300 are joined. And, again, there's about 660 trials pending right now at the Board. Again, 638 settle, a few dismissed and requests for adverse judgment. And of the 6,700 that we originally started with 1,539 actually reach a final decision or have reached a final written decision at that point. That's less than a quarter of all the petitions that have been filed to date.

So, the message that I'd like to give with respect to this slide is, again, two-thirds of your petitions are instituted, so one-third are not. Those petitions go back into the economy, go back into commerce, and those never see the light of day of an AIA trial.

The settlement data. Pre-institution about 823, post-institution about 638. If you add those numbers together

it's approximately one-third of all petitions settle. Again, we were hoping that one of the benefits of the AIA with PTAB would be the fact that it would promote settlement. And I think that seems to be happening.

So, again, a third of the cases never get instituted, and a third settle. By the time you get to final written decision, though, that's true. And those statistics are what are essentially out there, that there's a majority of cases at that point and if you reach final written decision, we'll find the claims unpatentable or we'll have a mix of unpatentability in the result. But it's only after the settlements and only after the institution and, again, only one-quarter of all the petitions that have been filed.

CHAIRWOMAN JENKINS: I say this softly, but we have many stakeholders, we have many stakeholders in the audience, and so obviously when you have your patent invalidated by PTAB these numbers mean nothing.

MR. RUSCHKE: Meaningless.

Absolutely.

CHAIRWOMAN JENKINS: And I think the other problem too which clients and the user community is concerned about is that, well, even if they do settle and you have already instituted, you then have that patent -- it's damaged, so to speak. And then someone else can go and pick up that same petition and file and go after that patent.

MR. RUSCHKE: True.

CHAIRWOMAN JENKINS: So, you know, we have very good conversations -- (laughter)

MR. RUSCHKE: I appreciate the feedback. And certainly, having been a chemist and a chemical engineer, when I had my intellectual property being filed on and we didn't go forward with it I was very sad. And I can imagine what it is getting the patent and then having it found unpatentable later on, particularly for small inventors who have put a lot of lifeblood into it and have spent a lot of their own money on it. I can understand that completely.

On the second point that you raise,

Marylee, I do know from personal experience that -- and this does happen obviously -- there's a very sort of important patent, maybe one that's royalty-bearing in particular. It's certainly not unheard of if that patent is litigated multiple times in district court, never held to be invalid or unpatentable, the subsequent defendant will inivariably go back to the first litigation and grab up all the prior art there and put it in the second litigation. I'm not sure that's significantly different than maybe what's happening here. It's just a different forum.

CHAIRWOMAN JENKINS: The whole premise of PTAB is that it would be less expensive to do a PTAB proceeding than to go to a litigation, arguably.

MR. RUSCHKE: Correct. True.

CHAIRWOMAN JENKINS: Can we segue to the reform initiative? Is that possible?

MR. RUSCHKE: Sure. We actually do not have a slide on that, Marylee. I printed out the slide just so everybody has it. Again, I hope everybody looks at the USPTO

website underneath the PTAB section. The very first box that we have put up goes to the PTAB procedural reform initiative.

We launched this website about a month or so ago and we're looking at a number of different areas. I'll read them off because I think it's really important for you to know that this is a comprehensive look at the PTAB procedural posture that we are in right now. And, again, this is a non- exhaustive list, but we are looking to multiple petitions. And I think that's what you're getting at, Marylee.

So, that is one of our number one concerns. We are looking at motions to amend, we're looking at claim construction, and decisions to institute generally, and of course as well all know, decision to institute. As I was up at the Fed Circuit this morning which is exactly what that was about, encompasses a large number of issues. So, all of those are being in consideration underneath the initiative.

In addition to that we're also

looking to see when it would be appropriate to extend into the 6-month good cause period following the 12-month trial, and we're looking at what would be appropriate for us to implement with respect to reviewability of those institution decisions. And of course, the oral argument today at the Fed Circuit was all about what can the Federal Circuit review after those institutions, after Quoso has essentially said that those decisions were unreviewable at least to a certain extent.

MR. THURLOW: If I can? So, we were trying with Bob Bahr's help this morning to make an argument for the multiple petitions. The Patent Office has a history of limiting petitions, for example, the Track 1 10,000 applications each year. That, according to Bob, is in the actual AIA. The other pilot programs that Andy pointed out, the P3 program for example, only pilot program but 200 petitions each group art unit.

So, there's nothing specifically in the AIA that says you can limit petitions, but there are other issues just about the

operations of the Office, the sanctions. There's just a general awareness of these multiple petitions that even though the pendulum has gotten better where 87 percent now down to 64 percent from an institution rate, there still is a feeling of unfairness to the patent owners, especially with multiple petitions.

So, there may be a case to be built there that the Patent Office has a history of limiting certain petitions. Not a strong one from the way I'm arguing it, but maybe it's a start of something to review. Because we're not going to change the statute.

MR. RUSCHKE: Correct. And I also think it's very important that these issues be talked about because when I go out and talk to stakeholders, frequently this issue is number one or number two on their list. And I totally understand where that's coming from. You thought you had a patent, then all of a sudden you get challenged, they get challenged again, et cetera, et cetera.

A lot of my feedback to the

stakeholders is always let's take a look at the actual data as to why those petitions are being filed. And I think that's really important. That's my message for a lot of folks that tell us about these multiple petitions anecdotally because, as I've said before on multiple occasions, there are a lot of reasons for that. We specifically have in our statute that if it's a harassing petition, multiple petitions, we have the power to deny those harassing petitions.

