UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

QUARTERLY MEETING

Alexandria, Virginia

Thursday, August 8, 2019

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PPAC Members:

MARYLEE JENKINS, Chair

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BOB BAHR, Deputy Commissioner for Patent Examination Policy

ROBIN EVANS, Director, Technology Center 2800

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Other Participants:

KATHLEEN DUDA

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P R O C E E D I N G S

(9:00 a.m.)

CHAIR JENKINS: Good morning. I will say it is August 8th because that's what the slide says. And welcome to our August PPAC meeting. I am Marylee Jenkins. I am calling the meeting to order and opening this session. I am chair of PPAC. And with that, Andrei, are we ready to go with your comments? I have absolutely nothing to say this morning. No, you're going to do your comments and then we introduce you after your comments. So, whatever that rumbling noise is. Yeah, very busy day at PTO I've noticed. It's always a good day at PTO.

MR. IANCU: Good morning. I was going to wait for the rumbling noise to be during your remarks but in any event, thank you very much. Thanks, Marylee, and great to see everybody from PPAC and members of the public as well. Always a great pleasure to be here with you all. Very much appreciate being here and let me begin by once again thanking the entire committee for its commitment to fulfill the PTO's mission.

The ongoing collaboration between the

PTO and PPAC is extremely important and your guidance on a number of issues continues to be invaluable. Before I go any further, let me first mention that Julie Mar-Spinola who is right now sitting to Marylee's left will be the vice chair of the Committee, so congratulations Julie.

MS. MAR-SPINOLA: Thank you.

MR. IANCU: Very well deserved and thank you for your many contributions to the Committee and I look forward to working with you and continue to work with you actually. So, and I very much look forward to continue working with the whole committee. Indeed, without you and the vital work of PPAC, we could not do the great things that we have been accomplishing and will continue to accomplish here at the Agency.

For example, because of PPAC's outstanding work in conjunction with the PTO and, of course, our dedicated and hardworking patent examiners, patent pendency is down, patent quality is up and we are constructively engaged with our user community as never before. By the way, new filings received as of July 23, 2019 were 357,951 which is an increase of approximately 5

percent over the same time last year. And you'll hear more about all of that from speakers down the road today.

The most important area in patent law remains section 101, patentable subject matter. I am proud of the USPTO's efforts over the last year to issue forward looking guidance that clarifies this complex area of law. The guidance synthesizes the law and provides a clear framework that our 8000 plus examiners and almost 300 PTAB judges can apply in a more consistent and more predictable manner. Our last guidance issued on January 7, 2019 has been welcomed by our examiners and so far, it appears that it has, in fact, resulted in more clarity and more consistency during examination.

Let me turn now to our funding. In order to accomplish the mission, of course, the USPTO requires a predictable and sufficient funding stream. And that, in turn, means that we must continually review our fees and adjust them as appropriate. To that end, last weeks' notice of proposed rulemaking regarding the USPTO's fees resulted from a comprehensive biannual fee review

that began in 2017 when we analyzed the effects of proposed fee changes on our operating model.

At that time, we concluded that fee adjustments would be necessary to provide the resources needed to improve patent operations, including the implementation of the PTO 2018 to 2022 strategic plan. As part of that analysis, we also received feedback from this committee and members of the public. As a result, the proposed fee adjustments outlined in last weeks NPRM increased certain patent fees where there are specific needs and increased the remaining fees at a set percentage to address rising expenses.

As usual, a 60 day public comment period is now open and as always, we welcome feedback on the proposed changes. After carefully reviewing and considering the public comments, we expect to prepare a final rule for publication sometime in 2020. I noted by the time the new fees will be implemented, fees will not have changed in about three years. Of course, many things at the PTO and in the world of patents have changed during that time.

A particular big focus here at the

Agency has been a devoted and renewed effort to stabilize and modernize our IT infrastructure. And to retire legacy systems, many of which have not been updated in years. Jamie Holcombe, the USPTO's new chief information officer has been leading these efforts and you'll hear more from him this afternoon.

In the interim though, I'd like to say a few words about what we have been doing as critically important changes finally are afoot. Over the past Memorial Day weekend, for example, we successfully transitioned a critical part PALM system. PALM, by the way, stand for Patent Application Locating and Monitoring. So, we've transitioned a critical part of that from a platform that was nearly two decades old to a new, more modern, stable and resilient server platform. The new platform is 1000 times faster, 20 times more efficient and far less prone to failure. Further, well executed data center shut down procedures play a large role in our business continuity planning.

To prepare for emergencies, we're refining our data center shutdown and startup

procedures in a test or lab environment as we move toward the ultimate goal of executing a controlled data center outage. Our plans also include leveraging new technology that will increase our systems availability, resilience and fail over potential. Further, we're exploring innovative approaches in the examination process to include artificial intelligence and machine learning to drive up the efficiency of search classification and other things.

Needless to say, a fully modernized, stable and secure IT system that will remain operational per industry standards is a large scale project that will take time and will require significantly more work. We are though fully committed to making the necessary investments to better serve our country's inventors, entrepreneur's and the general public.

Another important update relates to the USPTO's Telework Enhancement Act Pilot Program, also known as TEAPP, which provides cost savings by reducing the need for additional office space, enhancing recruitment and retention and

fostering greater production and high quality work. As all of you know, the USPTO's talented and dedicated workforce has fanned across the United States now and through its TEAPP program, the Agency is able to hire and retain employees who find it necessary or desirable to live outside of the immediate area of our Alexandria headquarters.

That's why I recently approved the TEAPP expansion pilot that would enable employees who have approved patent hoteling program worksites in Alaska and Hawaii to have the first opportunities for one of the ten POPA pilot sites in those locations. The remaining slots are open for additional eligible and interested POPA employees in Alaska and Hawaii. If employees are interested in joining and staying in the pilot, they'll need to apply for TEAPP. We anticipate NTEU 243 and 245 employees will receive information regarding additional TEAPP slots in those two states within the next six months. Last year, by the way, Congress authorized an extension of the TEAPP program in general which is now set to expire on December 31, 2020.

Turning now to employee engagement efforts in general. We're continuing our communications outreach to the USPTO's workforce both in person and remotely through quarterly townhall meetings and our newly established USPTO speaker series events. Which expose our employees to firsthand stories from leaders in innovation and entrepreneurship. After all, so many remarkable people come through the doors of the PTO and we want to make sure that there is as many folks as possible get to see them when possible.

So, in light of that, we started the speaker series about a year ago. And so far, the guests have included the prominent author, speaker and patented inventor, Temple Grandin. Raytheon's Joseph Marron, the inventor named on patent 10 million for technology they developed in the field called LADAR. Dr. Lonnie Johnson, an American inventor and engineer who holds more than 120 patents including one for the super soaker water gun, one of the worlds best selling toys. And Vince Cerf, National Inventors Hall of Fame inductee who is also widely known as a father

of the internet.

Our most recent townhall meeting took place on January 20th when our CIO Jamie Holcombe, Commissioner for Patents Drew Hirschfield, and the Commissioner for Trademarks Mary Denison and I updated employees on the USPTO's ongoing IT transformation. With about 5000 employees participating in person or online, this was one of our most well attended townhall ever.

And then a week after that on July 9th of this year, our USPTO speaker series featured the Japan patent office special advisor and former JPO Commissioner Naoko Munakata who recently ended her tenure as commissioner and provider her insights on the global IP environment and patent examination in Japan to PTO employees. And there's more.

As you know, we recently celebrated the 50th anniversary of the Apollo moon landing with an event at the USPTO that was focused on space innovation, technology transfer from the Apollo missions and an overview of the administration's policy on space exploration and space commerce. Featuring U.S. Secretary of Commerce, Wilbur

Ross, NASA administrator Jim Bridenstine, astronauts Kathryn Sullivan and Paul Richards and other distinguished speakers. The event was truly momentous and celebrated a very important milestone as well as the importance of patents.

As Secretary Ross noted in his remarks at the event, "protecting the intellectual property of new space companies, entrepreneurs, inventors and individuals is essential for U.S. Success." Secretary Ross went on to say that the people on the leading edge of this global competition are the examiners and employees of the USPTO. Thank you, he said, for your critical role in processing the ever increasing numbers of patent applications while maintaining and improving both pendency and quality of examination. You provide inventors with the protections they need to commercialize their technologies, create companies, hire employees and put people, satellites, manufacturing plants and tourists into space.

Further, after noting how the IP and technology gleaned from the Apollo 11 mission "elevated the human condition, something that

nobody could have ever predicted in 1958 when President Eisenhower created NASA. Jim Bridenstine administrator of NASA remarked with regard to future space exploration including missions to Mars. That we're going to need to unleash American industry, that means intellectual property and patents are critical." But if the United States is to maintain its leadership role when it comes to innovation, we as a nation must broaden the innovation ecosystem, geographically, demographically and economically. Studies have shown that doing so can up to quadruple innovation rates in the United States. The USPTO has held three public hearings and solicited written testimony in support of the Success Act. The Success Act stands for Study of Underrepresented Classes Chasing Engineering and Science Success and it was an Act that was passed last year in Congress and signed by the President.

The first hearing on this was held here at headquarters on May 8th of this year and subsequent hearings took place in the Detroit and San Jose regional offices. At these hearings, we welcomed representatives from industry, law and

academia who presented valuable insights and recommendations regarding concrete ideas and action plans to increase the number of women, minorities and veterans applying for patents. Public policies and other initiatives to promote the participation of such underrepresented groups in the patent system and entrepreneurial activities and the role that the USPTO should play in addressing these important matters.

In addition to gathering information on these issue for purposes of providing a report to Congress, which we will do by the way in the fall of this year. We've also been engaged with other Department of Commerce bureaus and consulting with U.S. government agencies in general. Including the Small Business Administration and the Department of Treasury regarding possible data sharing or analysis relevant to the number of and benefits from patents applied and for and obtained by women, minorities and veterans.

Bottom line, broadening the innovation ecosphere is critical to inspiring novel inventions, driving economic growth and maintaining America's global competitiveness.

Further, when it comes to maintaining our leadership role in innovation, we must work to equip tomorrows inventors, innovators and entrepreneurs with the skills they need to succeed. That's why I was so pleased in late June to visit a Camp Invention in Hyattsville, Maryland, where I was joined by Hall of Fame inventor, Al Langer, the inventor of the first automatic implantable cardioverter defibrillator.

Camp Invention, as you all know, is an annual summer program hosted by the National Inventors Hall of Fame in partnership with the USPTO. And delivers a science, technology, engineering and math, STEM and IP based program to over 160,000 students across the country annually. The theme of this year's Camp Invention was “Supercharged.” And it featured four modules that incorporate concepts of inventing with activities on superheroes, sea adventures, farm tech and robots, quite a combination. What a pleasure it was to meet and speak with the young students and see how engaged they were when presented with scientific and

technical challenges.

These future inventors will play a crucial role in helping the U.S. compete and succeed in a global economy. Our support for their development is so important. So, with that, I will stop there and open it for questions. We have a full agenda scheduled for today as we bring you up to date on our activities and we hope today's session is informative for all of you on PPAC and the public. Again, I want to thank you all for your hard work throughout the year and as always, we welcome your comments and questions as we move through today's agenda. Thank you.

CHAIR JENKINS: Great and thank you. It's always wonderful to hear all the different things that the office is doing and particularly in a short span of time since our last meeting was just May. So, you have kept the office hopping since you've started and I know it will continue. So, do I have questions from the Committee with respect to any of his remarks?

MS. CAMACHO: I have a comment. I just wanted to thank you and the office for bringing the important issue of underrepresentation of

certain groups in the innovation ecosystem to the mainstream discussion. I really -- this is a very important issue, I think. And over the summer, I had the honor of hosting Elizabeth Daugherty, the Atlantic Outreach liaison at my company with a group of men and women. And the discussion came to the underrepresentation of women among inventors. And I have to say, it was a very powerful discussion and the engagement of both men and women in that discussion was very heartening. I think it's an issue that awareness is a very important step forward in this and so I think the more that we can discuss this among everybody I really think that we're making progress. And so, I wanted to thank you and the whole office for that.

MR. IANCU: Well, thank you, Jennifer. No question, this is a very important issue and we are very much focused on it. And the release of our study on women inventors in February of this year was an important step to identify the issue and try to put a spotlight on it and have a national dialogue surrounding it. So, we are having discussions like this across the country.

We're having small group discussions like the one you mentioned. It's being led by a variety of PTO leaders.

I have personally had several roundtable discussions, for example, in Silicon Valley where I was joined by Congresswoman Zoe Lofgren. I had one in New York City, Austin and so on and we will continue. So, discussing the issue is critically important to keep it at the forefront. Even more important than that is taking action. Figuring out what has to be done with some specificity and going about to do it. Because as our study shows, only 12 percent of our inventors in 2016 were women. And bottom line is, we can't compete in the global, increasingly global innovation competition with one hand tied behind our backs.

So, we need more Americans, not just by demographics but also geographically and also folks who are from economically underrepresented communities. We need more Americans across the spectrum to be involved. So, we need industry, academia and governments both federal and local governments to join forces and work together to

keep the spotlight on the issue and to figure out solutions.

CHAIR JENKINS: I also echo Jennifer's comments. And I think that and I know you're working on this but I find that many women inventors just don't have either the monetary resources, the knowledge, the details of a very complicated patent system of how to do things. And so, not only is it important to get the facts and make sure they are forefront in the issues of women and minorities but also that knowledge.

The PTO is a fabulous resource and I always commend the Office that you have such a range of customers and you have people who are from big corporations who understand the patent system and have a fleet of lawyers helping them guide through the process. And then you have individuals who just come up with a great idea and have no clue on how to get that enforced and protected. But someone in their family has said to them, you need to get a patent on this.

And so, you know, combining that altogether and getting the message out is a large task and I commend the Office. This is such an

important facet and I know there's lots of women out there that want to invent stuff. So, you know, keep moving forward because this is something that's going to help us and the economy and just important overall.

I want to just switch to also the importance for the IT system. And I know you have come into the IT issues at the PTO and just jumped right into them. I have seen personally better response times and better access. And so, I applaud you and the Office for continuing the efforts in this area and just do more. Because we need to have a very solid protected and as Julie often says, secure, patent system.

MR. IANCU: Thanks for that. On IT, we are doing more and you'll hear quite a bit more from Jamie, our new CIO later during the day. But to emphasize, this is going to take some time. The IT systems here are fairly vast. There are many components both hardware and software. They are complex, they have to work both for internal examiners and the internal processing. They have to work for the public and how they interact with us. And we do have all hands on

deck on this issue. There is complete buy-in from PTO leadership across the board but it will take some time.

But we are very focused, we have a detailed plan with deadlines and targets. And the critical thing is first of all, we first must achieve stability. We're not quite there yet for full robustness but we're definitely better than we were a year ago and we are definitely moving in the right direction. And I'm very much hoping that soon enough we will have increase of stability such that our systems will be less prone to failure and even more important than that, when there is failure, we are able or better able to recover from that failure in a much quicker fashion.

So, we're definitely moving in that direction. We've made tremendous progress. I'm extremely optimistic about this but significant more work is ahead.

CHAIR JENKINS: Okay. We have a very full agenda. Anyone else have any questions? Thank you as always. This is, I think, always informative for the audience and I know I get a

lot of positive feedback to always hear your comments and where the PTO is during PPAC meetings. So, thank you, Andrei, appreciate it.

MR. IANCU: Thank you. Happy to be here and have a good rest of the meeting.

CHAIR JENKINS: Okay so we're going to jump right to quality and operations. Valencia, are you going to start?

MS. MARTIN-WALLACE: Yes, thank you.

CHAIR JENKINS: Okay great, thank you.

MS. MARTIN-WALLACE: I'd like to just very quickly before we begin on the program, introduce you to our new Chief Patent Academic Officer. And if you don't mind just standing, Dr. Deborah Katz who joined us just a couple months ago. And she is heading up our training within the patent business unit. Not only our new examiner training but all of our advanced training and technology and legal procedures as well. Before she was here, she came to us from the Naval Academy where she was a professor there for over 20 years.

DR. KATZ: 24 years.

MS. MARTIN-WALLACE: 24 years and just

recently was at the Air Force Academy as a professor there as well as helping them to update their curriculum. So, we're very lucky and excited to have Deborah Katz here with us.

We can then move on to our program. So, to begin, we would like to give everyone an updated understanding of the patent examiner role and give them some more insight. So, we have two of our Technology Center directors here to go through this program and I think we'll kick it off with Robin Evans who is the Technology Center Director in TC 2800.

MS. EVANS: I apologize, I'm fighting through a summer cold so I have water here just in case. As Valencia said, my name is Robin Evans and I am one of the Technology Center directors in TC 2800. So, today Wendy and I will be discussing parts of the role of the examiners and specifically how examiners are trained which I will cover and then Wendy will follow up with how productivity is measured and how examiners are awarded for their work.

So, examiners receive training not only when they first come into the office but, Mark's

like why is the screen jumping? That's not me, that's not me, Mark. Examiners receive training not only when they first enter the office but throughout their career here at the PTO. The training that we provide both formally and through every day interaction with our examiners help us ensure that we continue to provide a quality work product to our stakeholders that is reliable.

Listed here, you see several types of training that is provided through our Office of Patent Training, OPT. The new examiner training, the legal practice and procedure training, technical training and corps-wide training. So, the new examiner training while our examiners are required to have a science or engineering degree, they are not required to have a law degree. So, the PTA provides an in-depth review of the statutes and the rules and tells the examiner and teaches the examiner how to apply those statutes as it pertains to patent examination.

They have legal lectures or what I call large college like lectures and then they also

have labs or classroom exercise and course work that focus on patent examination process and procedures. They are also talk about automation tools, technical training and, of course, soft skill training. This first year entry level training comes in two phases. The first part of that training is four months long where they are in the PTA for four months and they have a trainer and a training assistance that is assists them as they are first beginning their career here at the PTO. Then they move back into their respective technology centers and come back to the PTA for subsequent training during that first 12 months.

Now after that 12 month training and as I said, as they go through their career, there are other types of training that the OPT provides. Examiner refresher training program. So, you can imagine being in the Academy for four months, you get a lot of statutes and a lot of rules thrown at you. And as you're learning, when you get into your TC, sometimes you need a refresher on those things you heard or learned in those first four months.

So, the OPT offers an examiner

refreshing training program. And then as we move further in our examination career, we also have master class training program. So, that's more in-depth training on those things that you learned in your first year. For instance, how to respond to applicants' arguments. So, when you're first starting as an examiner, you're doing a lot of first actions. As you move through, applicants are starting to respond. So, you get more in-depth training and further discussion in those master class training programs.

And then there are also patent quality chats and legal lecture series training. Those legal lectures are based on major court decision and USPTO policy and changes therein. And those legal lectures are often followed by quality chats within an expert that talks about the patent quality that relates to that. And then there's the patent law and evidence course. And that covers court decisions, changes on the statutes and handling of evidence during examination.

CHAIR JENKINS: So, who teaches all of these classes?

MS. EVANS: We all do.

CHAIR JENKINS: So, people within the PTO?

MS. EVANS: So, people within the PTO. So, the Office of Patent Training which is led by Valencia's office. They have instructors there that are permanently located in the Office of Patent Training. And then our supervisors help in developing that training and you'll see later that the training is developed collaboratively by the instructors in the Office of Patent Training by OPLA and by Patent Operations. And then we move through and we train the supervisors collectively and then we train the examiners.

So, we have a group of supervisors that routinely help OPT deliver the training to the examiners. Does that answer your question? Valencia, did you want to add anything? Okay.

MR. SEARS: Robin, I have a question for you. When I learned to write patents, I spent a lot of time first just reading patents.

MS. EVANS: Absolutely.

MR. SEARS: Reading patents, reading prior art. It was a long time before I was

actually let loose on some claims, drafting claims of my own. And writing claims took a long time. I'm curious whether the training program includes any aspect on how to write a claim and if not, would it be beneficial to consider? Is this something examiner -- is this something that would help examiners in searching in examination how to exactly write a claim.

MS. EVANS: So, I'll let Valencia jump in. But I will say in those first four months they would not learn how to write a claim. Because in those first four months, they don't even know what a claim is, right Jeff? So, they're trying to figure out the statutes, how they apply the statutes, what a claim is and what we are doing with the claim in providing the protection of those four corners. So, that's where our focus is and is this claim novel, is it non-obvious. And that's where our focus is and what is written in that claim is what they're going to get protection for and that's what we want to make sure they get the broadest reasonable non-obvious claim that has been presented before them.

MS. MARTIN-WALLACE: So, that is a

great comment and it is something within the first four months that we explore with examiners. Not only that but actually a shock to the system in being on the other side of conducting an interview as well in order to learn how to construct. As well as it is actually a requirement when working with pro se's that examiners be able to draft a claim for them. And we have a pro se art unit where that it's a common occurrence. So, it is something that we do but certainly would love to hear any ideas you have about exploring even more but it is part of our curriculum.

MS. EVANS: And I will say that as examiners move to helping applicants with allowable subject matter, they will definitely through an interview give the applicant options or limitations that they have not found during their search. That perhaps is put into that claim would overcome the rejection on the record and make that claim allowable.

CHAIR JENKINS: There's a question here.

MR. GOODSON: I asked this question about four and a half years ago and I assume things

haven't changed but I'll just ask again. Would it be beneficial if you had a dictionary in the patent office that said, these, you know, and there would be thousands of terms, these are the commonly accepted terms. You know, in electronics it would be a shift register or amplifier or shunt, whatever, so that those things have certain meaning and bring about a certain uniformity in practices. Unless the applicant, you know, gives a definition.

MS. MARTIN-WALLACE: Yes, you have brought up that before, Mark, and I appreciate it every single time. And while we don't have an overall for the corps or the business unit is a formal dictionary. Every technology center within each of those technology centers we have those type of reference tools that supervisors and quality assurance specialists use to help the examiners in identifying these standards. And our TC directors could probably talk more about that as to some of the things that you do in the TC.

MR. GOODSON: Well, the follow up would be, is that made available to the vendors?

MS. MARTIN-WALLACE: That I would have to ask. I'm not sure if that is something that is public or not.

MS. EVANS: So, I don't think that we share any type of dictionary with the applicant or the inventors. But surely through interviews, through communication, through other technical training. Examiners are communicating and collaborating with applicants and attorneys to figure out what those limitations and those terms mean to the examiner through change interpretation.

MR. HIRSCHFELD: Yeah, if I can add, because we've actually explored this many years ago, longer than the four and a half years ago. We actually, I believe, had even federal register notices where we were looking at this issue whether we could have dictionary definitions. And we ended up at the same place every time that it is a very difficult to work situation because applicants can be their own lexicographer. We have a dictionary. Other dictionaries can be cited to contradict a certain dictionary. You're using words to describe more words.

So, anything we have in house that we use is for education of examiners. But the whole point is that the record is made clear through the prosecution of what the meaning of terms are not based on some dictionary alone, right. So, it'd be the whole context of the application.

I'll also just say from my own experience, you know, and maybe many, you know, former patent examiners have different views on this. But I will tell you, the words that I always found were most challenging in prosecution were not the highly technical words, they were usually the easier simpler words that have common meanings that you would argue over what they mean. For example, like end, right? Does end mean, you know, the end face or around the, you know, end portion. Things like that are where we get into the back and forth with claims and that's just another reason why dictionaries are really challenging. And, it is, you know, I'm not trying to shut down the idea, it's just we certainly have looked into that over the years.

MR. GOODSON: From what I'm hearing it's just not practical. Okay, thank you.

MR. POWELL: I thought I'd just chime in really quick. I'll never forget one claim that I saw not too many years ago and it was essentially a protocol comprising. Okay, this man, (inaudible) said, you know, was looking at this stuff under 112(b) trying to figure out what that means, you know, as opposed to, you know, an internet protocol. I mean, what really does that mean and so forth. So, those easy words or simpler words can indeed be a mess sometimes.

CHAIR JENKINS: Okay.

MR. LANG: Another question is I think kind of related. I think some of what Mark is getting at is how do we raise the technical capability of examiners overall. I mean, part of that is understanding terminology but part of it is just simply understanding the whole system and how it works based on the language in the patent application. Which, you know, admittedly can vary from application to application and may not even be the same as people use in their every day life as engineers.

But here I see there's a patent examiner technical training program and it's based on

volunteers. It's wonderful that people are willing to volunteer their time but does that result in a sufficiently structured training regime that we can assure ourselves that examiners are operating at the right technical level in their respective art units.

MS. EVANS: Yeah. I can say absolutely. And these technical training programs, I was going to say that is a great segue because that gives the examiner the opportunity to meet the experts and the applicant and to learn about their technology. So, through these two programs, the PETTP is where the attorneys, the experts, the applicants, the engineers, come to the office and not just here at Alexandria. Also, we've had these programs at the regional office as well.

And you're right, they travel at their own expense. But they thought it important to come to the examiners to share what their technology is and to educate the examiners in the current technology and the advancement. And while that program is a volunteer program, it is a very successful program that happens in all of

the technology centers here at the PTO. When I mean here, I mean entire including the regional offices. And TC 2800 just had one last month where we had engineers and applicants and experts come from a variety of different places even from Korea and Japan. And they traveled here to share with the examiners.

And while it's voluntary for the experts to come here, that is a mandatory training that we require the examiners in that technology area to attend those meetings. So, and often times those experts will come on a smaller scale as well. It may not be as large as the PETTP program but often times they will come to a work group meeting or an art unit meeting to share and to collaborate with the examiners.

And by the same token, they come here and then we go there. And so, through our SEE Program, the Sight Experience Education Program, we allow examiners to travel along with supervisors and other experts in the office to travel to organizations, companies, labs. So, that they can see the technology and operation and meet those experts and those engineers where they

are. And again, to share that experience and that technology and through that program they also receive the education on the emerging technology.

Now they cannot talk about any patent applications that are before the office but they do discuss the advancements and technology or just what those experts are working on at that time.

MS. MARTIN-WALLACE: I was going to add very quickly that Robin did a great job of these two. And these two are just two pieces of that puzzle of our training in technology. As Robin was saying, each technology center spends such a great deal of time in bringing inventors in to discuss the latest in technologies as well our formal programs of going out.

We have quality enhancement meetings where in each technology center where examiners will share the advancements in technology that they know with their co-workers. And we have time that we give the examiners for reading journals on their technologies as well. So, all of the pieces of this puzzle then when come

together yes, give a very whole comprehensive opportunity for examiners to stay abreast of the technology that they're examining in.

MS. MAR-SPINOLA: If I can add and Robin, thank you for that explanation. You know, I think almost is that not almost, as important and fundamental to the Patent Office and its services are the strength and the quality of the examination by the examination force. And so, I think as much as training as creative training can exist, I think that that is time and effort and money well spent.

And I will be interested in hearing from Professor Katz about what her plans are and how that integrates into the training. I see that there's the list. What I think is missing from your list of volunteer trainers and maybe it's included in the actual program, would be professors, academia. Because I think that also provides a more neutral overview of the technology. I think it's great to see technology working and being able to go to companies that can display it. But that is often only the higher echelon of corporate America or any applicant to

be able to host that kind of event.

So, I think to in an effort always to meet the Patent Office's efforts to have a level playing field is to be able to get academics in here. And to have training at that level and to make it consistent and fun, right? Because we all want to learn but it's got to be fun because our time is so tight, and particularly for examiners that we got to make it so that they want to learn about that. Thank you.

MS. EVANS: Thank you. And yes, professors and academia are included in these areas. So, we also have corps- wide training, right, and that's training provided to the entire office or the entire examining corps. And we talked about this earlier, I think Marylee asked who does all of this training.

And you see here, the training is developed by the OPT, OPLA and Patent Operations. And then OPT as well as supervisors and sometimes OPLA, often times OPLA will also provide that training through the lectures and the workshop.

So, here listed, you see the FY 19 corps-wide training topics that were delivered to

the entire body of examiners. And that was subject matter eligibility training. 112 as it related to computer implemented functional claim limitations, claim interpretation and 112(a) written description for design examining and restriction training. So, those were the training that were provided to all examiners in FY 19.

MS. CAMACHO: Robin, thank you so much for all of this. When I was growing up in a law firm, I think that some of the most valuable training that I got was through mentoring and one on one peer to peer type interactions, you know, live interactions and dealing with real issues real time with wonky fact patterns. I really, you know, with all of like the great training that I got at the law firm, I think that that was some of the most valuable training that I got. Does the office recognize that sort of -- the importance of that type of training? It's very different than supervising mentoring is. So, I'd be interested in how you foster it.

MS. EVANS: And you will hear about it in just a couple of slides.

MS. CAMACHO: Fantastic, thank you.

MS. EVANS: So, that was our corps-wide training. We also have examiner training plans. So, through the mandatory training, the training assigned by the supervisor, the examiner is also allotted 25 hours that they can take training of their own choosing as long it falls into one of the categories. And that's the technical training, automation training, leadership training. Anything that we do mandatorily is not counted toward this 25 hour bank of training. And so, they can take that of their choosing and when they choose to in the fiscal year.

Though training through advancement, one of the things that we have, although not formal training is training as they move up. And one of the things that I tell examiners often times is one of the most important things I do as a Technology Center Director is grant full signatory authority. Because what that says is that you have demonstrated that you are responsible, accountable and you have the ability to sign independently on behalf of the Office.

And so, that program is nearly about a

two year program that the examiner goes through. Their work is reviewed and evaluated by a panel and they often learn a lot through that program. Because they have to sign that office action while they're going through that program independently. Their supervisor is not going to review that office action and so they learn a lot. I always tell them, you don't examine in a vacuum.

So, while you're on that program, you can still ask for advice. You can get as many opinions as you want to but you need to be responsible and accountable for that decision. And when you're on your own, that's a lot of times when you learn the most. You learn who you have to go ask, you learn who you can consult with and who you should consult with as you're going through that program. So, that program in itself while not a formal training through that program provides the examiner with a lot of skills and abilities.

And then training on a regular basis. And this, I think, is one of the things that you were talking about, Jennifer. The PAP tells them about what they have to do and what they need to

do and what they need to put in on an office action. But we have our supervisors and our primary examiners are reviewing that work of the junior examiners every day. And every day, we have interactions with our examiners where we are providing feedback, coaching and mentoring. Whether it's in a small group, an art unit training or one on one just talking through an office action and what we have seen in that office action, what we should differently, what needs to be changed. So, through that, every day interaction with examiners, they often get training, always get training I should say.

And then we have, and here is where it is, we have quality enhancement meetings. And quality enhancement meetings are voluntary attended meetings. Often times these quality enhancement meetings are just what it says. We call them QEMs. They're there to provide enhancement for the examiners to improve their office action. And one of the things about the QEM is that most of them are led by examiners. So, they are not led by the supervisor.

Sometimes the supervisor is in the room

just to make sure everything is good but often times they're led by the examiner. So, it's an exchange of knowledge and a sharing of information and a mentoring among peers. That peer to peer relationship in an informal setting that you don't have to attend. But if you want to gain more insight and more knowledge, more information about how to do something different or something more effective or just to hear what other folks are doing. And it might be on an office action, it might be related to search, it might be how to conduct an effective, efficient interview. All of those things are handled in a QEM and that's a voluntary basis as needed run by examiners. So, that's where that peer to peer mentoring comes in to play.

We also have a mentoring program here at the USPTO not just for examiners or examination, just for work life balance, career balance, whatever that examiner or employee wishes to talk about. We have mentors here to help them through their career here at the PTO.

CHAIR JENKINS: So Robin, what is -- so, you said that's voluntary. So, I'm

curious what, if you even know what the percentage or do you even keep track of well it's voluntary but this percentage of the examining corps does it, you know. And what is the bare minimum? So, if I'm an examiner, the most training I have to do is, is it 25 hours of mandatory training? So, you know, I think it's great that you offer all of this but, you know, say I just want to stay in my hole and not learn anything, you know.

MS. EVANS: So, and I'll let Drew jump in a minute. But we have corps-wide training. We have the 25 allotted training that they can take. But we also have in the technology centers, action plans, right? And those action plans are on a -- could be on a work group level, an art unit level or an individual examiner level. And that's where the supervisor recognizes what improvements need to be made in examination for that examiner for that art unit or that work group for that TC. And they create a plan that they will follow through the fiscal year in improving or maintaining, solidifying what the examiners examination skill is.

So, what is required is anything that

the SEE says or the supervisor assign. So, you may not want to take a soft skilled training on time management but I'm going to assign that to you because through my every day interaction with you as a supervisor, I have decided that that is what you need. So, the supervisor makes that call other than the required corps-wide training.

MR. HIRSHFELD: If I can just add a little bit of additional perspective. I think the way to think about this is we have a training program that has a multifaceted approach. Where to me, the foundational piece is the day to day, you know, first you start at the academy and you've got to go there to get the basics. And then when the examiner gets into the technology center and they start to work with their supervisor or an assigned trainer, you know, primary examiner who's training them, they're going to literally every day get training as they're going through the job because they don't have the ability to sign their own work. And every level you progress to, you get more responsibilities and you'll eventually get to the point of being able to sign your own work as Robin

mentioned the signatory authority program.

Supporting all of that is a combination of some of the mandatory training that we either roll out at a corps level or at the technology center level depending on their needs. And then we even supplement that with some of the voluntary training such as the Quality Enhancement Meetings. I don't know what the percentage, who go to Quality Enhancement Meetings is. We intentionally leave it up to examiners to decide as a supplement.

But I will tell you, I probably get more feedback from examiners about the Quality Enhancement Meetings and the positive benefit that they have then any other training that we do. Because people really like, and this goes to Jennifer's point, people really like to sit down with somebody who just has either a different perspective or more experience then they do or a colleague in any way and discuss the issues that they're faced with on a day to day basis.

We have made the concerted effort to try to make the Quality Enhancement Meetings more uniform throughout the technology centers. I

think a few years ago, some areas had them, some didn't and we've really tried to make them much more available to all examiners. Anyway, just some thoughts to try to pull this altogether.