When we look at those, one of the reasons that's a little tricky for us to dissect, what happens if a patent owner sues ten defendants? Should the patent owner expect ten petitions back? Now, those are multiple petitions, and if you looked at a chart that just listed it there would be, uh-oh, ten petitions filed against that patent. You have to go more granular and you have to look deeper and say, well, that patent owner sued ten defendants, so he or she should expect ten petitions.

Is that harassing? That's a

question that I think this initiative will address. And, again, I encourage you to use as much as you can the mailbox that we provided here. And we've already received a number of feedbacks. Some very interesting comments. Things that, again, only you can think about. That's what's really important for us to see.

So, again, when you think about the multiple petition issue, think about why. If I sue somebody as a patent owner, I only assert claims 1 through 10, and then I amend my claims to 11 through 20, should I expect two petitions? Maybe. And that could be dependent on timing. But it's those sorts of situations that we try to parse through and we could help get the input from you as to what you deem to be an inappropriate or harassing multiple petition. That's what I think this initiative is trying to address by getting that kind of granual feedback from you. That's really where I think the rubber hits the road for us.

MR. THURLOW: They don't limit the

petitions to the IPR because the ex parte, there is no time limitation.

MR. RUSCHKE: Exactly.

MR. THURLOW: And you have the ability to stay those cases but I don't think that's been used that often. I may be wrong on that.

MR. RUSCHKE: Not too frequently. We're actually, just as an initial data point, there's not a great -- Julie asked about this yesterday. Again, it's not our data but we do think approximately 80 percent of IPRs are in concurrent litigation.

That's not translatable to other sort of reissue reexams within the Office. That's just not -- that's a much smaller number. Not exactly sure what that number is yet, but that's not comparable. So, there isn't a lot of overlap between IPRs, CBMs, and then reissue and reexam.

MR. KNIGHT: David, I completely agree with you about if a patent owner sues ten parties for infringement they can expect ten IPRs. Or if the patent owner amends their

complaint and alleges additional grounds for infringement they should expect an additional IPR on those additional claims.

But I think the user community is concerned about the scenario where it's the same petitioner filing on the same claims but using new prior art after they get the first decision. And there are decisions by the Board that state that, oh, well, if you have new arguments or new prior art we might allow the same petitioner to file a follow-on petition.

And I do think there's a pretty good argument that you could use your discretion, or the judges could use their discretion, in those situations to say, hey, no second bites at the apple, period, by the same petitioner on the same claims.

MR. RUSCHKE: I agree, Bernie. That is probably the most prickly area for patent owners because, again, should a petitioner be allowed what we've been calling essentially, not a me too petition but with multiple defendants. It's essentially second bite at

the apple. I've heard it also referred to as a roadmap. We told you there was a deficiency and we denied your first petition. You fix it and come back in with a second petition or a third.

I would refer the stakeholders to a number of decisions that have come out of the Board really within the last month where we've addressed exactly this issue, Bernie. And I believe there were six decision that came down within the last month where if I'm not mistaken almost all of them denied the second and third bites at the apple for exactly that reason.

In particular, I believe one of the cases did cite specifically to the concurrent district court litigation where the petitioner explained to the district court, well, the reason we waited to do something at the district court is because we wanted to see how the PTO responded to our petition so we could file another one. That was not permitted by the PTAB.

So, we totally understand that that

is probably the most difficult period. But, again, that's a timing issue for us. Was it filed before the DI, after the DI? It's tricky for us to get at. But that granual data we need.

MR. WALKER: I commend Director Lee for instituting procedural reform initiative because there's a lot of attention on this.

I guess my question is the work output. If there is something that comes up that's a reform that seems relatively obvious based upon the data, will some reforms be taken as time goes on? Or is the idea to go through the initiative, the full study, come up with a list of recommendations at the end, and have like a set recommendations that are implemented at the end versus going along the way?

Do you have any views on what that might look like at this point? Because I think people would like to get some sense of timing.

MR. RUSCHKE: Sure. It's certainly early but I think -- and Director Lee can

correct me if I'm wrong -- we have continuously talked about if there are changes that can be made along the way we will make them. We are not going to wait until there's a huge package that we get done and then we can make one big decision and make some massive changes.

Now, there might be a lot that happen because they might require a lot of comments and a lot of thought, potentially additional fees if it's rejiggering some of our procedures, requiring more judge resources, absolutely that's going to take longer. But if, like you say, Mike, if there's situations that we can implement sooner we will.

MS. MAR-SPINOLA: I'd like to circle back to one thing, one comment, and respectfully disagree with Bernie. But it's a mindset issue. The comment is about if you sue for ten patents the patent owner should expect ten IPRs. I don't think that's correct because I view it as it should be on the merits. And if someone challenges or files

ten petitions because they've been accused of infringing ten patents that were filed at different times, examined by different examiners, and based on different prior art, or maybe even the same prior art, that essentially the petitioner is saying the Patent Office got it wrong ten times. I don't see how that's meritorious.

It could be, as you said before. But I think it's the wrong mindset that patent owners should expect one-for-one ratio.

MR. RUSCHKE: And you're not the only one, Julie, that I've heard that from. I mean, I've heard that from a number of stakeholders, particularly ones that are in chem and pharma. And a number of them that have used the European system effectively, where essentially everybody comes to the table in one fell swoop and it gets decided once. That's a very different model than what we have right now. And there are ways we might be able to improve that. But you're point of view is well-taken. I've heard that a number of places before.

CHAIRWOMAN JENKINS: Go ahead, Mark. One more question.