You'll also hear, you know, I know we've got more to the role of the examiner but the two pilot programs we're going to discuss this morning also relates to how do we improve training and feedback to examiners. So, there's a whole multifaceted approach.

MS. MARTIN-WALLACE: And I would like to say just very quickly that there is formal position. The examiner trainer position within each technology center where the majority of, and they're still examiners, they're primary examiners, they still part of their time is examining. But the majority of their time is spent in training and coaching other examiners. So, we do have both informal and formal that do that.

MS. EVANS: And let me just say and I'll just leave you with this. Examiners want to do a good work and they want to learn, right? So, whenever we have Quality Enhancement Meetings or

optional training, the SEE trips and the PEET program examiners are engaged. And most of them want to attend because they want to do a good job and they want to produce a good product. And so, we, as Drew said, we're always training.

MR. KNIGHT: Robin, I was wondering, you know, I think the discussion was great. I think on the signatory program, I think the Committee may not have a full appreciation for how rigorous it is and that examiners get partial signatory authority and what that means and how they go through the process. Could you just explain that a little bit so we have a better appreciation for how rigorous and structured it is?

MS. EVANS: Okay, I will try to do that quickly. It is a nearly two year program. They have to reach the level of GS-13 before they can participate in the program. They, of course, have to be fully successful to become part of the program. And they spend 13 bi-weeks on the first part of the program.

The first part of the program focuses on first office actions. So, they're signing

their first office actions independently. And then those first office actions and restrictions are pulled in by a panel of managers and QAS's in their technology area. And each of those reviews, at least 17 cases during that 13 bi-week is reviewed. We as directors have the opportunity to review more if we so choose. But they are reviewed by supervisors in the technology area as well as QAS's, T-QAS's and sometimes R-QAS's also review also review that work.

Each application is reviewed by at least two managers, I'll just say managers include everyone, and those are blind independent reviews. And then we come together and we meet as a panel and we discuss those reviews of that work product and decide what issues have risen. And we talk about those issues or concerns in that panel.

Once we figure out how many errors the examiner can allow because we understand errors will be made, we do what's called a concern letter if they have more issues or concerns then they're allowed. And the examiner gets a concern letter.

They have seven days to respond or to rebut before the director of any issues in that letter.

Sometimes there are not many, sometimes all 17 cases have issues. And they're given an opportunity to come either in writing, orally or both and rebut those issues before the director and sometimes a QAS is in there. Their home SPE, their supervisor is also normally in that meeting and then the director makes a decision. And I said the first part is geared towards first office action.

If they are granted partial signatory authority, they are allowed to independently sign their first office action. And then there's a waiting period of 10 bi-weeks where they are signing their first office actions and the supervisor is signing their finals and allowances.

And then they go on the second part of the program which is geared toward finals and allowances and the same procedure happens for 13 bi-weeks. It's nearly a two year program and we go through that same process. And if they pass, they are awarded full signatory authority. Did

I miss anything? Strenuous, stressful program. You put the stress on yourself but it's stressful.

MR. CALTRIDER: Robin, thank you for an outstanding presentation and also just informing us of the rigor of the training program. It's encouraging because it's obviously one of the most important aspects the patent system is to have highly qualified and highly trained examination.

My question is, what's the role of computer based training? It was unclear to me during your presentation how much of this is instructor led, how much of it is computer based and where are you going with computer based training? And I ask a little bit with the caveat or I'll explain why I'm interested in the question.

Because in my opinion, computer based training has come a long, long ways and it can be very interactive and very engaging and, in some ways, more effective then, I think instructor led training both because a person can go through it at their own pace. And two, if they answer questions incorrectly as it checks for

understanding, it can circle back and expand on certain subject matter. So, what's the plan for computer based training?

MS. EVANS: So, we have both and I'll let Valencia jump in on that. But you're actually right, when we do CBTs, as we call them, we often have knowledge checks to make sure the examiner is understanding that topic as it's relayed throughout that training. But normally even when we do lecture training or instructor led training, often times we will record that so that the examiner can go back and that's turned into a CBT as well. So, that the examiner can go back and look at that training at their own pace if they need to throughout the year or their course of examination.

MS. MARTIN-WALLACE: That's a great explanation of how we use CBT and yes, we've been using CBT type training for quite some time. What we're finding though is a combination of the different training styles is what really resonates with the examiners where we may use a CBT as an introductory to a topic before they go into a lecture. Or go into a workshop style

training that's more interactive to help prepare them for the training.

So, we've been using it quite a bit as well as what Robin said that we do quite a bit of videoing of our training and having that along with the training slide materials or training materials there for examiners to go back at their leisure and whenever they would like. We have CBTs for Just in Time training when we may have trained examiners but they may not have seen a particular ish in a while. It comes up on their docket, it's right there for the CBT in order to help remind them of a process or how to handle a particular situation.

And we've also seen a lot of success that we give our training materials, we publish them. And we've seen a lot of success with attorneys and agents coming on and using our training materials as well.

CHAIR JENKINS: Robin, great presentation. I think it's always helpful. I know when people interact with me with respect to the PTO and PPAC, I say, you know, you really have to understand the other side too and how they go

about their process. And I was going to ask, is all the training material, are all of it online or for the most part?

MS. MARTIN-WALLACE: Yes, all of our training materials that we give to examiners, after we've completed the training of the examiners, we publish.

CHAIR JENKINS: Yeah, and I've used that. And it's very invaluable if you're trying to do -- sometimes I've used it in interviews where I've gone back to try to see, okay what's their training focus so I can better explain to them where we're coming from so yeah. So, who is our next speaker?

MS. MARTIN-WALLACE: Next up we have a technology center director in TC 3600, Wendy Garber, who will explain the second half of the role of an examiner.

MS. GARBER: Thank you, Valencia. Good morning, everyone, something has just happened to the slides. Back some more. Perfect. Okay. So Robin's training topic touches a lot on the quality element of an examiner's performance appraisal plan. This

section is going to touch upon another aspect of what examiners are held accountable to, and that is how much work is completed in a particular period of time.

For those of us who work here, this is second nature and very simple to us, but explaining it to people who don't work here can be quite complicated, so I'm about to try. So let's give it a try. So at a high level, the equation is fairly simple. It's a ratio of how many hours' worth of work an examiner completed, divided by how many examining hours they had during the same period.

So, for example, if you take a two-week period as two 40-hour work weeks, so there's 80 hours in a two-week period, if an examiner completes 90 hours' worth of work, they have exceeded their expectations and they would have production for that two-week period of 112 percent. If they complete less than what they're expected to do, they will have something for that two-week period that is less than 100 percent.

So the easy part of the equation is the denominator, how many examining hours did an

employee have. Our employees are expected to keep track of their time. In an 80-hour period, the presumption is you have 80 hours of examining time and then you start to subtract. You subtract -- if you took a vacation and you weren't at work, you subtract those hours. If you attended one of these training courses Robin talked about, you subtract those hours. If you are a mentor examiner and you're working with a junior examiner, you subtract those hours, and so there's a pretty strict accounting of examiners' time. So that was the easy part.

Now we have to determine how many hours' worth of work were done by the examiner. It is based upon these three things. It's based upon the examiner's grade level. So we do expect our more senior employees, because they've worked here and they have more experience, to do work a little more quickly and we do provide more time for our junior examiners who are still learning to accomplish the same thing.

So it's based on an examiner's grade level; it's also based upon the production count that is associated with the office action that is

completed, and I'll talk about that in a moment. And it's, lastly, based upon the expectancy or how much time is given to a particular application to complete it from first action to abandonment or allowance or examiner's answer. So more in a moment on those three things, or at least on the latter two of them.

So this is the amount of time that is associated with any given application on which the examiner is working. So it's the amount of time, like I said before, that an examiner is given. It's in hours, and it describes how much time is associated with that application from the first action to the ultimate disposal, and that amount of hours is divvied up to all the types of actions that can be done on that application. So, in general, expectancy is based -- well, expectancy is based on the technology claimed in the application and, in general, more complex technologies are given more time to do the same work than a simpler technology.

So currently our expectancies range from the high teens in some of our more simple areas to approximately 31, is a max for our most

complex technologies. And so between the teens and the 31s, there's a spectrum of time there each one is assigned to a particular application based upon what's claimed in that applications. So you layer on to this the examiner's GS level.

So let's say they have an application in front of them that is worth 31 hours. It's in one of our computer areas, so it's considered complex. A GS-12 will be given 31 hours to work on the complete application. A GS-9 who is a less junior employee will be given 38 hours to do the same thing, and whereas a GS-14, more senior employee, will be given 25. So it shows you, you have to know the expectancy assigned to that application, which every examiner knows when they start an application, layer onto it their GS level. And I think that's it. Okay.

So this is the last piece that you need to determine how many hours of work an examiner has completed. You need to know the count value or the credit that's going to be given for any particular office action. So we provide the most of -- the highest amount of credit, and credit is equal to time, if you want to think about it that

way, so it's also of the examiner's work from first action to disposal, we give most of the time, or most of the credit at the time of first action because that's when the examiner is expected to read and understand the application, perform the full and complete search, and draft a first action on the merits. So you see there, that's where we give examiners most of the credit which is, again, very similar to time.

Once upon a time, we only gave credit when there was a first action done and when there was a disposal. So more recently, we took some time out of the disposal bucket and gave it if there is a final rejection because final rejections obviously require time and we wanted to compensate employees for the time when there is a final rejection in a case, and the remainder of the two credits associated with every application goes at the time of disposal.

So, for example, just to give you an idea of how much time, if you take that same 31 hours that my earlier examples had, if an examiner is doing a first action on the merits in an area that has 31 hours and they're a GS-12 examiner,

they will have 19.4 hours to complete that first action on the merits, just to give you an example. A GS-9, a more junior employee working on -- had they been assigned to that same application, would be given 24 hours to do the same first action. So that's how the timing is tiered based upon the employee's experience level.

Then for every action that is completed by the examiner is summed up over the period we're looking at, and you divide it by their examining hours. So you can see at the bottom of this slide, there are some activities that examiners need to do that don't have production credit associated with them. So, for example, if you get a second action non-final, an examiner is not compensated for that. And I saw the questioned look, so I'll go ahead and answer why.

Once upon a time I think before any of us in here who are USPTO employees worked here, examiners were given credit for every piece of work that was submitted, and so what you find over time is you get more pieces of work per application, and so, you know, we try to incentivize employees doing complete office

actions the first time and so if you made a mistake the first time, have to do a second one, we don't compensate you with that.

Having said that, examiners are free to go to their supervisor at any point and say, for whatever reason, because the undue complexity involved with this because of the number of claims, I'd like more time to work on it, and supervisors may grant that on a case-by-case basis.

MR. SEARS: Wendy?

MS. GARBER: Yes?

MR. SEARS: I'm really happy to hear that the default is no credit for non-finals after the first action on the merits from the applicant's perspective. I really don't like seeing those because they really slow down prosecution --

MS. GARBER: Right.

MR. SEARS: -- and the default really aligns the applicant's expectations with the examiner's incentivizing --

MS. GARBER: Right.

MR. SEARS: -- so really great.

MS. GARBER: Thank you. Yeah, and that's why we set it up this way.

MS. MAR-SPINOLA: Wendy, this question on -- how does not giving credit impact quality, if at all? And the second question would be, and I don't expect an answer now, is morale.

MS. GARBER: No, that's a good question, and it's a complicated answer in so far as examiners have a lot of applications assigned to them. Some of them are yet to be examined, so they have time to do the first action on the merits when they pick it up; some are back on amendment, and so then you have to look at those. So examiners, in any given bi-week, there's going to be some first actions that are given a lot of credit. There's going to be a couple of final rejections that are given credit, and there's going to be some disposals that are allowances, abandonments that are going to be given credit.

So we're looking really that the time is appropriate on the average. So, for example, if on a first action, and examiner does a thorough, complete job, is able to reject claim one, but object to claim two because it includes

allowable subject matter, if the next amendment is simply putting claim two into claim one to put it into condition for allowance, that's a fairly quick office action. An examiner doesn't need the full amount of time that they are given for that work, and so then that extra times goes toward something that perhaps they don't get credit for.

So it's difficult to look at time given on an office action basis because it's an average across all of them. Does that makes sense?

MS. MAR-SPINOLA: Yes, but I guess one thing, does that not encourage -- if I'm only looking for credit as an examiner, does that not only just encourage me to do a final? I'll do a first office action and then I know if I do a second office action, which I kind of disagree with Jeff, because I don't want a final because it seems -- with all due respect to the office, it seems that finals are just into RCE land, so now I'm going to have an additional expense for the client, right? So -- right? So is it -- I mean, an indirect encouragement of getting points, so to speak?

MS. GARBER: We have set up how we would like prosecution to go, theoretically, and that's the best and most thorough first office action that finds all the best, most relevant prior art to your invention as it's described in the specification, a clear demarcation and clear and complete office actions so our applicants know how to amend, or frankly, whether to amend, and if we had our druthers, the next office action would be an allowance or an abandonment because we found all the right art.

We were able to completely and thoroughly, clearly explain it to you, next office action is either you abandoning the invention or putting it in condition for allowance. We realize that sometimes things are more iterative than that, and so that's why we started compensating people when they have to do a final rejection. But our whole goal is to get to the right disposal which is either the abandonment or the allowance in as few office actions as possible because we think that helps both our applicants and our employees.

MR. HIRSHFELD: I can also add one

point about, I think Julie's question about incentivizing poor work or potentially, you know, does the count system have a byproduct of incentivizing poor work? I would say that poor work is never incentivized regardless of whether an examiner gets counts or no counts for the work. Poor work is going to lead to rework by that examiner in most instances, so whether they're compensated or not, poor work is going to slow them down and make them do rework, and they're only getting the two credits, as Wendy said, during that time, so the more work they're putting into that same case, the more time they're spending for the same amount of credits.

MS. MAR-SPINOLA: Thanks, Drew, and I want to be clear. My question was not intended to say that it incentivizes poor work, but rather -- and keep in mind that I think all of us on PPAC come from a very different perspective where this hopefully -- or not hopefully, but less structured in that sense, right. The expectation of excellence is the same on both sides. The question is, what is the mindset mentality and what are the incentives to do

excellent work as opposed to what are the incentives to rush through and do it.

But the bigger picture from the stakeholders' perspective, an applicant would be, does that process externally, that how does that impact in the bigger picture of not only having a patent issue as soon as possible, but also the quality of the patent, which is this section's discussion, and then how does that carry to post-grant challenges. So, yes, I would like the patent as soon as possible.

It's great that the patent office has a fast track, and if I can afford to do that I will; if I can't, I go through the process as normal, but at the same time, once I get that issued patent, I want it to have value to me, and I don't want -- I would like it to be, at the outset, a quality where when there is a post-grant challenge and we're not having to face what happened in prosecution, and actually to me, fewer office actions is not a good thing when it comes to challenges, because it's not vetted as well, and now we're vetting it after we've made huge investments, not only on maintaining that

patent over the years, the life of the patent, but also in terms of products and everything else that goes with the expected value out of the honor of having a patent.

So that's the context of my question, and it is a bit unnatural to me to look at every step of what I would do at work, probably for me and my nature, would strangle.

MS. GARBER: Mm-hmm.

MS. MAR-SPINOLA: -- and I don't know if the quality of my work would be the same or my interest in making that effort, so that's where I'm coming from.

MS. GARBER: No, and that's a very good point, and that's the eternal struggle for us, is finding that right balance. So there are three primary things examiners are held accountable for in their performance appraisal plan, quality, productivity, and timeliness, and those things -- there's a tension between all of those because you could -- theoretically if you increase the time, you decrease the productivity so our pendency goes up, you arguable increase the quality, but you reduce the timeliness or the time

it takes for us to get to your application or your amendments. And so we're trying to strike the appropriate balance.

So when I talk about productivity, it's just one of those pieces, but it is not viewed in a vacuum. So the insurance that we're maintaining quality is done through not only the things Robin mentioned, particularly focusing on the one-on-one mentoring between peers and supervisors and their employees. So, yes, when you look at productivity in isolation, it sounds like we care more about the number of widgets that are made than the quality of the widgets, but we care very much about the quality of the widgets, and that's why we devote so much time to training our examiners and the mentoring piece. So we do have a very high expectation of our employees' quality. It's just not measured through this production element.

But that's your eternal struggle in the tension between those things. And I will tell you, Robin and I were both examiners. I can't speak for Robin, but I can speak for myself, is one of the things tht attracted me to this job and

kept me here was that rigid treadmill. I think some people really enjoy working like that, whereas I think if I were in a more freeform area, I'd probably spend more time daydreaming, right. So I think it's -- you know, it is a very particular type of personality that takes to examining very, very well, and so I think many of us who have been successful here kind of like that march.