MR. GOODSON: Good afternoon, sir. I'm just an inventor, I'm not a practitioner, but I have clients that have a common concern and that is that the PTAB judges, while certainly knowledgeable of the law, may not be well-versed in the particular subject matters in which they are asked to be rendering an opinion on. In other words, a biochemist being one of the three of the panel of an electrical invention, it doesn't sit well. That would be my comment.

MR. RUSCHKE: Thanks for that, Mark. We've looked at this -- if I can maybe give a little bit of transparency to that, because essentially it goes to paneling and workforce. We can't determine if there's going to be an influx of chemical cases and respond immediately, that's very, very true.

But I think we do a pretty good job on the technical side. Again, all of the folks here are required -- all the judges are required to have extensive technical

backgrounds. What we do when we panel cases, on the ex parte side, for instance, we have technical clusters that are very, very specific. So, you will not see a chemist being paneled on an electrical case. That just does not happen.

On the AIA trial, we also do the same sort of analysis although it's more multifactorial there because in that situation we do look at families of cases. And obviously from our standpoint there are certain patent families that are challenged frequently by a lot of different petitioners. It's helpful for us to have the same panels on those going forward because you don't have to start from scratch. And from an efficiency standpoint we can hit our year deadline or a three- month deadline for DIs much more consistently that way.

But, again, even in those situations we look to the judges' technical expertise. I will tell you, we regularly go back to the judge core and ask them what cases are you familiar with, irrespective of your resume,

irrespective of your degrees, what technology areas do you feel comfortable in?

And I'll tell you, many of the judges will say I'm only comfortable in this area. That's their technical expertise, that's what they grew up with, that's what they're only comfortable with.

There are a number of judges, like myself, who probably -- my resume does not reflect that I could probably do mechanical and other things. But those judges, if they run into a case that they're uncomfortable with, they very frequently recuse themselves immediately and say, I need this to be repaneled, I don't feel comfortable handling that technology.

So, there are mechanisms that we have within the Board to hopefully address that concern. And, again, maybe if you're looking at somebody's background you might say, well, that's a biochemist sitting on an electrical case. There might be something else that you're missing that doesn't jump off the page because that situation we will not do

as a matter of course. That's not something that we will do. We look to the technology of the judge as expressed and by their skill set when we panel.

CHAIRWOMAN JENKINS: David, thank you. I was going to save you and give you that topic for next time. (Laughter) But I'd love for you to spend some more detail on that. I think that would be very helpful for the user community because, along with Mark, I've heard those comments from multiple stakeholders about the technical expertise and maybe that's something the Office looks to -- not looking at your resume, but maybe they think about more information about the judges so people could see a more varied background.

But I feel your pain on that. A lot of times people look at your bio and if you don't have it listed they immediately assume you don't do that.

MR. RUSCHKE: Right, exactly.

CHAIRWOMAN JENKINS: I know another topic that we're not going to talk about right

now is conflicts. So, maybe that is something that we could also touch on for next time.

MR. RUSCHKE: Great. Thanks, Marylee, thanks, everybody.

CHAIRWOMAN JENKINS: Thank you, David.

MR. RUSCHKE: We could bring this in next time, Mike, if you wanted to. Oh, sorry. We were just talking about judge training. We can get into that. And actually I'm glad you brought this up. We are having a PTAB judicial conference on Thursday, June 29th. We've been doing this on an annual basis. It is going to be free but also webcast. Anything that PPAC can do to spread the word on this. It's going to be a half-day program. Stay tuned to the PTAB website. We will be putting our agenda up there shortly. But there are going to be a lot of things happening including the PTAB procedural reform initiative, obviously ex parte appeals, and obviously working with the EPO and the JPO. So, stay tuned on that. Thank you for letting me advertise that to the community. Thank

you.

CHAIRWOMAN JENKINS: I just feel bad because Mark and I have been on too many panels and he always gets the end. And he's supposed to have like 20 minutes, half-an-hour and he usually gets five or ten. (Laughter) So, it's a guilt you all now know about.

But I know Dana is next. Dana kind of gets this too, so apologies to both. Mark?

MR. POWELL: While we're changing panels here, I understand there was a question about Global Dossier usage from Peter. I apologize for being late, naturally I had something I had to take care. But to give you a quick answer, in Calendar Year 16, when the Global Dossier had really just come up as a public site here at the PTO, we had close to 12 million hits. And so far in Calendar 17 we're running upwards of 2 million hits a month and growing. So, quite a successful program.

MR. THURLOW: I'm happy to hear that. I always say to myself, like many things I need to use it more. But I'm happy

to hear that.

MR. POWELL: We're happy that you're using it.

MR. COLARULLI: I think I'm on. I was actually going to offer to yield the rest of my time to David. (Laughter) Because I can be fairly quick. Good afternoon, everyone. I'll give you the Legislative Update. We were able to sit down with the Subcommittee yesterday and kind of go into a little bit more depth on some of the measures that have been introduced.

You'll see from my slide deck I'm going to talk about some activity that's more recent, particularly in the copyright area. And then I'm going to provide a number of slides on bills that were introduced that we'd been watching in previous congresses, reintroduced, again, by members hoping to start a conversation. But we haven't yet seen a whole lot of activity there.

The last two times I've come up and given an update on what's happening up on Capitol Hill, the same is true today. A lot

of the IP issues that we hold very dear, certainly important, Congress and the administration have had a lot of other issues that they wanted to have Congress consider.

So, even as we've been sitting here, a bill to fund the government for the rest of the year was just passed by the Senate and is now on its way to the President's desk for signature. It's very likely he'll sign that, so that's good news for continuity of government.

The House also just acted on Affordable Care Act repeal and just passed that bill as well. So, that's going to to continue to the Senate.

So, a lot of issues that Congress is focused on, not necessarily addressed us but nevertheless I'm going to talk a little about the activity related to IP.

Most significantly, the Judiciary Committees in both the House and the Senate at the end of last year talked about copyright reform, particularly the structural proposals to change the structure of the Copyright

Office, to ensure that it can function effectively and to serve its stakeholder community.

That activity continued at the beginning of this year and we saw the House Judiciary leadership introduce a bill and then quickly bring that bill to markup in April. The bill is quite narrow. The primary goal is to make the Register of Copyrights a political appointee in hopes that it would give the head of the Copyright Office certainly more accountability to the Congress, and potentially a little more autonomy within the Office to be able to invest in important things like IT. We spent a lot of time with John earlier today on similar PTO issues.

That bill was taken up and modified by the Committee and sent over to the Senate. The Senate promptly introduced an identical bill. That bill is now pending with referred to the Senate Rules Committee. And it's unclear how fast that bill will be taken up, but certainly something the Senate Judiciary Committee leaders have been very interested in

pushing.

Interestingly, the Copyright Office has split jurisdiction within the Congress. On issues of policy and legal issues the Senate Judiciary Committee has jurisdiction. On issues of operations, because the Copyright Office is in the Legislative branch it goes to the Senate Rules Committee and the Senate Rules Committee will opine on whether the Office has the things it needs to run its operations efficiently. So, unclear, again, how fast that will move but certainly some further discussions will be had there.

I think both the House and the Senate leaders on this bill have deemed it as a first step, and they do intend - - Chairman Goodlatte earlier this week reiterated to look at further more significant reforms to address some of the issues that they've seen. So, a lot going on on the Copyright side.

The next few slides are as advertised. Bills that we've seen in previous congresses reintroduced. I wanted to highlight some of the pharmaceutical bills

because the issues of drug pricing have been at the forefront of the Congress. Now, many of those don't directly impact patent rights, but certainly do indirectly. So, these are the bills that we've been watching. And each of these bills in the next two slides, as I said, there were versions in the last Congress, the same members reintroduced a bill to hopefully try to get some traction given that both the President and both houses of Congress have continued to consider what they might do to reduce the price of drugs.

Our attention on all of these bills is to make sure that we are aware of any impact on the substantive IP rights. I think some of the proposals certainly do try to overcorrect and do fundamental things much more broadly than just addressing drug pricing. So, clearly, it's something we want to pay attention to.

Third slide in this series, the CREATES Act, was a bill also introduced last Congress by Senator Leahy and a companion in the House by Congressman Marino, again

targeting drugs, potentially targeting some abusive tactics that might drive the price of drugs up. One being patenting of certain safety protocols, and those safety protocols being used as an enforcement mechanisms to delay potentially that generic drug from entering the market as quickly as they might.

Similar activity from the Senator's perspective on sharing samples. So, this bill I would imagine would be subject to a more substantive hearing. Didn't get an opportunity to do that last Congress, but tries to at least regulate those types of abuses that the Committee perceived were happening.

Last couple of bill, again, two reintroductions. One on design patents, particularly related to car parts. The effect of this bill would be to limit design term for a certain set of design patents, patents covering products that would be used to return a vehicle back to its original manufacture. This one has been reintroduced over the course of I think about four congresses. A number of

years ago the PTO also held a town hall talking about this particular proposal. I expect again we'll see a substantive hearing on this. Usually this issue and fashion design tend to be paired and on the subject of a hearing I suspect we'll see that again this year. But, again, I'm unclear on the priority of the timing.

Lastly, Patents for Humanity, a program improvement act. This is a bill that would enhance the current Patents for Humanity awards program here at the PTO that was started a few years ago. It would essentially allow the award that's provided in the program, an award that is an acceleration of a PTO process, to be transferable to another party.

The initial concept, I think, was to create a new source of funding for those developing inventions that are serving the third-world countries and underfunded countries with unique inventions that serve humanity. This bill was introduced last Congress, again reintroduced here. It

certainly would allow us to take the program to the initial concept which would allow you to create a new funding source. So, again, interesting. Certainly, complementary to PTO's program. We'll see how fast it moves forward.

Let me just highlight two other types of activity. One is a hearing. The only real big substantive hearing we've had on IP issues was put together around the same time as World IP Day. I'll talk about that in a second as well. April 25th, the Senate Judiciary Committee held a hearing generally focused on the theme of innovation improving lives, which was the WIPO theme for World IP Day this year.

This hearing has become an annual hearing for the Committee focused on IP, the importance of IP, and tends to focus more on the enforcement side of things. There was some additional discussion of what the Committee might look at in terms of legislation or other issues related to IP, but it generally is just focusing on enforcement

issues. I'll highlight there are two Patents for Humanity award winners, so we got some additional visibility for that program which is always great.

Two more slides. I misled you. One pending executive appointment, IPEC, the Office of the IP Enforcement Coordinators, an office the UPSTO has worked very closely with since the position had been created on a number of issues. The President nominated Vishal Amin, who was a long-time Hill staffer with the House Judiciary Committee. That's pending. Unclear when the Senate Judiciary will take that up that nomination and when that process might move forward, but he is expected to be confirmed.