MS. MARTIN-WALLACE: So if I could just add a little bit because I think Wendy gave a great explanation there. One of the things that we've really focused on in the last few years in all of our quality efforts is the recordation so the case doesn't go through finals, non-finals, and no clear explanation as to why examiners made decisions that they made, which is part of policing the fact that they're just not sending out something because they have to meet a deadline or because they're meeting their production, they have to as part of their job explain their decisions in a very uniform way, and a lot of our training that we've given them, especially in the last few years, goes towards that, having to

defend their decisions and not just make a decision. That, I think, helps get us the appropriate balances Wendy was talking about between getting the work done and making sure it's a quality job.

MS. MAR-SPINOLA: Right, and thank you. And one other thing is that -- and Jennifer who is our subcommittee chair on quality, you know, we know that PPAC knows from reporting and working with you all that the quality has definitely increased, so this is not, again, the question that I advance was not a criticism, but more about more information and understanding the bigger picture, and I have to learn to daydream myself, but thank you.

MS. MARTIN-WALLACE: So, Julie, I'll just say it was a great question --

MS. MAR-SPINOLA: Mm-hmm.

MS. MARTIN-WALLACE: -- and it's the question we ask ourselves all the time because we have to always strike that appropriate balance.

MS. GARBER: Right. It's a struggle we have all the time, and so I think it was the last PPAC meeting you had people here that were

working on the new performance appraisal plan that we have developed and how we are going to place those expectancies on the application, so we're about to give employees on average more time, but we wanted to change that performance appraisal plan, too, to say, here, if you're going to get more time, here's where we want you to spend it on. We want you to spend it on searching; we want you to spend it on explanation, and so that's how that's kind of tying those two pieces back together, but coming up with that new performance appraisal plan is a very delicate balance of those three components. Yes?

MR. GOODSON: Okay. This is probably for both of you as well as Valencia. Robin, you talked about, you know, you've got 17 applications, the examiner, and there might be problems. This is no surprise. We're all human; we come in here with our own preconceived notions, agendas, bias', whatever. What happens when -- these are 103 rejections. What's obvious to you is not obvious to me and vice versa. How do you all handle that situation?

MS. GARBER: Our basis for determining

whether or not a 103 is correct or not is based upon is the examiner's position reasonable, and there's going to be some that are clearly reasonable, so they're okay; there's going to be a relatively few that are clearly unreasonable, and there are some areas there that are in the gray area, but we determine everything based upon the reasonableness of it.

MS. EVANS: And the evidence that they provided on the record to support their position.

MR. GOODSON: That's still, that issue exists. I mean, the variance, the allowance rates among all examiners --

MS. GARBER: Mm-hmm.

MR. GOODSON: -- when you get on some of the websites to track this stuff is anywhere from some examiners in one group art unit 5-percent allowance, other examiners 90-percent allowance. That, it seems to me to be very difficult to grade an examiner based on 103 stuff. That's my comment. And I'm not being critical, because I get it. It is imperfect.

MS. GARBER: Yeah, we struggle with it, too, and, you know, we have -- when we talk about

poor core things like this, we have to understand that there is a multitude of technologies within the whole core and different -- if I'm in 2,800 in Robin's area, and I work in semiconductors, you're talking about a very few number of big players that tend to know what each other is doing, so they have a much higher allowance rate than perhaps other areas that perhaps have more 101 statutory compliance issues, et cetera, so we do have an interest in making examiners who are working on similar technologies more consistent with each other in terms of allowance rates and many other things, but across the core it's always going to be a challenge for us based upon the distinct nature of examiner's dockets.

MR. GOODSON: Oh, and I have no issue with that. It's the variation within one GAU that's -- is so surprising.

MS. GARBER: And sometimes it's challenging to look even within an art until. You might have examiners with very different specialties that are actually working on different things than each other. But we have -- yes, we share your interest in having

consistency.

MS. DUDA: Okay. I would just like to make a quick comment, and this is going back actually to the second non-final, and just to make it clear that a lot of times it is totally out of the examiner's hands. For example, if somebody, an applicant were to submit an IDS with the fee and the certification, then an examiner might have to send out a second non-final because there is a good piece of art, and int that case, there still is no credit. So I just wanted to make that clear, so everybody understood that.

MS. GARBER: Right. Yes, sir?

MR. CALTRIDER: I had a question on the allocation of time, and you may have said this and I missed it, and I apologize. If an application is submitted with, let's say, four references cited on the IDS versus an application that may be submitted with a hundred references on the IDS, is the time allocated differently in those instances, and I ask because the initial that the examiner read and understood and considered thoroughly is really something that the public and applicants and the patent owners really rely

upon as having downstream consequences. And I'm just curious, I didn't catch it in your remarks whether the IDS and the length of the IDS factors into the time allotment.

MS. GARBER: Starting October 1st, it does. So in the future -- I'll tell you in the future how we're going to handle it. So if there is a lengthy IDS, an examiner will automatically be given additional time to consider the number of references that are submitted. Right now, prior to the next fiscal year starting, it's much more on an ad hoc basis where an examiner could go to their supervisor and say, "Look at the length of this IDS. I need additional time to properly consider it." And the supervisor is granted on an ad hoc basis, but in the future it's going to be an automatic additional time.

MR. HIRSHFELD: And starting in October, it will not only be the IDS issues as Wendy is mentioning, but other attributes, so-to-speak, of the application will lead to more time such as the number of claims.

MS. GARBER: Okay, moving on to examiner awards. So our awards are directed

towards increasing examiners' productivity and timeliness above kind of their expectations, what we expect of them, and our thought is, you know, the less expensively we can perform our work benefits our users through the user fees that we charge, and so you'll see, after I explain the types of awards that we have, you'll be able to see this cost difference to which I'm referring. I think that's what I just said. Yes.

Okay, so the first two awards are directed towards productivity. So we have one of them is a gainsharing award and it is based upon performing at least 110 percent of your productivity goal, or above, and you can see the table there talks about the amount of the award and it's given from fiscal year to fiscal year. So if an examiner in one fiscal year produces 120 percent of their goal, they will receive a 4 percent bonus based upon that level of productivity. That is one of our awards.

The second award --

MR. KNIGHT: Wendy, what if the -- how does the error rate figure into this then? Say that you're very productive, but you're doing so

much work and the work is sloppy?

MS. GARBER: The way the error rate can play into awards is that an examiner has to be fully successful in order to get an award in all of their elements. So if an examiner is failing in quality, regardless of their productivity, there is no award.

MR. KNIGHT: Okay.

MS. GARBER: So this is our second productivity award, works very similar to the first, and they're additive together. This difference is it is a straight flat 3 percent for anybody who produces 110 percent, or above, in 4 consecutive quarters. So here is the cost of a production unit or a piece of work based upon whether it's a non-award production unit or an award production unit. So if you look at the purple bar first, those are non-award production units.

So we look at how many production units are done and then how much salary we pay the people who do them and it comes out to about $1,600 per production unit. Once we look at only those production units for examiners that reach those

110 percent or above levels and divide by the award money that we pay them, it comes out to $600 per production unit. So awards really help us not only incentivize examiners to those who can do it well to do additional work thus helping us in pendency; it also helps us in cost.

And if we didn't have these production awards, we would need approximately 700 GS-12 examiners plugging away to accomplish the same level of productivity, and so we figure the awards save us over hiring that number of additional people by about $58-million. So this is how we believe our productivity awards are well worth the money that we spend on them. Again, provided our examiners are doing high-quality work, still.

CHAIR JENKINS: So just -- question? Is this -- and this is just something I obviously don't know. Is this something common in the government, in other areas of the government to have production awards or is this unique to PTO?

MS. GARBER: I'll let Drew certainly speak to that. I don't know, but we do have an unusual job where we do track -- like Julie said, we do track work in units and so it allows us to

measure and reward productivity that -- you know, I've worked in other parts of the agency here where they don't have that, and then that becomes more challenging.

MR. HIRSHFELD: Yeah, I don't have much to add to what Wendy just said other than I think what's rare is really their production system in and of itself, so that would inherently make the awards based on the production, I think, pretty rare as well, certainly I don't know -- I haven't done any look at all the other agencies, but I don't think most people have production like we do.

CHAIR JENKINS: Okay, so how about international? Is production something Japan does, for example?

MR. POWELL: I'm sorry. And production what, again?

CHAIR JENKINS: So to other -- so I asked are there other U.S. government agencies that have production awards and it seems like the answer is probably no, right? Am I getting a collective "no" from the audience?

MR. POWELL: I don't know about other

government agencies. Some of their offices do have a bonus structure, but not nearly as really as robust --

CHAIR JENKINS: And that was my next question --

MR. POWELL: -- as is ours.

CHAIR JENKINS: -- to you, Mark, international. You know, do other patent offices in other countries have a production award similar to what we have, if you know?

MR. POWELL: Other offices have a -- you know, for example, the EPO will institute a bonus situation for areas they may have especially backlogged. It's not necessarily a scientific calculation as we have here as far as -- but not nearly, you know, the regular, you know, part of the job, you know, the bonus structure that we -- or award structure, I should say, that we have.

MS. MARTIN-WALLACE: So I would say just recently in some conversations we've had with EPO, JPO, as well as Korea where they are further exploring actually performance awards and they call them performance awards, so they

didn't go into any specifics of whether it's just based on production or other areas of performance, but they've actually started exploring having these awards.

MR. SEIDEL: No, I mean, my comment was just we need to look at the other areas of the agency, PTAB as well as Trademarks, and, again, tracking production, and I think that's the key. We have measurable, to use the term "widgets", right? As long as you're measuring widgets there's an opportunity to pay performance-based production awards. I think Trademarks really has a similar model to patent's.

MS. MAR-SPINOLA: So I may be jumping the gun with this question, but I wanted to make sure we get a discussion about how the production awards affect or impact fees. I think that was a comment, right?

MS. GARBER: Mm-hmm.

MS. MAR-SPINOLA: About that production awards and whatever could impact the fees that --

MS. GARBER: So I can tell you -- I can repeat kind of the concept of my comment, was that

hiring -- if we want to keep pendency steady or continue to reduce it, we have to keep producing the same level of work, and so if you look at these bar graphs here, you'll see that our award production units cost substantially less than the -- so if you want to look at it this way, an easy way to look at it is for employees that are doing 110 percent or above all of those extra production units that they're doing cost us quite a bit less than the first 100 percent that they did.

And so if we got rid of our awards, we wouldn't have an incentive for examiners to do more than what's expected of them, so many of them would likely drop to a hundred percent, and if we want to maintain pendency, we would have to hire about 700 or more people to compensate for that. And so those types of costs are the ones that are passed on to our users through our user fees.

MR. HIRSHFELD: And that would be the $58-million additional to GS-12s to equate the award system, hence raising fees to collect $58-million more to PTO to keep the same pendency. Did that answer your question?

MS. MAR-SPINOLA: It does, and I should apologize because you did go through that. It didn't click in my head that that was the connection. Is there any correlation on the credit side that we talked about earlier in terms of, does it impact fees at all?

MS. GARBER: I don't know how to answer that.

MS. MAR-SPINOLA: Okay.

MR. HIRSHFELD: So I'm not sure either, but let me take a stab, so I --

MS. GARBER: I'm not sure either. That's why I passed.

MR. HIRSHFELD: The whole point is that examiners are -- in order to succeed in our production system and achieve any given amount, you are getting it -- you are completing the work that you have, so you're getting the credits that were spoken about earlier --

MS. MAR-SPINOLA: Yeah.

MR. HIRSHFELD: -- and so, yes, an examiner getting, say, 120 percent, is getting more of the credits than examiner doing a 110 which is who is getting more than somebody doing

100 because at each level as you hand in more work you get the credits, you achieve more, and I think -- does that address (inaudible) --

MS. MAR-SPINOLA: Yeah, I think you are going down the right path of at least the way I'm thinking through. Thanks for that. And so by doing that, that increases production that'll increase the $58 million that'll increase the fees. Is that right? Is that the right trajectory or no?

MR. HIRSHFELD: So --

MS. MAR-SPINOLA: Right. Bob has a look like are you nuts?

MR. HIRSHFELD: -- it's a little bit of the opposite, right? So the whole idea of the awards program is to incentivize examiners to do more work.

MS. MAR-SPINOLA: Yeah.

MR. HIRSHFELD: And that what we're trying to point out on this slide is that the money that we pay for the awards --

MS. MAR-SPINOLA: Mm-hmm.

MR. HIRSHFELD: -- is significantly less than the amount you would be paying for an

examiner's regular time when you'd do the salary. So the bottom-line, you know, point is that the awards program saves us about $58-million --

MS. MAR-SPINOLA: Got it.

MR. HIRSHFELD: -- a year if we were --

MS. MAR-SPINOLA: To save it.

MR. HIRSHFELD: -- to keep the same pendency without the award program.

MS. MAR-SPINOLA: Yeah.

MR. HIRSHFELD: And then if we didn't have the award program -- state it another way, if we didn't have the award program, and we wanted to keep the same pendencies that we have, we would have to raise $58-million more dollars from user fees.

CHAIR JENKINS: Steven's been waiting patiently, but I think one thing that would be helpful, too, is how long has the office been doing this type of award program; I mean, this is not new, right? So --

MS. GARBER: The next award is one that is newer, but these -- productivity awards in this way have been around for decades, you know, very similar to --

MR. SEIDEL: I think we've made tweaks on the margin, maybe, right, but -- to the production, but generally it's been the mid-eighties, I think, is when we first started with productivity (inaudible).

CHAIR JENKINS: Yeah, that's helpful. That's helpful to know. Yeah. Steve?

MR. CALTRIDER: I would like to get a sense for how many employees or how many examiners get this award. Is it essentially all the examiners who are achieving over a hundred percent of their productivity goals, or is it 20 percent of the examiners achieve over their productivity goals; how often does -- to say 58-million? I can try to do the rough math and figure that out, but can you give a sense for --

MS. GARBER: Can I phone a friend?

MR. CALTRIDER: -- what percentage of the workforce --

MS. GARBER: I'm going to phone my friend (inaudible).

MS. EVANS: He said 40 percent, 40 percent --

MS. GARBER: He said 40 percent.

MS. EVANS: He said 40 percent.

MS. GARBER: Robin knows. It's 40 percent.

MR. CALTRIDER: Forty percent exceeds 100 percent or a 40 --

MS. GARBER: Get awards.

SPEAKER: Get awards.

MS. GARBER: Exceed 110 percent.

MR. CALTRIDER: Okay. Thank you.

MR. LANG: Is there any work that's been done on assessing whether as -- examiners add hours, that there's any compromise to search and examination quality?

MS. GARBER: We do our same qualitative analysis of work that is done for the first hundred percent that we do on top. So there's always -- is that the question? I think some examiners have a natural capability to work faster than other ones, and so they're able to achieve very high quality work within perhaps less time than it takes their neighbor, so they're able to achieve 110 percent where their neighbor may can only achieve 105 percent while doing the same level of quality, but we do always have

quality checks. We won't give our examiners monetary awards if their quality is poor.

MR. HIRSHFELD: Some of the other metrics we've been tracking, do they show any change, I mean, with respect to examiners that are at the higher production levels?

MS. GARBER: So I would say no. It's the same quality level.

MR. KNIGHT: You know, the way that I always thought about saving money with production awards or overtime is that you still pay the compensation, but with the production award or the overtime, you have the same employee. So you're not paying pension benefits again; you're not paying the five- percent matching for the 401k; you're not providing health benefits; you're not providing another office. So all of those cost savings that you get by using this -- having the same employee work more, saves all those costs.

MR. HIRSHFELD: Yeah, so that is a great point, Bernie, and we actually had the fully burden cost on this slide and thought it just confused the matter, so we ended up taking it out

and just have the numbers based on salary. But when you look at the fully burden cost which would be, as Bernie said, all the other expenses, you know, that go into the building expenses, et cetera, the delta between the award amount, because they're already here, and the regular amount would be much, much greater, but we were struggling with how to explain that in an efficient way and we thought this was the most easy way to explain it, but it is an excellent point because the fully burden cost of examiners is, again if we had to hire those 700 additional, that's more space, that's more overhead, et cetera.

CHAIR JENKINS: I think -- I mean, is it wrong to say it's a bonus? I mean, you're doing a good job. You have metrics in place to determine what that job is, and unlike I would say many other businesses who give bonuses, you know, you have different parameters that you put in place. The office follows those parameters in order to determine -- and you call it a production award, and we would call it a bonus. No? Right?

MR. POWELL: I wouldn't take it both

circumstances are not easy to get. I mean, I'm just speaking from experience. As an examiner, I mean, you really had to work hard; you really had to concentrate; you really, really had to pay attention, you know, to your time and that sort of thing, so they're not "gimmes". Trust me, I think everyone would agree with that.

MS. MAR-SPINOLA: There was a question earlier about other Federal agencies, and as part of some work I've done with other agencies on their performance review boards, other agencies, they all have some form as you were saying, Marylee, bonuses, whether they call it "award" or not, they're not on a production system as we are, so, you know, it's not going to be calculated the way we have, but they have bonus systems, yes.

MS. GARBER: Okay, so I'll move on to the other type of award that we have. So this is the third element. We've talked about quality, we've talked about productivity. Our timeliness component that examiners are expected to meet is docket management which relates to their timeliness in doing all sorts of different types of actions. And so similar to productivity, we

have a docket management award where we provide incentives for examiners to work on things more quickly than perhaps they otherwise would. So we have three tiers of docket management award.