Last by not least, I mentioned World IP Day. My office worked with a number of folks here at PTO to do two events. One here at the PTO to serve examiners. We did essentially an examiner training trying to talk about the WIPO theme, talk about how innovation improves lives.

We picked two particular inventors.

One, Nike and their investment in a shoe to help disabled athletes perform. And a second a Patents for Humanity award winner Mario Bellini who invented with some of his colleagues from MIT an all- terrain wheelchair. So, both here with the examiners were able to talk about a lot of the technical aspects of their inventions, and talk about their processes moving forward.

We brought those same folks up to Capitol Hill and did that for Capitol Hill staff and some of the stakeholder community. Had four members of Congress, four House members, certainly one Senator as well, there to talk about the theme of why IP is so important. Had about 200 or so folks there. So, we were able to contribute to WIPO's World IP Day.

PTO executives, particularly the regional directors, were able to participate in some of the 25 additional programs that were happening around the country on the WIPO theme this year. So, we really had a lot of activity trying to bring to the public some of

the reasons why IP is important, what's happening, and in particular in line with the WIPO theme this year. INTA, the U.S. Chamber, and AIPLA all helped to put together this program, and it was, I think, quite a success.

With that, I'll stop and take any questions that folks have. We're happy to bring David back if you have more questions for him. (Laughter)

CHAIRWOMAN JENKINS: He definitely left the room, I have to say. (Laughter)

MR. COLARULLI: I saw him run, yeah.

MR. THURLOW: Here is a question from left field. It relates to 101, and it's related to best mode in the AIA. I'm giving it to you piece by piece here. Do you remember how that came up? It was kind of a clever arrangement where it's only reviewed for patentability examination purposes. And the reason why I raise it, and I think I told you, we had a presidents forum and heads of the New York IPLA, IPOAPA, many others spoke. And a judge from the southern district of New York, Congressman Jeffries was there and

talked about 101 challenges and issues.

Someone recommended wanting to do for 101 what was done for the best mode, and many people looked at him like, what are you, crazy? But then it's actually been getting discussed more. I wanted to know, first of all, how did best mode -- how did that arrangement work out, and is it even remotely possible for 101?

MR. COLARULLI: I can talk a little bit around the history, and I might lean on Bob or Drew to help on how the core is actually implemented.

As I remember, there was a number of proposals in the leadup. The first of which was to eliminate best mode entirely. The compromise that was adopted in the AIA was to allow best mode to stay in the statue but not use it for the purposes of examination. So, it limited impact there, but still is a requirement of the application.

As I remember, I think the conversation was that best mode in the application could still provide an important

role in identifying at least a mode in the initial application. In practice, that mode that was disclosed at the time may not be the best mode when the patent is issued.

So, that was the conversation around eliminating it. It could certainly be used as a basis for unnecessary litigation if you actually did disclose the best mode at the time. It in fact was causing unnecessary litigation, so it was limited in that way and that was the compromise.

Folks at the time couldn't get their head around eliminating it entirely out of the statute because of the reason I said, because at least it would identify a mode and a mode wouldn't necessarily be identified anywhere else in the application process.

Drew or Bob, do you want to --?

MR. BAHR: Yes. I was going to say strictly speaking what was done with best mode is that it's still in statute and we could make rejections based up on it if that information came to our attention. But as a practical matter during examination, unless

the applicant comes in and makes a confession we won't know what's the best mode to the applicant. That stuff always comes out in litigation.

So, it's not a defense in litigation and it's also not a basis for you not getting priority to an earlier application. So, it's sort of like the goal of eliminating it was effectively achieved though it's still there.

MR. COLARULLI: I think Bob just said I got it about percent right. (Laughter)

MR. BAHR: No, 90 percent.

MR. COLARULLI: Okay, good.

MR. THURLOW: Your thoughts on using that approach, and you can't answer. I just want to plan the seed, I guess.

MR. COLARULLI: Very interesting thought. I hadn't thought about it. I think there are challenges with 101 and a section so fundamental to the statute that didn't exist with best mode.

MR. THURLOW: Congressman Jeffries said you can't come to us with all different folders, you have to come with one voice. And

if you can't get one voice on this issue how do you expect Congress to figure it out?

MR. COLARULLI: I think that's very true.

MR. THURLOW: So, I think that that solution in some dinner parties would solve the problem.

And then a completely different idea --

MR. COLARULLI: But not at other dinner parties.

(Laughter)

MR. THURLOW: Exactly. This is completely outside your issue, but around the country there is a Walk for Science, and is that because of certain defunding issues for the NIH or something? I know in New York and around the country they had that. Do you have any wisdom on that?

MR. COLARULLI: And here in D.C. as well. I don't have any necessary wisdom; I haven't talked to the organizers. I can tell you -- and Drew and I both were up in Boston at the National Academy Inventors Conference

recently and a main discussion topic was concerns about the lack of funding in very, very basic fundamental research. So, I know that's driving some folks. But I don't know if there are other things that might have been driving the various marches around the country.

CHAIRWOMAN JENKINS: Are you suggesting a march for the USPTO? (Laughter)?

MR. COLARULLI: PPAC would lead a march, I like that.

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

MR. COLARULLI: You're very welcome

CHAIRWOMAN JENKINS: I think I was a tad confused. I saw Mark sitting at the table, but I think Mark is not having to do the presentation, but Dom is going to be doing the presentation. He gets the squeeze. All right, Dom, go.

You know what, while you're getting settled I want to say a couple of thank yous. I want to say a thank you to the Office for all the hard work and the work with us to try

to do a different type of format for PPAC. I think it's slowly but surely getting there and that's much appreciated. I think the Committee can -- I think I see nods of agreement with that.