The entry tier has, why don't we say, the lowest of the additional things an examiner has to do and then each tier builds on top of it. So our tier two examiners who can get a.75 percent quarterly bonus has the highest of the expectations on it for how quickly they are doing work. And so we took just one of the types of office actions that we do, amendments, obviously, and we looked, we compared people who get these awards their timeliness to people who don't, and so if you look at our tier two awards which again have the highest of the expectations on them, examiners who receive those awards turn around amendment 60 percent lower or faster than non-award recipients, so they're doing work that much more quickly.

And that's not directly related to productivity. That doesn't necessarily mean they're doing 60 percent more productivity. They're just selecting which of the office

actions that they're going to do any particular moment so as to achieve an award like this. When compared to non-award recipients, our tier one folks have 28 percent faster turnaround time for their amendments, so this is just an example of what we think the effects of our docket management award is. Any questions about docket management award?

MR. KNIGHT: Is this award on a, like, case-by-case basis, or how is it aggregated?

MS. GARBER: Docket management is calculated over -- similar to productivity, so we can calculate it over a bi-week, a quarter, a fiscal year, and so it's based upon your quarterly performance, so it's on average a quarterly performance. So it's not case-by-case, no.

MR. LANG: My observation is it's great that we have, you know, financial incentives for productivity, but it would be even more great if in the future if there are also financial incentives for things like search quality and search effectiveness.

MS. GARBER: Yes. And we have the same desire and we've talked about them in the past,

and we'd like to talk about them in the future is to perhaps have different awards for all the different components or have one award that you have to do a certain thing in all three of them, so we have the same interest in that. It's challenging. It has a lot of challenges; how do you evaluate quality? Once you've reached expected quality, how do you evaluate what's even more on top of that becomes challenging, but that is something we're interested in investigating, too.

CHAIR JENKINS: Okay, just to give the audience an update. Thank you. One of the things that I have pushed and have worked extensively with the office and appreciate their feedback and working together is doing an agenda that is timely, includes hot topics, and it is a joint agenda between the PPAC and the office, and I think this is just a wonderful example of this presentation when we talked about in May that we wanted to learn more about what the examiners were doing, and the two of you have done an excellent job of giving us a fabulous feedback and giving us, as I say, sticking the nose under the tent to

get a little bit of what you all are doing, so I really thank you.

And I think this is such an important topic because it truly astounds me at times when I go out and talk with people about my role and what the office does, is that they truly don't understand all the mechanisms and all the components behind the office and what you do, and, you know, it's more than just the patent office, so thank you for that.

Now, I sadly must tell the folks who I think are sitting behind you that we're not going to do your presentations, unfortunately. As Chair, and have talked about in the front, and if you notice I also am reading e-mails because people are e-mailing me questions, and Jennifer, who is my coordinator and keeps me on track, you all are e-mailing me, so I'm trying to coordinate the meeting going on, too.

We are going to make sure that you are top of the list, Jennifer, for November, so I appreciate you sitting in the audience, but apologies, and we need to stay on time, and I want to give everyone their full time, and amazingly

actually it sometimes this works out brilliantly where your topic is even more apropos for the next meeting than it was for this one, so, yeah, so apologies. So with that, Mark, we're going to head -- unless I have -- do I have any other questions for Wendy and Robin? No? Good. Thank you, okay. Mark, we're going to head right into international stuff. Thank you.

MR. POWELL: Okay, great. In working with the committee, as you just mentioned, I was asked to give some high level updates about the Patent and Prosecution Highway Program, the Global Dossier and activities in the IP5, so I will do that. I did not provide a number of slides here. Any questions or information, please direct them to me following this meeting. We have tons of information on all of our topics on the OIPC website here at the office. So starting with the Patent Prosecution Highway, this is a program that's near and dear to me because when I first began working on the international cooperative stuff, this had just been introduced by the JPO as a concept in the trilateral context.

This is before IP5 existed. At that time, and something that is very important to note, is that the offices here are -- our office is the JPO and EPO, were terribly, terribly backlogged to the extent that, in fact, in certain areas such as telecom, we were really putting the system in danger because, you know, the system is inoperative when you have fast-moving technology that's not even begun to be examined for four years or grants don't come for, you know, four to seven years.

So the upshot here is that offices finally got serious about, well, maybe we should start to do something to reduce the duplication of work. You know, it had been talked about for a long time, but here we're in a bad situation now, you know, systemically. The JPO introduced a concept in late 2004. It is the first structured work-sharing program of any sort. It attempted to compensate for timing differences between offices and so forth, and given the enormous backlogs of every office, there was plenty of material out there to bite into.

The first pilot was to become between

our office in Japan in 2006. Other offices slowly over time caught on. The basic principle of the system is when a first office that examines a case finds that subject matter is allowable, the applicant can change his claims basically in the second office to those corresponding to the allowables in the first office and then have his case accelerated, so at the time that was very, very important. It originally began as the office of first filing to the office of second filing; we later added PCT to that.

And then further, we went to a model that's office of earlier examination and later examination, so it didn't matter where it was filed first, just who ever examined it first, and moved on, and then eventually we got to a situation called a Global PPH which helped us get rid of all of the bilateral agreements and we had, you know, dozens of the damned things that we had to re-up at different times of the year, and so on. That was the importance there.

Today we've had more than -- on the U.S. we've had more than 65,000 entries in the PPH system, and still receive them at a rate of about

700 a month. Worldwide there are 48 offices that participate in PPH. We have agreements with 36 of them, and that number may sound high, but while we have an agreement with the EPO, we mainly have agreement with their member states as well because of the internal European politics, that the EPO can't make a deal with their member states, and then so on, so that's how it wound up, but still, essentially in the system were all of the significant offices in some way, and the ones that we don't have agreement with are certain South American offices, for example, that are on a very small scale working with each other.

However, you know, while this has been very much a steady state program, you know, there are in the future improvements to be looked at in other ways that it could be put to use. I will say one rather recent addition to the PPH system has been Brazil. As many of you may know, Brazil has had, you know, first action pendencies of, you know, 12 years or worse, and so by, you know, getting them into the system, at least initially, is in a, you know, small way and, you know, given the fact that they have been willing now to use

work products of other offices to put a dent in their backlog is very important.

There are other important things that we're looking to in the future, you know, certain improvements, may be the use of certain facets of PPH in different context. For example, mainly, if not universally, applicants have waited until they've gotten, you know, a notice of a grant in the earlier office, however the rules provide that even a single claim would be -- make you eligible for PPH in the second office, and are there facets of maybe making use of that in some smaller sense that, you know, another -- us nor applicants have thought of, and there are other certain things that we've been asked about from applicants, there's a requirement that claims correspond.

One particular situation involves a so-called Swiss type claiming or use claims in the biotech area -- I see Jennifer nodding -- you know, and technically those don't correspond to the method claims that the same matter or similar matter would be required here in the states. So we've been studying that and, you know, over time,

you know, to learn what the searching differences might be, is it really a problem and whatnot, so we'll continue to do so.

MR. KNIGHT: Mark, I was wondering --

MR. POWELL: Yeah?

MR. KNIGHT: -- you know, I've always found it difficult to understand the benefits of the PPH program because examiners can't rely on the work of the foreign examiner, right? They --

MR. POWELL: Yep.

MR. KNIGHT: -- still have to do all of their work.

MR. POWELL: Yeah. Yes.

MR. KNIGHT: Is the benefit in quality or where have you seen the benefit?

MR. POWELL: Okay, well, one of the main benefits -- and I see my colleague Charles Eloshway has shown up and he may chime in as well -- essentially when the examiner here at the USPTO picks up a case in the PPA system, the earlier office, say Japan, a major office has already, by and large, knocked out the novelty rejections that both offices would have made, so the examiner here -- and to a great degree, often

they invent a step for obviousness rejection, so what our examiner is getting is a pre-examine or a more fine set of claims, in general.

The, you know, patent law is slightly different in different regions, or whatnot, but then again they're mostly the same in most respects, and so the reuses that's coming in from the actual background work of the first office, right, so the examiner is getting a more focused or usually a narrower set of claims that have already been, you know, debated, if you will, in the first office, so they're starting from there, and it bears out in the statistics, right.

So the first action allowance raised for PPH cases are roughly double what they are for the overall. I mean, it's not huge; it's 24 percent, 25 percent, something like that. Overall allowance rates, in the end, are in the 80s for PPH cases versus 54, I believe, for non-PPH cases. So there's efficiencies for the offices, clearly, but the true efficiency, I think, is the cost savings to applicants because they're not having to pay to respond to the same 102 rejection roughly that they would be getting

from multiple offices if they didn't respond to it once near their claims town and then subsequent offices pick it up from there.

They have appeal A in the past has estimated that the reduction in prosecution costs for a given case could be half, right, you know, in other words the substantive stuff that they have to respond to. Now, you not every, you know, PPH case is going to sail through. I mean, that it could be that we find a piece of prior art that came in late into the process or whatnot or there are other problems with it in terms of disclosure or something like that, but it is indeed one of the most successful programs and, indeed, as I began with, honestly, the first, you know, structured and implemented work-sharing program, and I mentioned that it was near and dear to me, personally, and Chuck.

I will say, because Chuck and I actually did all the ground work in implementing it and figuring it out and, you know, talking to management here to get it implemented and others, so we've been with it really since the beginning. Chuck, is there anything you'd like to add PPH

wise?

MR. ELOSHWAY: It's not working.

MR. POWELL: It's not working? Here.

CHAIR JENKINS: No, I can just say, Bernie, too, timing is really important with PPH. If you don't -- if you're not sort of earlier in the process, it doesn't help you that much. The examiner is too far ahead of you, so if you time it right, it's very helpful, and it really -- it does cut significant cost off of the prosecution, so.

MR. ELOSHWAY: Yeah, just a couple of additional points. This question has come up a lot of times in the past, questions about the benefits and things like that. You know, for an office of the size that we are getting, what now, 600,000 applications a year, something like that, the amount of participation in PPH relative to the number of applications we receive on a yearly basis is fairly small.

Even still, accounting for some of the studies that we've done in the past, which admittedly haven't been really updated in a few years, the amount of time savings that we were

seeing on the average case, if scaled out, was still representing somewhere in the neighborhood of a 1, 2 percent, maybe even higher, efficiency gain, which on our scale is still something. So that's one thing to keep in mind.

Another thing to keep in mind is that one of the main benefits that we have been seeing, and in fact one of the reasons why we spent so much time in the early years proselytizing the PPH is the impact that it's having overseas for U.S. stakeholders. Mark was touching on the situation in Brazil when I came in. It took us about four years of knocking on doors in Brazil to finally get them to come to the table and agree to do a PPH project, and for PPH cases, the pendency of those has been reduced, not just by months, but by years, and I'm talking a lot of years.

You know, when you're looking at average pendency in Brazil eating up almost the entirety of the patent term and maybe even exceeding it in some cases, and you're then able to turn around and get a patent in say, six years, versus 12, or longer, that is a considerable

savings. Mark mentioned that the PPH represented the first concrete implemented work-sharing arrangement among offices, and that's absolutely correct.

One thing to bear in mind there, is one of the early fruits that we harvested from the PPH is it helped to catalyze a lot of reform work that we've been engaged in with regards to the patent cooperation treaty since we started working on the PPH. That also took a lot of time, a lot of doubters initially, you know, wanted to see what's the real fuss here; what are we really getting out of it.

Once the PCT started to become somewhat threatened by the success of the PPH, well, all of a sudden all sorts of reform efforts started to take place in PCT and you've now started to see a lot of those benefits, too, benefits in the international phase, for instance, in terms of the scope and quality of the written opinions, and then also the more robust usage of the international phase results in the national and regional phases, including and especially at the PTO.

We use to largely just ignore the work that our examiners already did or that we paid contractors to do on our behalf, and then it would just be redone once the same case entered the national phase here at the U.S. Largely as a result of the work that we did on the PPH, we reformed that process as well to streamline everything, and so now not only are you getting the PPH results, but you're getting more robust usage of the PCT both here and abroad.

MR. POWELL: The PCT being really the original work-sharing framework and started to actually fulfill its role in that regard.

MS. COMACHO: I have a question following up on that point, have you noticed any uptick in Chapter 2 demands of folks going through the first written opinion and then trying to get a favorable written opinion then in Chapter 2 so they can participate in the PPH?

MR. POWELL: Well, we accept PPH on the basis of the Chapter 1 work --

MS. CAMACHO: I'm not in Chapter --

MR. POWELL: -- and here in the USPTO we have very few Chapter 2 cases at all, I think,

and numbering maybe 1,500 to 2000 a year grand total, so there, really, there's not enough to make much of a correlation --

MS. CAMACHO: Interesting.

MR. POWELL: -- I'm afraid, so. Let's see where was I. So, you know, with Chuck's, you know, very useful additions there, that's sort of where we are in the PPH system. It's a mature program, for certain. When it began, as I have heard, all those years ago about the PGT system itself, the uptick was slow. We had a lot of advocacy from certain stakeholders here in the United States as to the benefits of it and that really helped with the program going in off the ground, and as Chuck will remember, Mr. Kappos, who was our director at the time, asked us to however you do it, double the usage of it year over year, and we did for a number of years, so very pleased to say that.

Next, I'll give you a quick update on the Global Dossier initiative, and to remind everyone that while there is a IT resource that has the name Global Dossier, the greater initiative, indeed, is to work with stakeholders

not just to improve automation in all processes, but actually to take a look at the processes themselves, and, you know, in the 21th first century versus when some of these processes were founded in the 19th century, are they still the most efficient, do we still need to do them, and so forth, so one of the things that we're most proud of here in this initiative is our relationship with our stakeholders.

Here in the United States it's the AIPOA and the IPO. Our teams meet with them very regularly, very often, and talk about not just things in the Global Dossier, but, you know, everything patents-wise, you know, particularly with an aim to try to reduce administrative burdens and to whatever extent, procedural burdens, most of which, you know, when looking at the situation in terms of a corporate or a small inventor IP budget, our overhead costs that are not, you know, duly spent in an intellectual way on intellectual property exploitation, so.

In a greater sense than that, we work with IP5 industry which for the U.S. is represented by the two bodies I just said, and

also Business Europe, and Japan, IP associations and so on. There's representation in each of the five venues. As for the tool itself, I'm certain everyone in here is that as -- Marylee's a big fan of it, we're still getting an increase in usage, so daily hits on the system 2018 from the public, 102,000 hits a day, okay.

In 2019, it's more than twice that. It's over 200,000. Actually the number reported to me is 390,000 a day, but I think we found a couple of bots or data miner systems getting in there which we, you know, apparently haven't slowed our system down, but it may be skewing the numbers a bit. But --

CHAIR JENKINS: I'm sorry, Mark --

MR. POWELL: Yes?

CHAIR JENKINS: -- I have to attribute all of that to the fact that the Global Dossier link is on the main page of the USPTO website.

MR. POWELL: And that -- well, yes, then --

CHAIR JENKINS: That's why I'm (inaudible) --

MR. POWELL: That's why we work with

the stakeholders, right? That did, in fact, help. The system is accessed by USPTO examiners at the rate of 13,300 hits per day. Now, that data does not identify an individual user. In other words, if an examiner goes in and clicks it 10 or 12 times, you know, then that's 12 not, you know, 1. However that's, you know, per day, is pretty substantial. And examiners from other offices, the IP5 offices, are accessing our site at the rate of 3.99-million accesses a year, okay.

So what we have tried to do is, you know, get the training done, and then there is some, you know, slowness in doing that. I think that people are finding the information there incredibly useful. Members of the public all over the world find this information incredibly useful. As a matter of fact, the president of Business Europe's IP wing, his name is Tony Rollins, described it as a gamechanger, which I, you know, was very happy to hear.

Now, good things can always be improved upon and added to and enhanced and so forth, so we are working to do that as you may hear I think after lunch sometime from Mr. Holcombe, the CIO,

and perhaps Rick about our stabilization processes and whatnot. That slowed us down a bit, but we are continuing to work with the stakeholders on, you know, certain improvements that are very closely actually getting out one of which is alerting, so that a user can essentially subscribe to a family of cases and get e-mail alerts, like, Bennings' new office actually from China, that sort of thing, and that type of thing which is, again, something requested by the stakeholders, a legal status indications.

In other words, if somebody has paid their fees and application or patent is still in force, or not, and that's an enhancement that we've been working on as well. In the U.S. It's not quite as easy. We have to put a lot of disclaimers on it because people can let their patents lapse and then, you know, pay money later and get it back into the system, so it's just something that's just a little more constant in other offices, but indeed something that was asked for.

We, in the IP5, are working with the IP5 industry, meet yearly, and we were most recently

working with (inaudible) a list of new requests that they would like for our offices to work on which are, you know, in addition to certain enhancements of the current tool now, you know, can we explore having, for example, a centralized assignment registry, you know, where, you know, they can go change assignments in one place, it affects everyone, and so on.