I also wanted to thank -- we've gotten comments and we're still reading them from the New York Intellectual Property Law Association, the United Inventors Group, and also some other comments and questions from various Bar associations, so I want to thank those folks for doing that. It helps us and keep us in touch with the stakeholder community.

And I also want to thank the members of PPAC. We had a really lovely informal dinner last night with TPAC, which is our sister PAC. Why not, right, Jennifer?(Laughter) And it was very nice and I think it's the first time in the history, I believe, in TPAC and PPAC that they have ever had a joint dinner. So, it was a lot of fun. So, thank you everybody for that. We'll look for more of t hose in the future.

MR. THURLOW: (off mic) -- in March of this year and most trademark filings ever. I learned that over dinner.

CHAIRWOMAN JENKINS: Yes. It was a great opportunity for the two groups to get together and we're looking forward to doing more of that and working with them in some capacity as best we can.

Dom? Go ahead.

MR. KEATING: Thanks, Marylee. Shira is in Geneva right now and her deputy, Karen (inaudible) couldn't be here, so I've been asked to also cover the Special 301 Report. Would you like me to talk about that first or after the IP AttachÈ issues?

CHAIRWOMAN JENKINS: Why don't you do that first, yeah.

MR. KEATING: Okay. So, on Friday the U.S. Trade Representative's Office issued the 2017 Special 301 Report, which identifies those countries that do not provide adequate and effective protection for intellectual property rights. The USPTO contributed to this process. This year we reviewed the laws

of 100 trading partners and the USPTO and our IP attachÈs provided extensive input related to all areas of intellectual property including patents and trade secret protection as well as enforcement.

Furthermore, the USPTO contributed to making progress in these areas during the last year through providing expertise during trade negotiations and dialogs as well as through the Office of OPA, GIPA, and the IP AttachÈ training programs and key regional in-country initiatives in Brazil, India, Mexico, and China, among others.

So, I'm going to give you a brief summary of the country placement. Out of the 100 trading partners, USTR placed 34 of them on a watch list, 11 of those 34 are on the priority watch list and these are Algeria, Argentina, Chile, China, India, Indonesia, Kuwait, Russia, Thailand, Ukraine, and Venezuela. And these countries will be subject to a particular amount of scrutiny and bilateral engagement over the next year by not only USTR but also the other federal agencies.

So, there are 23 countries on the watch list. I'm not going to read them off. USTR is planning to conduct out of cycle reviews of three countries, that's Columbia, Kuwait, and Tajikistan.

I'm going to identify a couple of positive highlights from the Special 301 Report, that is areas where some of our trading partners have made progress, and then I'll point out some areas where we still have concerns.

Argentina's National Institute of Industrial Property, or INPI, has taken steps to confront its lengthy patent examination backlog. In September of 2016, INPI issued regulation creating expedited procedures for patent applicants who have obtained patents in other jurisdictions. So, INPI is also hiring more patent examiners, and it's working towards digitalization of internal procedures, and a more efficient online application management system.

In addition to collaborating with other foreign patent offices, INPI and the

USPTO commenced in March 2017 a patent prosecution highway pilot program to increase efficiency and timelines of patent examinations.

Chile has taken some steps towards potential progress over the last year. The National Institute of Industrial Property entered into a PPH agreement with the Pacific Alliance, which is Columbia, Mexico, and Peru, which came into force in July 2016. And also entered into an agreement with members of PROSUR which is a regional cooperation system that includes Argentina, Brazil, Chile, Columbia, Ecuador, Paraguay, and Uraguay. We expect that these agreements will help to expedite the processing of patent applications in Chile.

Kuwait is now a PCT contracting party. And now with that accession to the PCT, all the Gulf Cooperation Counselor, GCC, members are now PCT contracting parties.

So, jumping ahead to the patent related concerns in the Special 301 Report. India has long-standing concerns. We have

long-standing concerns with India with respect to the scope of patentable subject matter under Section 3D of its patent law. It excludes salts, esters, ethers, and new use of known compounds.

They've issued recently some guidelines on the patentability of computer software, which are problematic. We experienced a couple years ago -- well, there were proposed revisions to their patent manual that were going to restrict the patentability of software. We entered into some dialogues with the Indian government which resulted in essentially the status quo. There are some new guidelines that would take it in a more restricted direction. So, this remains a concern. They would like to link software to novel hardware in order to make it patentable.

China's promotion of self-sufficient indigenous innovation through policies on patents in related areas including standards and competition law implicates a cross- cutting set of concerns. Chinese authorities continue to work towards the

fourth amendment of the patent law. While successive drafts have addressed a number of U.S. concerns, the most recent draft presents troubling provisions including the insertion of competition law concepts that should be addressed elsewhere.

Argentina, we still have a number of concerns. Challenges to innovation, agricultural, chemical, biotech, and pharmaceutical sectors, including with respect to patent pendency. Among them, Argentina summarily rejects patent applications for categories of pharmaceutical inventions that are eligible for patentability in other jurisdictions including the United States.

In Canada, many of you are familiar with the recent developments in Canada with the Promise Doctrine. But we continue to have serious concerns about the availability of rights of appeal in Canada's administrative process for reviewing regulatory approvals of pharmaceutical products. The United States also has serious concerns about the breadth of the Minister of Health's discretion in

disclosing confidential business information.

So, I think that's enough probably for Special 301 Report. If you'd like I can jump ahead to talking about the IP AttachÈ Program? Okay, great.

We've had a chance to talk about this in the International Subcommittee yesterday, so if there is anything that you want me to skip over please let me know, otherwise I'll go through everything.

CHAIRWOMAN JENKINS: I think what would be really helpful -- we've had a variety of folks, Mark Cohen, Conrad, they've come to speak to us on attachÈs. I think one key thing for us is what is the Office doing with respect to the IG report, and next steps with respect to attachÈs. Some of those parts.

MR. KEATING: So, I think what I'll do then is talk about the IG report and then talk about maybe some of the things that we have on the horizon in terms of reforms to the program.

So, as we discussed yesterday, starting in August of 2015 the Office of the

Inspector General within Commerce initiated an audit. And an audit is different from an investigation. This particular audit is looking at the management controls of the AttachÈ program. And it was very expansive in looking at all management controls including travel and finances.

We were very pleased with the outcome. After an 11- month audit, the only recommendation was for USPTO to establish baselines and targets for each of the quantifiable performance measures to assess the effectiveness and efficiency of the AttachÈ Program. We concurred with this recommendation.

We also pointed out that quantifiable performance measures should not be the only measure of the IP AttachÈ Program's success. For example, we pointed out that if you have a well-planned and executed meeting with the right foreign interlocutor, it could be much more meaningful than having a series of, say, general meetings with the wrong interlocutor.

So, we are currently in the process of implementing OIG's recommendation. As I mentioned yesterday, quantifiable performance measures are not new to the IP AttachÈ Program. Since 2011 we began to track the progress of the AttachÈs based in Brazil, Russia, India, and China and the USPTO-based teams with respect to IP office administration, enforcement initiatives, developments, laws, and regulations, and international cooperation. This includes baselines and targets based on countries' specific action plans.

We began to track the attachÈs' time between patent, trademark, and copyright and other inseparable issues in 2014. And this is what we used to allocate the fees and the funding for the program, based on the actual time spent by the attachÈs on these issues.

And since the beginning of the second quarter of 2016, USPTO has been collecting data to support performance measures related to a number of attachÈ -- well, related to a number of

metrics but I'll roll through these -- the number of attachÈ meetings with foreign government officials, the number of training programs conducted, the number of foreign government officials trained, the number of public awareness programs conducted, the number of participants in those programs, the number of weekly activity reports submitted, the number of same day reports submitted, and the number of identifiable successes.

Since the third quarter of FY16, we've begun to conduct data for quantifiable performance measures related to the number of U.S. stakeholders helped and the number of articles published.

So, that's where we are right now in terms of the OIG report. It's something we welcome, that we concurred with the single recommendation. We're in the process of implementing it. We think we're going above and beyond in supplementing the broad range of quantifiable performance measures that we already have. And we're continuing to look at non-quantifiable measures of success as well.

Now, to get to your other question of sort of what's going on with the Program in terms of reforms. Back in 2010, we created an IP AttachÈ Taskforce that was Director Kappos', and that Taskforce was asked to develop proposals for the reform of the Program. The Taskforce established 18 proposals which were all accepted.

Some of the highlights of the Taskforce recommendations that were either fully adopted or in the process of being adopted include the establishment of a master action plan that pulls together all the many action plans that existed previously, including the Intellectual Property Enforcement Coordinators' strategic plan, the plans that existed at embassies and consulates, and plans that existed here in USPTO Headquarters, into a single document so that the IP attachÈs and their teams here in Washington can all be focused on the same priorities and be working in a more coordinated manner.

We've also developed standardized

operating procedures for the IP attachÈs, where the IP attachÈs would first talk to a number of industry associations, both U.S. and foreign industry associations, to identify issues within a given country. They would review bilateral agreements to see which of these issues are being addresses and see where the gaps lie. And then they would suggest to Headquarters the negotiation of new bilateral agreements to address those gaps that might exist.

We continue to look for ways to improve the Program. One of the challenges that we've faced is in the recruitment of qualified IP attachÈs, so we've begun to do outreach to the examining core, to help the examining core to understand what the IP attachÈ does, and generate interest in the examining core working as an IP attachÈ.

We've done some outreach to the public in this regard. We've begun to use social media to advertise the position so we can get more people to apply. We have also, based on input from PPAC and TPAC in the past,

begun to conduct outreach to the public to help the public to understand the services of the IP attachÈs.

And we have begun to conduct consultations. Every December the IP attachÈs come back here and they meet with a large number of stakeholders including PPAC and TPAC and others not just within USPTO but other federal agencies. We meet with industry associations, user groups, and many others while we're in town.

We've begun to conduct outreach with our regional offices, bringing usually five IP attachÈs just prior to December consultations out to those offices to meet with a variety of local stakeholders there. And we've begun to conduct outreach normally in the Spring, often tied on to the INTA annual meeting or another annual meeting of an IP association where a lot of stakeholders will be in town.

This October we're going to be in Long Beach, California to speak at the ABA IPL conference, and then to conduct outreach with a number of stakeholders in town. We reach a

wide variety of sectors including aerospace, defense, fast-moving consumer goods. We reach out to universities and many others to help them to understand the services that are available through the AttachÈ Program so that they can take advantage of these services.

Yes?

MR. WALKER: Just to confirm something that we heard yesterday, but for the benefit of the public it's been very visible and public by the Secretary of State that there are going to be significant cuts to the State Department. Can you confirm that these public ally announced cuts will not have an impact on the IP AttachÈ Program?