You know, it sounds simple, but the one thing we're having to research into is all the legal complication the U.S. With regard to assignments is, you know, a whole section of Title 35. You know, Bob has lots of MPP on that, and, you know, what will meet the requirements of our stakeholders there. But, indeed, that could be another historic thing if we can reduce the cost of changing assignments for people which is enormously expensive, or historically it has been, and, again, simply another administrative process.

By an example, at our most recent meeting, a stakeholder, I believe representing Siemens or some other major company stated that they did some internal portfolio shift. It

wasn't even, you know, with another, you know, entity, and it basically cost them half-a-million dollars out of their IP budget just to change the assignments in this one portfolio cases, and if that's not an administrative tax on exploitation of IP, I can't think of a better one, so. Those are the things in the Global Dossier context that we continue to work on.

Another one you may be familiar with is our access to relevant prior art project in which we are trying to automate to the extent possible citations from other offices into the files of our offices so that applicants aren't taxed with the need to file IDSs with information that we actually already have access to. That, again, is something that's a very high priority to Drew and others, and we are trying to get through the, you know, stabilization efforts that are critically important and then, you know, we'll be able to proceed a pace with these improvements then.

So that's where we are in the Global Dossier, and we will continue to work with the stakeholders. I see two of our closest ones that are behind me from the IPLA and as time goes on

we hope to, you know, really advance to the futuristic things of, you know, one truly portal filing a prosecution and that sort of thing. That's many years off, but, you know, it's a name worth looking to in the long term. I believe now we'll turn to Chuck --

CHAIR JENKINS: So --

MR. POWELL: -- to talk about -- unless you have any questions. I'm sorry.

CHAIR JENKINS: Well, I have another question. You know, I guess the comment you said that other examiners from other countries are using Global Dossier --

MR. POWELL: Yes.

CHAIR JENKINS: -- like, for example, if I wanted to, I could also use the EPO. They don't call it Global Dossier. I could use their, I'll just call it portal, so how do you know if other examiners are using, I guess, I should say, our global --

MR. POWELL: Our vision --

CHAIR JENKIS: -- dossier?

MR. POWELL: Right.

CHAIR JENKINS: And do you know from

where?

MR. POWELL: Well, in the case of the EPO, their examiners have quietly told us they use our version because it's vastly superior to what the EPO has -- and what the EPO has put together is kind of a little service on top of a different system that's very old, right, so we, for example, have indicators, you know, that there are office actions available without an examiner having to go into each dossier to find them. There's like a little suitcase that pops up, right, and that sort of thing, so we have the features that were really designed, again, by our stakeholders, and in the initial round we were, I think, successful in achieving exactly what they asked for on not everything all at once, but the utility in it has come from the stakeholders that need to use it.

Examiners use this, and, you know, the future of it here is to actually have, you know, these very fast out processes integrated into our federated system, if you will, as we get closer to the next generation of paten tools. So, yes, our version seems to be favored over others, so I'm happy to know that that is working well.

CHAIR JENKINS: Interesting. I do personally find it is much easier to use than the EPO system, so.

MR. POWELL: Yeah. And it will get better.

CHAIR JENKINS: Yeah. There you go. Good. Any other questions for Mark? No? I think --

MR. POWELL: Okay. In that case, Chuck, here, is going to talk a little bit about IP5.

CHAIR JENKINS: Chuck is not Courtney, I've been told.

MR. POWELL: And, no, he's not Courtney, maybe he can do half a good a job, right, just kidding.

MR. ELOSHWAY: There we go. Yeah -- and so I'm pinch-hitting sort of last minute here.

MR. POWELL: Thanks, Chuck.

MR. ELOSHWAY: All right, so I'll talk a bit about IP5, give you a little bit of the background history of IP5 and then bring you kind of up-to-speed on where we are right now, and then

to the extent that I can -- I'm sure Mark can round out whatever information I might not have, be happy to take questions at the end. So IP5 was launched in 2007 at the initiative of the USPTO to bring together the five largest patent offices by filings in order to exchange, use, and identify opportunities for collaboration with regards to common challenges which at the time primarily centered on patent examination, workloads, backlogs, quality, and inefficiencies in the patent system.

In 2010, IP5 launched 10 collaborative projects that came to be known as the foundation projects designed to further the IP5's vision of eliminating unnecessary duplication of work, enhancing patent examination efficiency and quality and guaranteeing stability of rights. Many of those original foundation projects have either since been completed or have been rolled up into other initiatives like Global Dossier, and in that respect, the Global Dossier Task Force was created in 2012 to assist with defining the Global Dossier business requirements and it consists of the offices IP5 industry

representatives and WIPO representation.

Global Dossier, as Mark has already mentioned, is a set of business services that provides stakeholders with secure online one-stop access to dossier information of all applications compromising a patent family that have been filed in offices around the world. In 2012, the IP5 held its first meeting with IP5 industry which was a self-constituted group of industry representatives form the different jurisdictions, AIPLA, IPO for U.S., Business Europe, Japan Intellectual Property Association, Korea Intellection Property Association and the Patent Protection Association of China, which coincidentally is also PPAC.

In 2014, the IP offices launched the IP5 PPH pilot program which leverages fast track patent examination procedures to allow applicants to obtain corresponding patents faster, more efficiently with higher quality. And then, finally, at the 10th anniversary of the IP5 in 2017, the offices created a new vision for the collaboration among offices which is as you see on this slide to promote patent harmonization

of practices and procedures, enhance work- sharing, high quality in timely search in examination results in seamless access to patent information to promote an efficient cost-effective and user-friendly international patent landscape.

This slide shows you the general IP5 organization as it currently exists. The IP5 has grown substantially since 2007 given the ambitious agenda that we have created over the years. In order to insure continual progress, the current organizational structure starts with the IP5 Heads and Deputy Heads who set the priorities established the work to be completed and approved completion of projects at the annual Heads of Offices meeting.

There are several working groups that have been formed and the efforts of the working groups are coordinated through a steering committee called the Program Management Group. In terms of the working groups, working group one focuses on harmonizing classification practices and systems. Working group two focuses on IT System cooperation and Global Dossier

development. Working group three focuses on work- sharing efforts and quality.

There's also a Patent Harmonization Experts Panel, PHEP, which focuses on procedural harmonization, practices and procedures among the offices. The IP5 stats working group which produces the IP5 statistics report, and then there is also the possibility of establishing ad hoc taskforces of limited time and scope for initiatives that don't fit within the existing structure, but which are sufficiently important that the offices have decided to carry out work on those. Finally, the program management group coordinates efforts with IP5 industry to insure transparency and to get feedback on priorities of the projects of IP5.

So now, you have a little bit of background on the types of work that IP5 does and its structure. I'll give you a bit of a readout of this year's IP5 Heads, and IP5 Heads an industry meeting that as held in Incheon, Korea. The annual meetings began with a meeting of the Deputy Heads on June 11th, and that was followed by a meeting of the IP5 Heads of Offices with the

IP5 Heads of Industry on June 12th, and it concluded with an IP5 Heads of Offices meeting on the 13th.

The highlights of the meeting with industry included the completion of three original projects by the Patent Harmonization Expert Panel which focused on unity of invention, citation of prior art and written description, as well as a discussion of new topics be considered by the PHEP, and, additionally, the meeting allowed for discussions of a more strategic nature that encouraged both the offices and industry to benefit from a more dynamic brainstorming session.

In particular the group discussed new emerging technologies like artificial intelligence and how they will impact filing practices, office operations, industry efforts, and examination policies. And additionally during the session, the group continued a longer-term discussion on what future cooperation of IP5 will look like and how it will adapt to changing practices and patent landscapes.

At the IP5 Heads meeting, the group went through the regular order of business by approving the completion or progress on several initiatives related to work-sharing classification, Global Dossier common statistics and the PHEP. The group also agreed to a more streamlined process for proposing projects to the IP5 that involves the program management group. The majority of the substantive discussion however was focused on IP5 approaches related to AI and how the group can focus efforts on communicating a pro-IP message beyond just the IP5 offices.

Regarding AI, the offices the offices agreed to establish an AI Task Force for identifying the areas that are right for cooperation among the offices and develop a roadmap for how the cooperation could be accomplished. The roadmap would take into consideration both the operational aspects of AI as well as legal aspects of AI, and it's expected that the task force will begin work late 2019 or early 2020. As to the discussions about how to promote innovation in IP, the group agreed to

identifying ways to deliver a consistent data-driven pro-innovation message to other international partners and other government agencies.

This slide gives you some more information about where you can get additional information on these and other topics and be happy to take any questions that you have.

CHAIR JENKINS: Chuck, thanks for jumping in. Has there been any discussion about making it bigger than IP5 and making it IP10 or IP15, you know?

MR. ELOSHWAY: The issue has been raised, not necessarily by the IP5 offices.

CHAIR JENKINS: I assumed that.

MR. ELOSHWAY: Yeah. And there has generally been reluctance among the offices to expand it beyond what it currently is for a number of reasons. First of all, it was quite a step to expand it just from trilateral to IP5. We had trilateral cooperation for almost two decades, I believe, before we launched IP5, and even just adding two additional offices, the complexity factor goes up considerably.

First of all, you've got two additional voices. The other two offices were coming into a cooperation environment that we, the EPO and the JPO had enjoyed for years and years. We kind of knew each other's practices and systems and stuff fairly well, so we were speaking more-or-less on even terms. The Chinese and the Korean offices were at very different stages, and even though there's a lot of progress that's been made in the year since then, there are still considerable differences among us.

There is also quite stark differences in terms of industrial policy among the offices, and in how that policy is expressed and by whom. Here at the PTO, we have the statutory voice for the U.S. government on IP matters. The EPO, though, is not an organ of the European Union. It's a stand-alone international organization that does have close ties with European Union member states and European Union policy, but the European Commission, for instance, has no real competency on patent matters at all. So it's a very divided system with regards to who can enunciate policy in Europe.

In China, there was recently a reform effort to consolidate several IP offices under one administration to give it more of a centralized voice, but there is still a lot of turf battles there. Also things are generally dictated by the central government there in any event, and so trying to get China to speak frankly and openly and candidly about things is practically impossible. Korea and Japan are in circumstance somewhat more akin to U.S., so there's a lot of variation.

At the end of the day, it makes it fairly impractical to expand the group beyond where we are now, and the other thing to keep in mind is there's a considerable expense that goes along with hosting these meetings on an annual basis and I wouldn't want our CFO to come knocking on our door too much about the cost of holding some of these meetings, particularly when you factor in industry representation and we're having a hundred people or more at some of these IP5 meetings between the office delegations and the industry delegations as well. There's quite a lot of (inaudible) complexity and money that goes

into this, so that's another thing to keep in mind.

MR. POWELL: Yeah, I'll just add to all that. If you went to an IP10, for example, the next one would be the German Patent and Trademark Office, DPMA. Now, we understand from the EPO that the EPO avoids having direct agreements or, you know, negotiation with their member state offices for, you know, various reasons, structural reasons. Another one of those top 10 would include Taiwan, which as you may be aware, with China, is a particularly sensitive geopolitical topic.

And then I probably would -- I have to add that, you know, the larger context as just WIPO is where the greater good from the most offices should be discussed whereas although that can be, you know, a bit of a slow process. One other thing I wanted to add that was on Chuck's slide with regard to the future of the IP5, and the reason I wanted to say something about it is because it circles back to one of your opening remarks along with Andrei this morning, and that was getting the word out about IP, and that's what

you said, and Andrei completely agreed with you.

Andrei also, really, himself, in the context of the Heads meeting, you know, introduced that as a, you know, extremely important thing that we should all be working on because there is still a lot of ignorance among even sophisticated countries and as we all know with their LIP, (inaudible) property, in general, that we should all collectively work on.

MR. ELOSHWAY: Yeah, and on that particular topic there we are working on a couple of proposals in that area, but we are not in a position right now to provide any detail on that.

CHAIR JENKINS: Any other questions for them? No? No? No? No? Thank you so much. We're right on time, so we appreciate it. The committee is now going to go into a working lunch. That, yes, I emphasized lunch, but we will be working, so if everybody could grab lunch, we come back, we have some business that we need to do, so. And we will start back up again at 12:20. Thank you.

(Recess)

CHAIR JENKINS: We are ready to start.

The afternoon session starting just a tad late. So, I'm going to just jump right into it. Scott, Jackie welcome. Can we just start right into your presentation?

MR. BOALICK: Sure. Happy to do that. So, thank you. So, we have a pretty full agenda here. We wanted to catch you up on some of the latest happenings here at PTAB. As you see, we are going to go through some of the latest precedential and informative cases. Then we're going to go through the motion to amend the Pilot Program status and then we're going to just kind of give you a couple of updates to round that out.

So, starting out with the cases, we've talked about Standard Operating Procedure #2 previously here a number of times, but I think it's always worth a little refresher because it is a bit confusing. There are two paths that are created by SOP #2 to making cases precedential. The first path is through the Precedential Opinion Panel or the POP, which two of the three members are here in the room. So, it's Andrei, the PTO Director, we've got Drew Hirshfeld as Commission of Patents and then myself as Chief

Judge are the three members of the POP Panel and that's the first path we have made and this is all on our website so you can go find the SOP and the cases. Because the three of us only have, you know, a limited amount of time, we take a smaller number of cases through the POP Panel process. One thing that's important to know about the POP cases, they have to be live cases. They typically come up on re-hearing. So, any case that's already decided and beyond the re-hearing time isn't appropriate for a POP request. But they tend to be issues like the ones you see here. Big questions, important questions regarding either constitutional, statutory, regulatory issues. Issues where there's a split at the Board on how things are handled.

So, we talked about three members of the POP panel and we've issued one case so far to date, however, there are two others that are in the process. We've actually had oral hearing on both of these cases. The first one is the Hulu case, which addresses the issue of what's required for a petitioner to establish a reference to say that it qualifies as a printed publication at the

institution stage. We've had briefing including amicus briefing. We had an oral hearing a little over a month or so ago and right on the heels of Hulu was the GoPro case, which addresses a click to call issue on whether the 315(b) time bar is triggered by service of a pleading that is deficient. For example, if the person that serves you is not the owner of the patent or there's some other deficiency, is the time bar triggered. We've also had an oral hearing in that case and, you know, those are now with the panel and I can't promise exact dates on when these will come out, but I would expect them soon. I can guarantee you they'll be done before our next meeting, but hopefully much sooner than that.

There is a second pipeline that we call ratification or designation is the terms that's used in the Standard Operating Procedure. This is the second path and this is a much higher volume path than the POP path than the POP path. What happens here is we look at cases from the Board that have already issued on any topic. These cases can be nominated by anyone. A member of the

public, for example, can nominate these. These nominations can come from PTO employees or really anybody. There is a process for nomination that's described in the SOP. There's a particular e-mail box that we'd like you to send the nomination to and there are some descriptions of exactly how to nominate the case in the SOP, but this pipeline relies on cases that are already decided. We can designate them as either precedential or informative. The difference being precedential cases bind the agency. Informative cases are ones that illustrated best practices, board norms, but they aren't binding on future panels or binding in that particular case. They tend to be there just to illustrate current thinking in certain topics.

So, since the Standard Operating Procedure has been in effect, this slide actually is inaccurate because on Friday we added three more so the actual numbers now are 13 precedential and eight informative. We added three cases on Friday. Two were precedential, one being Becton Dickinson that had to do with factors in 325(d) and just the factors themselves were made

precedential. There's another case, a Valve case, that had to do with institution under 314(a). The third case was an informative case, Adaptics, which had to do with the case that had voluminous grounds in the petition and consequently, was not instituted due to an insufficient description that the petitioner did not carry their burden. So, that one was made informative.

One reason is we don't want to suggest any particular formula for how many grounds is the right number. It just says if the challenges are too voluminous and you don't spend enough time to make your case in the petition, then it won't be instituted.

A word about how these come out or the way that we try to package these decisions. We generally look for topics and try to find several cases on each of the different topics, which this slide has listed some of the topics under which we've issue precedential and informative decisions and you can see that they've had to do with either real parties and interest, AIA institution, amendments, oral arguments,

re- hearing requests, testimony of witnesses at trial where we had one case where live testimony was allowed and another case where the witness did not submit a declaration and consequently, was unable to cross-examined so we would not let them present live testimony in the first instance at trial.

The informative cases, we've had five on 101 and also on institution factors. So, you can see that these are coming out. I was going to talk about -- well, here's just a listing of all of the ones. I wanted to talk about some of the ones that have come out since our last meeting including Valve. There are now two Valve cases, by the way, that are designated. This is the first one, which explains -- we have factors for institution under the General Plastic case and this explained that the General Plastic application is not limited to multiple filing by the same petitioner if there's additional petitioners who have certain relationships with the first petitioner. Then the General Plastic factors might be applied.

The NHK decision was one that applied

the now precedential Becton Dickinson factors and showed an illustration of where the Board would not institute based on art that had previously been before the office. It had another further aspect to denial under 314 where there were a number of factors including district court proceedings that were nearing the final stage and there was the same claim constructions, the same prior art, and the same arguments were in both forums so there was a lot of overlap so for that reason, too, it didn't make sense to go forward.