MR. KEATING: That's correct. That's our understanding, is that these cuts would be to State Department. Our program is operated with USPTO funding, not with State funding. So, if there's a cut to State funding the State Department may be looking for other agencies to step up to provide additional resources to keep the embassy running and to continue the work that is done

overseas by the U.S. government. So, it may have the impact of State Department even looking to us more than they do already to help them out on intellectual property issues.

We do, I should mention, work with not only State Department but all the other U.S. federal agencies overseas and we also work with foreign governments, like-minded attachÈs, from Europe including the UK, IPO, the European Patent Office, and the French Intellectual Property Office, the Korean Intellectual Property Office, and others when we're overseas. We try to leverage as many resources as we can.

MR. THURLOW: Dom, do you have somebody in place in Mexico and Peru? I know that there would be -- not that I want to go there, but is there someone there now?

MR. KEATING: Yes. We do have Todd Reeves in Mexico City, and Anne Chitavitz is in Lima, Peru right now.

MR. THURLOW: It's on the website? I thought I checked the website and didn't see that. I must have missed it.

MR. KEATING: It's up to date on the website. In fact, if you click on the links that you see on the screen -- this particular graphic comes right off of the IP AttachÈ pages of the USPTO website. So, if yo click on any of the black boxes you'll go directly to more information, including information about who the attachÈ is, contact information, et cetera. So, you can try that tonight and let me know if you run into any problems. But it should all be up to date.

And I should also mention that each of the IP attachÈs is regional in focus except for our IP attachÈs in China which all focus on just China. And our two IP attachÈs in Geneva who both work on multilateral issues, Debbie Lashley-Johnson is at the U.S. mission to the WTO where she works on trips, counsel issues primarily, and Christine Shlegal-Milch is at the U.S. mission to the UN organizations where she works on world intellectual property organization issues. They both collaborate on issues like the World Health Organization and other places where IP issues come up in a

multilateral sense in Geneva.

CHAIRWOMAN JENKINS: It is 3:00 o'clock, so could I get one minute of the explanation on rank?

MR. KEATING: Great, I'd love to.

CHAIRWOMAN JENKINS: And Dan is sitting right behind you and I see him nodding.

MR. KEATING: Terrific. So, our IP attachÈs are at the rank of first secretary, which is a mid-level rank within the embassy. They've been very effective in their work and we've been receiving positive feedback from not only the U.S. Trade Representative's Office and other federal agencies, but wide-range of industry associations, and even Capitol Hill, about the effectiveness of the attachÈs.

We have heard of many missed opportunities due to the existing rank of the attachÈ and the fact that our IP attachÈs are not of a sufficient rank to meet with the senior interlocutors that would help their work to be more effective. For example, in

India our IP attachÈ has difficulty in meeting with somebody at the Joint Secretary level, especially if you're talking about the Ministry of Health and several other ministries.

So, we have heard -- this issue has been simmering for a number of years. It's been something that we have paid attention to. We've heard some former U.S. ambassadors raise the issue and suggest to cabinet secretaries that all IP attachÈs should be elevated in their rank for one level, from the current first secretary rank to the counselor rank.

This seems to make a lot of sense. we've heard support from this from the U.S. Chamber of Commerce last year in a letter to a cabinet secretary proposing that IP attachÈ diplomatic rank be elevated. The preceding year we saw a letter from the Silicon Valley Leadership Group I believe to Secretary Kerry proposing the same thing. We've heard a lot of interest in this and we think that it would help our IP attachÈs to become much more effective in a relatively straight-forward

way.

CHAIRWOMAN JENKINS: That's the State Department? Who would ultimately make that decision?

MR. KEATING: Correct, State Department. It could be done in two ways. State Department is the agency that determines diplomatic rank for diplomats. There are some statutory provisions also that determine diplomatic rank. So, it could be done either through State Department or by legislation.

CHAIRWOMAN JENKINS: It seems quite sad that we do not have sufficient representation when we have folks in different countries trying to help our stakeholders. That we don't have sufficient rank seems bizarre, that this can't be taken care of. So, we on PPAC will try to figure out what we can do to help address this issue.

MR. KEATING: Terrific. We appreciate your support on this issue.

CHAIRWOMAN JENKINS: Dom, thank you so much. I appreciate it.

MR. KEATING: Sure. Thank you.

CHAIRWOMAN JENKINS: I think Drew -- he's not scheduled, he's just going to make a quick comment.

MR. HIRSHFELD: Sure. Just to wrap up, I know we're after so I'm not going to take much time. I just want to say thank you to everybody involved, both PPAC for all your great work and all of the PTO employees for all your great work. We certainly had a very rich conversation.

I will share with you that at the lunch break I ran into somebody who didn't usually come to these meetings and he said, I don't usually come to those meetings but it was a really good meeting so far. So, I think there is a lot of rich discussion that people get a lot of value out of it, so thank you to everybody involved.

Last but certainly not least, I would like to thank Jennifer Lo. You always do a fantastic job in this. (Applause) And Jennifer who puts all of this together, quarter after quarter, I look at you like a referee that when you do a great job you don't

get noticed. But we certainly do recognize the wonderful work that you do, so thank you for everything that you do.

CHAIRWOMAN JENKINS: Seconded. It's like herding cats. So, it's much appreciated.

Drew, thank you so much. Thank you, PPAC members, thank you, USPTO. Another very good productive meeting. We look forward to doing more and more with the Office. I'm going to move to close the meeting. May I have a second? Thank you, Julie, second. We are closed. Thank you.

(Whereupon, at 3:06 p.m., the PROCEEDINGS were adjourned.)

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

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