Focal Therapeutics is the third precedential that I have a slide for. As I say, there were two more than don't have slides because they just came out on Friday. I will probably have slides next time. So, Focal Therapeutics basically resolves a question about during the cross- examination, can the attorney talk to the witness or do they have to wait until the cross-exam has concluded and the answer is you have to wait until it's concluded and so, this will just promote uniformity of practice across the board.

We've designated a couple of cases as

informative. I'll walk through these just very quickly. In fact, really all I'm going to say is one, two, three, four of these are all one on 101. These are all applications of the revised guidance on subject matter eligibility and there's not a whole lot to say other than I would commend them for your reading. I think they're all examples in different areas of technology of the Board applying the 101 guidance.

The decisions can be found on the PTAB website. So, you can see here -- we've actually added -- it's hard to see, but there's a little blue box that you can see in that middle red box. Basically, what we've done is we have a flag that shows you everything that is new so we've added that to the website since our last meeting so if there's a very recent decision, we'll flag it with a little new tag. So, that's an enhancement we've recently made to the website.

MS. MAR-SPINOLA: Scott, how often is that updated?

MR. BOALICK: Well, so it's updated essentially at the same frequency that we designate new cases although I suppose if we had

a lull in designating new cases, at some point, I don't think we specified an exact period, but after a couple of months that new case really isn't that new and we'd take the flag down. But, you know, currently we've been every, you know, designating additional cases every couple of weeks generally so sometimes more often than that, but when we do get a new batch, we'll update the new flags and we'll take some of the then old new flags and take those ones down.

And the precedential and informative decisions, what the arrow is pointing to here -- I realize it's hard to read on the screen, but if you actually go to the website -- these are all the recent designations so the very first thing that you have are all the most recent cases that have been designated. But we also break it down topically so if you want to look at all the 101 cases that have ever been designated in any fashion, we've got a tab for 101, we have a tab for obviousness, we have other issues so they're kind of broken down also by issue if you wanted to look by issue to see which cases there are.

That's all I have on the precedential

opinion panel and the designation or ratification cases for now. Are there any questions before we transition to the next topic? All right. So, Jackie is going to take us through the motion to amend the pilot.

MS. BONILLA: So, I know that we covered this last time, but I thought I would do a quick review of what the pilot is now that it's actually in place. I have about three months of data so after I go through a little bit of a review of what it is, I'll give a status update on where we are with it. And just to remind everyone, you know, back in October we did a request for comment, proposed a potential pilot, we asked for input, included questions, and then we received a number of comments.

And thereafter, in March, we published in the Federal Register notice about the pilot itself. So, you can see the link there if you want to go take a look at it. It provided, you know, timelines and just information about what the pilot was going to look like and gave a little bit of information about what the comments were that we received.

And the main thing that we like to tell people is the pilot provides for people who are filing motions to amend it provides two new options for patent owners that they didn't have before. The first one is they may choose to receive preliminary guidance from the Board on its initial motion to amend. So, as long as patent owners designates in their initial motion to amend that they would like preliminary guidance, they will get it. If they don't ask for it, they won't get it.

They also can choose to file a revised motion to amend after they get the opposition from petitioner and/or preliminary guidance from the Board and they can do that whether they ask for preliminary guidance or not. So, even if they just get an opposition and they want to file a revised Motion to Amend based on what they've heard from petitioners, they can do that as well.

And this is just to remind everyone that those are options to patent owner. They can elect to do neither one of those options and if they do, the practice will look very similar to what we've been doing all along.

And once we institute a case, we're going to issue a scheduling order that is the same in every case. And so, it looks very similar. We've done it in terms of weeks rather than months now, but otherwise it looks very similar to what we've already done. But, of course, if patent owner chooses to file a revised Motion to Amend later on in the process, then we issue a second scheduling order adjusting for that.

And you can see here if you go to the Federal Register about the pilot, you can see these schedules. It gives you that actual due dates. This is the initial one that we would release when we institute a trial. Again, this looks very similar to what we were already doing.

If it turns out later on after the opposition and preliminary guidance, then if patent owner chooses to file a revised Motion to Amend, then we switch the schedule. A new scheduling order goes out then and then what you can see is that each side gets a chance to file another paper and the briefing is a little bit accelerated to accommodate for them.

And just to remind everyone that

Motions to Amend they're still contingent and what the means is the only reason why we would address a substitute claim and a Motion to Amend is if the original claim is found unpatentable. So, if all the claims are upheld, we're not going to address the Motion to Amend unless the patent has designated that they don't want to be contingent. They want us to only consider the substitute claims. And, of course, just to remind people, if they don't for preliminary guidance, there won't be any.

Also, just to point out, if there is a series of Motions to Amend that are filed, the final written decision will only address the substitute claims that issue in the last one that's filed.

And this is just to remind everyone the effective date was March 15, but it applied to any AIA trials that were instituted after that case. So, one of the consequences of that is it took a little while for any of the cases to be subject to the pilot and the very first time that somebody could file a motion to amend within the pilot and indicate whether the wanted the preliminary

guidance or not, was June 7. So, that's what I meant when I said we have about three months worth of data because it turns out we're about three months later from June 7. And what we we've seen since then is about 15 Motions to Amend have been filed under the pilot in those three months. Five of them, the parties didn't ask for preliminary guidance and about ten of them they and some of them were families. So, some of it was a group of three, group of three, and the others were just singles.

And I also just wanted to update that the first time that patent owner can file a revised Motion to Amend will actually be in mid-October so we don't have any data on that yet.

And similar to what Scott pointed out, this is just an indication. It's still on our webpage indicating sort of things that are new. You can see it to right, you can click on it, and you can get access to the Federal Register about the pilot pretty easily.

The last time we were here we also talked about a notice that we issued. This was a notice that we issued on April 22 and this

relates to options for parties in relation to reissue and reexam and in particular, we wanted to make sure that people understood their options both before, during, and after an AIA trial. And we don't have very many slides for this here, but I didn't want to run through this a little bit again because when we have spoken with people and we've gone out speaking and like, there's a lot of people who still don't know about this notice or know about their options. And, you know, especially if you go through an AIA trial and you get a final written decision, you still have options to amend your claims. You can do it through reissue and reexam and it's important to remember.

And what you'll see in the notice, the notice it doesn't really provide anything new. What it does is it's just a one stop shop that's a summary for our current practice as it relates to reissue and reexam including what happens during an AIA trial and what happens after a final written decision. And it provides a nice summary of information about the factors that the office considers when they determine whether to stay a

reissue or reexam for example during a pending AIA trial and when they might lift that stay or in the case of a reissue, if they suspended.

And, basically, what you'll see is that one big factor in whether somebody would stay one of the proceedings is if there is an ongoing AIA trial that's addressing the same issues and the same claims so you'll often see that it is stayed. But in certain situations, after a final written decision, we might lift that stay and it's important that people know that. If a patent owner wants to file a reissue or reexam and they are going to meaningfully respond to the final written decision, do what we call meaningful amendments meaning they're responsive to what's in the final written decision, then it's very likely that we would actually lift either the stay or the suspension.

One thing to keep in mind, especially as it relates to reissue and also reexams, but reissue has some special aspects to it, is if patent owner requests, we will, in fact, go forward with the reissue and the reexam while the original case is on appeal. So, for example,

let's say patent owner loses some claims in their written decision and they want to appeal those to the federal circuit, but at the same time while that federal circuit appeal is ongoing, they actually want to go ahead and see if they can get amended claims. So, the minute they get an answer from the federal circuit, they can either take the amended claims if they lose there or if they win, they can go with their original claims.

And reissue, in particular, is special because you have options there. As a patent owner, you can basically decide to abandon the reissue. You can do that any time so if you went in the federal circuit, you can just drop the whole thing. You can file a request for re-hearing and you can also, of course, let it issue. So, those are some nice options.

Reexam is a little bit different. Reexam is by special dispatch and so, they won't, in fact, hold it back, if you will, and reissue. They will generally not reissue the patent until the federal circuit has made a decision about what was going in appeal, but in the case of a reexam, they might keep going and go ahead and issue a

reexam.

MS. MAR-SPINOLA: Why is that, Jackie? Why is that?

MS. BONILLA: It's just the difference in the statutes relating to reissue versus reexam. The reexam is under special dispatch and it just procedurally --

MS. MAR-SPINOLA: Just following that. Okay.

MS. BONILLA: Yeah, just following the procedure that they have to complete it, but there are provisions in the reissue that allow them to actually abandon at any time and for us to actually hold back from reissuing the patent.

MS. MAR-SPINOLA: Okay. Thank you.

CHAIR JENKINS: Do you have any data that people have started doing any of this or not? Is it too soon?

MS. BONILLA: So, it's hard to tell because people are filing obviously reissues and reexams anyway.

CHAIR JENKINS: Yes.

MS. BONILLA: I think it's too preliminary for us to tell. For example, there's

an uptake or anything like that. I think by the time we speak next time we'll have a little bit more information about that.

MR. BOALICK: Right. And it's something again we're just reiterating it because we find that people do appreciate hearing these options. You know, many people were of them, but many were not aware of the options or if they were aware, they didn't exactly understand how does it interplay with the AIA trial so we think this is worthwhile to bring up again. We'll see if, you know, how much perhaps this has been utilized. We'll kind of keep an eye on that. It may take some time to develop statistics, you know, on how many times it's requested because amendments, as you know, are not quite as frequent. We get on average what about 100 now Motions to Amend a year. In AIA trials now, you know, you can amend without a Motion to Amend in the AIA trials so we'll just have to sort of see how that plays out. So, the next topic --

MS. MAR-SPINOLA: Before you move to the next topic, can I have you go back, Jackie, to Slide 34, Highlights of the MTA Pilot Program,

and the first bullet point where the amended claims or the revised Motion to Amend are contingent unless the patent owner indicates otherwise. So, just trying to crystal ball it. I'm trying to figure out whether the, if any, what are the ramifications for going through the Motion to Amend and then not pursuing it. Is there a collateral (inaudible) in the event there's a future challenge or how does that work?

MS. BONILLA: So, let's say, for example, somebody filed a Motion to Amend and let's say that the original claims were found unpatentable and the substitute claims were also found unpatentable, let's say.

MS. MAR-SPINOLA: Okay.

MS. BONILLA: And patent realized, "Oh, okay. I see now that there may be a path for me to amend further." For example, one of the reissues or reexams we were talking about, it goes to what we would want to see is that those amendments are meaningful. So, whatever reasons they were found unpatentable in the first instance, they would want to make sure that they addressed that.

MS. MAR-SPINOLA: Okay.

MS. BONILLA: So, some kind of narrowing amendment or something to show that they're responsive. The final written decision, if there is a finding of unpatentability of the original and the substitute claims, it will go into detail about why on both of those counts.

MS. MAR-SPINOLA: Okay.

MS. BONILLA: So, they'll just want to make sure that they're responsive and if they are, then it's likely that they'll have an opportunity to keep going and try again after the final.

MS. MAR-SPINOLA: Are the baseball rules to that? In other words, how many times can a patent owner file for a Motion to Amend or revised Motion to Amend?

MS. BONILLA: So, right now they have one chance.

MS. MAR-SPINOLA: Okay.

MS. BONILLA: That's not to say that that's an absolute bar on them doing it again. There could be weird situations. They don't have it as a matter of right. They would have to ask for it and it would have to be something the Board

would have to take into account in terms of the timing of the trial and so on, how far along they are, and what exactly they wanted to do.

MS. MAR-SPINOLA: Okay.

MR. BOALICK: The statute does provide for, you know, additional Motions to Amend beyond the one that, you know, the request that says of right, but there are conditions, like Jackie said, that either there has to be mutual agreement between the parties or the Board has to authorize it.

Another recent development is our Trial Practice Guide. So, we recently issued last month the second update now to the Trial Practice Guide. Recall we had issued a Trial Practice Guide update about a year ago and so, this is the second update to it. It updated on a number of topics. The ones that you see up on the screen are the major topics, which are including factors on additional discovery. Because we've had a lot of cases that have, you know, taken place and we wanted to make sure that we had brought some of the current practices into the Trial Practice Guide update and I will mention this is just an

update so you have to read it in conjunction right now with the -- the original Trial Practice Guide is modified by the first update is modified by the second update. The question you'll probably ask so I'll just address it now. Why don't you put that all into one document? We're working on that. Hopefully, in the not too distant future we should have a single Trial Practice Guide reference for you so you won't have to flip through the various layers of update to get the complete picture.

But some of the things that have transpired, of course, Claim Construction Standard changed. The final rule on claim construction went into effect back in November so we've addressed the new Claim Construction Standard. The, you know, testimonial evidence rule that had come out. We also have information about multiple petitions what to do there. We've had a lot of development in the ratification cases on multiple petitions either the informative or precedential on how the Board is handling, you know, multiple either serial or parallel filings.

The Amendment Practice now is in there.

The factors are in granting joinder. You know, what we do when the case is remanded from the federal circuit. And Default Protective Order is, of course, only a default. If the parties want a different protective order issued, you can request and this one lays out a suggested multi-layer protective order so that's an option. One thing to keep in mind is that, of course, the Default Protective Order doesn't go in effect unless it's requested. So, it has to be positively requested to put a protective order into an AIA case. It doesn't happen automatically.

MS. MAR-SPINOLA: Do the parties have to stipulate or can it be one party requesting the protective order?

MR. BOALICK: One party can request. There can be oppositions, you know, to it. Hopefully, we do like, of course, parties to agree on what the requested protective order should be. That's our --

MS. MAR-SPINOLA: Don't we all.

MR. BOALICK: -- hope is that you will come to agreement over what the protective order

should look like.

MS. MAR-SPINOLA: Yeah. Okay. Thanks.

MR. BOALICK: So, all of those topics are in the current Trial Practice Guide update. I should add that as additional topics get stale or require updating, we will from time-to-time update that. We envision at least annually updating it so if, you know, no other urgent changes come in, we do envision going forward looking to have an annual Trial Practice Guide update around the start of the fiscal year just as sort of a place to target it. So, we're kind of looking -- if there's nothing urgent, look for October updates to come although this October we've already kind of updated it so you might not hold us to an October update this year, but for future years.

And, of course, Trial Practice Guide is found on the website and the update is here.

MR. LANG: On the Trial Practice Guide --

MR. BOALICK: Yes.

MR. LANG: -- before we leave that, the

commentary in the Trial Practice Guide on multiple petitions about the fact that petitions, two parallel petitions should be fairly unusual and three should be rare, do you view that as a description of the current practice of the PTAB or as a kind of a goad to restricting multiple petition practice even further in the future?

MR. BOALICK: There may be perhaps elements of both. So, we did about two years ago a multiple petition study where we found that the great majority of the time the one petition was sufficient and sometimes two and even more rarely three petitions were filed against a patent and then more than three was extremely rare. So, that was partially an observation about just the state of affairs. It didn't seem like often times more than one was needed, but it's also a request to the parties that if you're going to file more -- well, request a petitioner in particular I should say. If the petitioner is going to file more than one petition against a patent, but they set out an explanation. The Trial Practice Guide sets out a, you know, the ability and, you know, requests that you submit

a separate paper of five pages or less laying out the reasons why a separate petition is needed, which, you know, might include reasons such as the number of claims that need to be challenged or perhaps some other circumstances that would require more than one petition. Of course, patent owner can reply to that and can make certain stipulations that might even make additional petition filings unnecessary. So, part of it is a resource issue at the Board. We try to when there's more than one petition filed against a patent or if they're a suite of related patents, we attempt as much as we can to get the same panelists involved for consistency purposes in those proceedings and, of course, the more there are, the more taxing it is for the panelists and the less they're available to handle other cases.

So, sort of a resource request and sort of an example of that the recent Comcast v. Rovi case where the panel sent out a request for a short paper to prioritize the petitions and kind of give reasons for why are there this many, you know, why should the Board devote the resources to more than

one petition of a patent. So, I think there's probably elements of both, you know, in there.

MR. LANG: Yes, the new filing sounds like a good idea to give, you know, petitioners an opportunity to explain why multiple petitions are needed and not use up all the pages in the petitions themselves. (inaudible).

MR. BOALICK: Right and it doesn't chew up pages of your other filing. It's a separate five-page paper that you can explain and lay it out so it won't chew up your petition space to do that.

MR. LANG: It seems to me that the Board and with, you know, some of their precedent in General Plastics has already done a lot to, you know, clamp down on multiple petition practice and I'm hoping that this guidance in the Trial Practice Guide is more a matter of education about the current state of affairs for the purpose of the parties rather than moving things too far the other direction where legitimate multiple petitions are going to be restricted.

MR. BOALICK: Right. And, you know, it is something that, you know, has been and

certainly directory (inaudible) emphasize the need for balance and fairness so we think this strikes, you know, a good stance to where if there's a reason to have the multiple petitions that can be explained and it can also be opposed by the patent owner laying out both the state of what we have seen and also, what we are hoping petitioners will do is to home their petitions to make sure it's the best petition that you can file without throwing just, you know, a bunch of junk at the Board, you know, just because.

CHAIR JENKINS: Thank you, Scott. Thank you, Jackie. We may have more questions. I just want to note and sag way, we appreciate from the stakeholder community that we get letters with all sorts of different topics that people have sent us over the past I guess two years. I've started that process as Chair. I look for stakeholder input and comment. This week the PAC received several letters from U.S. Inventor Inc. and about, obviously, individual independent rights and their processes before the PTAB we have. So, this letter will go onto our PPAC webpage where there are other letters as well from

other entities and we have shared that, obviously, with the office and with the PTAB and I know we're reviewing it and, you know, we're going to be looking at some of the questions that have been raised in there. But I just wanted to say thank you for folks doing that. So, you should know that we do read it and we do review it, but we do have a process so sometimes we can't be as responsive as you would like us to be, but we do appreciate it. Mark, you have a question?

MR. GOODSON: I just want to point out Scott and I had a meeting yesterday about some issues and it was most professionally and cordially handled. I'm appreciative.

MR. BOALICK: Well, thank you, Mark.

MS. MAR-SPINOLA: So, that gives me an opportunity to ask a couple questions. I have reviewed the letter as well and I think there are issues there that the PTAB is not in a position to respond to because they're pending matters. But one of the issues that I think is worth bringing up is about the standard of review and the PTAB going from to BRI to Phillips. I think that's important that stakeholders understand

that there is a, you know, there is that transition and a consistency in the standard for claim construction and review. If can comment on that.

MR. BOALICK: Sure, Julie. So, you know, I'm happy to comment on that and, you know, as you mentioned, of course, I can't talk about any, you know, particular case that's pending before the Board, but I can say generally that one of the reasons, as you know from our prior presentations, that the PTO made the change from BRI to Phillips is to prevent, you know, gamesmenship that potentially would happen in the space between district court litigation and claim construction arguments made there and claim construction arguments made at the Board, and so, by moving to the Phillips standard, we are, you know, on the same page, it's the same standard so those opportunities for gamesmenship have been, you know, removed. But something to note is so that final rule went into effect in mid November of last year and applied all petitions filed on or after that date. Of course, our, you know, institution process lasts about six months so

it's only very recently that institution decisions have started issuing under the Phillips standard. I should put a little footnote here that, of course, the Board has always applied the Phillips standard to expired patents, but setting that aside, we now apply them to all cases filed since that mid November timeframe and, of course, once an institution decision is made, if there was an institution, it's going to take another 12 months roughly to play out so sometime about this time next year we'll actually start to have seen a couple of final written decisions applying Phillips. So, all that to say, the pipeline is length from the time you make a change to where you really start seeing a lot of, you know, different results. It can take some time before those cases work their way through the system and so, in the meantime, there are a lot of cases that were pre rule change that are coming out in final written decisions.

So just, you know, it's good to keep that in mind and Jackie had mentioned earlier, for example, the change in the Motion to Amend practice and again, that's not going to be even

until October before you really start seeing those revised motions even coming out and then it will be, of course, a couple months after that before you'll see rulings on those revised motions. So, all that to say that, you know, we've made a lot of changes. We've talked about many of them. Some of them just take some time, you know, to play out.

MS. MAR-SPINOLA: Thank you and I think that most, if not all stakeholders, prefer the Phillips for consistency and maybe an increased level of predictability so thank you for that. I think we all just have to be patient and stay tuned. We will see the opinions in due course I'm sure. Thank you.

MR. BOALICK: Sure.

CHAIR JENKINS: Any other questions.

MR. BOALICK: I think the only other update really that we had is just that is just that, of course, you know, it's more of what we've said before that, of course, we have the, you know, standing by for what's coming down the pike for Motion to Amend practice. Expect that there will be further decisions on, you know,

precedential and the informative front. And, of course, we're always welcome to stakeholder feedback and suggestions for any additional changes that you think we should make. We do have on our website a suggestion box, which is really a suggestion e-mail address for trials, appeals, or for our end-to-end system, our IT system so we're always welcoming feedback.

CHAIR JENKINS: Great. Thank you. Always interesting and you all are always busy and always a great presentation so thank you both. Great team behind you all too. We are early. You never hear me say that. It is 1:08. Anyone from IT here. Oh, they're coming. Oh, look at that. Right on cue. I couldn't have done that twice, Jennifer. We've segregated. The PPAC is on my left and PTO is on my right. We can get settled.

MR. HOLCOMBE: So as we are getting settled I might as well give you like my little opening remarks. I would just like to report out that the fact is over the summer we've been very successful at our stabilization and secure efforts. We have 19 different initiatives going

on right now. And we are either green or yellow in all of them.

Now one of the great things we've done is we've created two agile project teams. And we will use those teams as a basis for future development efforts. So it's a really great story that these pilot teams worked out well. We're learning a lot from that. And it's also exposed a lot of the things that I'd like to improve. Namely, security.

We're moving on and making sure that everything is safe and secure within our boundaries, and we also have the dissemination mission to ensure that everything that's public needs to be public.

So in our continuing efforts I've briefed the Director that we have a risk inventory as well as a full list of plans of actions and milestones. Which in the Federal government is called a POAM. And in those POAMS we are tracking against criticals and highs, and making sure that we go and solve and remediate all these different things that we're finding.

Now of course whenever you get a new

person on board, which I have in my Senior Information Security Officer, he comes from DHS, he's always going to find new things and have a new focus. So I'm very happy to say that this new focus has also caused a lot of others to look at things that heretofore have been okay. Well, wait a minute, maybe they're not okay, and maybe we need to remediate them.

So I'm not saying things are bad because I will say that patents is a very locked down system. I'm happy to say that things are not insecure at all. There are other systems that I'm more concerned about within the Patent and Trademark Office, which will go unnamed only because you never want to tempt hackers, you know, to go after something.

But I will say that along with the security, the stabilization effort's moving on. And what I want to be able to do is next year I want to give you the hope that next year I'm able to operate completely separate and apart from this facility here. So we will not be beholding to the data center we have here, that we would be operating either in the Cloud or at our redundant

site in Boyers, Pennsylvania, at an Iron Mountain site.

So, unless I have any questions, I was going to turn it over to Bill. All right. Bill.

MR. STRYJEWSKI: Thank you, Jamie. I'm going to talk about two particular topics. One, the authentication change on EFS-Web and Private PAIR, and the other one about the PALM resiliency.

So the first, I want to say thank you to everyone in the PPAC in supporting us and communicating out to the hundreds of thousands of end users that use our ecommerce tools. As of today we are completely off a critical legacy system that was ending of life, and we've migrated over from this tool to a new solution. So the old tool we culled is PKI, that stands for Public Key Infrastructure. And the new tool is called RBAC, Rural Based Access and Control.

And we started this journey last summer, in which we opened up my USPTO for these two factor accounts, something that you have and something that you know. And we migrated all our legacy accounts over to that in the PKI. We

introduced a thing called sponsorship that allows now attorneys and agents to recognize people in their organizations that can access and file documentations over time. We created a new verification process for checking the individual so they're held accountable and they can non- repudiate their connections with the USPTO.

And then finally in July we retired the system. It's kind of a simple five-step process over the years, but we had a lot of challenges from communication. And there's a lot of fuzziness. Our previous system, we basically had one account that was shared by lots of people. So we really didn't know what our user community was, and that's why we say thank you for all this communication. Because we needed to reach out to those variety of users. So we have a better sense of our user community because the only way you can access is that we know who's exactly accessing the account as opposed to a shared password.

So it's been very successful, and we really appreciate the help. Is there any questions related to the authentication change?

CHAIR JENKINS: Has it gone well, does

the user community seem to be able to understand how to do it, you know? There was a little push back because I guess was it in, I want to say spring, it wasn't transitioning very well. So I know you had to wait, right?

MR. STRYJEWSKI: We had a major blip in February. We regrouped, we created a new monitoring solution and then we progressively kind of lessened the hours of the old tool and relied more on the new tool. We increased our help desk support, continued with our communication plan, and kind of followed through.

It's been quiet, and usually quiet means good for us.

CHAIR JENKINS: Thank you. Yeah. I've not heard, other than that couple months ago everyone sort of panicking. I haven't heard anything since then, so, yeah, quiet is usually good. Agree. Knock, knock.

MR. STRYJEWSKI: I'm going to hand it over to Raman for the PALM.

MR. SARNA: Hi. Good afternoon. So after the PALM outage in August of last year there was guidance from Executive Leadership to look at

the various components of the PALM system, identify any single points of failure and alleviate them.

So we have one such instance where we have a component running on hardware that was 18 years old, running software that was not supported by the vendor, HP, and as a result we were not receiving critical security patches and product upgrades. So that's leaving us at the risk for business disruption.

IBM was tasked to come in and rectify the situation. They on boarded in December, began working on a proof of concept in the middle of January, which was successfully delivered in March. On the basis of that they began work on the full solution, which was delivered in the last week of May, over Memorial Day weekend actually. Which achieved two major objectives.

One, it moves that component onto a newer infrastructure which is supported by HP. And two, it provides fail over, so in the event of an outage, we are able to resume operations within one day.

All of this is an interim step. The

long-term solution, which is already under way, is to rewrite these components so that they are modular, less dependent on the hardware, so that effectively we are increasing the supportability of our services to our customers.

Any questions?

MS. MAR-SPINOLA: I have a brief question, which is you mentioned that bringing IBM in, they were able to satisfy two major issues. Were there other issues, are there other issues pending?

MR. SARNA: So as far as the stabilization prospective is concerned that, you know, it was a single point of failure. That objective has been addressed. The long-term goal, you know, which is in progress, probably a year and a half away from completion, is that we would reduce our dependency on PALM and go to more modular software.

MS. MAR-SPINOLA: And as I understand, PALM is still working at the same time with the new system.

MR. SARNA: That is correct.

MS. MAR-SPINOLA: So when will PALM be

shut down, if ever?

MR. SARNA: Good question. So we have plans to rewrite various components of PALM so that we are reducing our dependency and associated risk. I can take an action to determine what the overall plan is to reduce complete dependency, if such a plan exists, and report back to the group.

MS. MAR-SPINOLA: Last question is on PALM you had mentioned that it was susceptible because of not being able to get patches, right?

MR. SARNA: Correct.

MS. MAR-SPINOLA: Even though it's running in parallel with a new system, is it still susceptible, or is that removed because of the new system overlap?

MR. SARNA: That has been addressed because of the fact that we were able to essentially port that component onto newer infrastructure both in terms of the hardware itself as well as the software. So that risk has been reduced, eliminated.

MS. MAR-SPINOLA: I like the last word better. Thank you.

CHAIR JENKINS: I've been on the Committee now six years, so PALM has been a common phrase by the IT Group for a long time. I commend you for tackling it and taking it on. I think we had to, right? Always one reason to do it.

But I'm still sitting here puzzled of why this hasn't been done previously. You know, so you might want to answer that or not. But I think, you know, it seems to me though, did you have to, and did you have to reassign or prioritize other projects? So in other words, in order to address PALM did you have to not do something, say for example, for Global Dossier, you know, you had to realign in order to make that happen, or are you able to continue to do everything? So we're also writing our Annual Report, so you should know that.

MR. HOLCOMBE: I'd like to tackle that and say one of the first things that happened when I came on board a scant five months ago, I'll still use that newness to my advantage as much as I can, was the fact that there were not a prioritized listing of the top ten, whatever the top ten was. It hadn't been done across all the business units.

The patent folks knew what their top ten were, the trademarks folks knew what their top ten were, finance knew what their, but they hadn't done an across-the-board prioritization. And within three weeks we had everyone do that prioritization. So, yes, everybody knew what was number one, two, three, four. And from that what we were able to do is then prioritize our projects in the following months.

One of the things that I was told was "You don't understand, it can't be done by Memorial Day." I was told that not by one or two people, I was told that by almost everyone I spoke with, because I did not understand the intricacies and complexity of the problem. And although it is very complex and it is very intricate, I did understand the problem and it was primarily the fear of the unknown.

So what we set out to do was to approach it with a data driven decision matrix, not feelings, not fear, but rather what can and can't be done. And the folks came back and they said "Well, wait a minute, it still can't be done by Memorial Day, even given all of this." And I said

"Wait a minute, your assumptions are great, everything is fantastic, but I see here that we still have weekends and nights that are open." They said "Well we're not authorized to do that." And I was "You are now authorized."

So in six weeks we did what they said couldn't be done. And it was mostly because the team we had, and God bless IBM, but it wasn't because of IBM, it was because of us. The folks behind the team was really good, and I challenged them and they came to fore. And they have a lot more confidence, I believe, in themselves because we did get over this hurdle. It was our first big win. And from that now we can do a lot more because they're confident in themselves.

Does that answer your question?

CHAIR JENKINS: Yeah, thank you. Any other questions from the Committee?

MR. GOODSON: Oh, I'd just comment here, it's just a relief that the spare parts situation is not dependent upon Fed Ex being able to go to Europe or something like that.

MS. MAR-SPINOLA: I would just add another comment, which is I very much immediately

recognized the change in energy. I mean I want to give credit to your interim predecessor before because I think that in his interim time he gave us more confidence that things were moving along, and that was important to stakeholders and to the PPAC. But today, even though you came on our side of the table, the energy is great, and the confidence is even better. So thank you. Collectively thank you.

MR. HOLCOMBE: Thank you.

MR. SEARS: Yeah, I have a question for you, it's about Global Dossier. I use it frequently, it's a fantastic program, and most of the time it runs extremely smoothly. But on average about once a day, whenever I open it up, I'll get an error message "Data not available at this time," or something else. So I'll close the window and reopen the window and magically the data comes up. It's a little odd, it's not particularly troubling to me, but it is very public facing and it's not an isolated instance. It's almost every single day that I use it, no matter where I use it from, it doesn't matter. From the office, from home, from my mobile phone.

Just curious if this is an issue you're aware of and what you're doing to address it.

MR. HOLCOMBE: Very much so. I said this just this morning to Andrei Iancu. The fact of the matter is every day still does surprise me. I learn something new every day, and I really can't believe how well these 20 year old systems are working with the new internet in front of them. So you are really experiencing something that it's a mismatch of technology.

And so because of that, what we're trying to do is go the Cloud as soon as we can. Now the Cloud is not a panacea. I was doing the Cloud before they called it that. They used to call it Data Centers, right, and telecommunications. So I mean the fact of the matter is people have moved out because it's a lot more affordable and it's a lot more effective because of all the different functions that you can get from AT&T, Century Link, Verizon, and so forth. Even the other data center provider, Equinox, QTS, and all the things that are out there that are available.

But because we have 20 year old systems

that were not designed to take advantage of that, we can't use that new functionality. My design philosophy will be such we will get rid of this tightly coupled application mess that we currently have. So if I'm not able to tear it out, whatever we put in, I have to be able to take out. Because I don't know what it's going to be in the future. In the next five years everything's going to change. Artificial intelligence and quantum computing, in my opinion, will change the game field. We will not be operating the same way.

So whatever I put in right now I'm going to be having to take out so I can take advantage of that new stuff when it comes on board. So that means that when I move to the Cloud, it could be Boyers in our own private cloud, or it could be AWS or Azure, Microsoft, or, I'm sorry, Amazon, based on whatever is the most affordable.

One of the biggest problems with Federal agencies is the fact they have gone to the cloud without understanding their utility, their measurements. And some of them blow their budgets halfway through the fiscal year. That's

not good. So we also have to measure what our through put and what our CPU basis will be before we go out to the cloud.

So we're formulating all those ideas right now and we will be able to take advantage of the new technology in the coming years, but my thing to Andrei is July of 2020.

MR. GOODSON: How rapid is the transition by the user community in terms of filings from OCR to text filing? Is that still occurring?

MR. STRYJEWSKI: So right now it's still kind of in a basic state. I think we really, we're spending a lot of our communication energy on the transition from the old PKI solution to the new RBAC solution. And it was important for us to continue to get that message out. Now that that hurdle has cleared, I think we have a large focus on making sure that all our customer base understands the value of filing through text, the quality that's going to improve, and more importantly, the longer term view of the precision that we'll be able to not only prosecute a patent application, but publish a patent

application when we receive the text directly from the applicant.

So again, it's not a large percentage of the filings are in text today. We have a lot of big plans on text filing coming forward. For those who don't know, every examiner has text of about a large percentage of the file wrapper today, but it's OCR so there is an error component to it. We have different tools to help the examiner. But those tools are only good as the data that's provided to them. So if we're actually getting text directly from applicants, we're going to have a much better prosecution, and hopefully lead to a lot of efficiencies and quality improvements in publication.

So from a percentage perspective, I really don't have any great, you know, it's 27 percent. It's not, it's a small amount today.

MR. GOODSON: And I can't remember when fee setting takes place but I believe there is a substantive penalty for filing with PDFs as opposed to Doc or Doc.fix; is that right?

MR. STRYJEWSKI: That is the direction that we are proposing in our fee setting.

MR. GOODSON: Okay. Thank you.

MR. POWELL: I'll just toss in that in the international community, say in IP5 getting to, you know, full text files is, you know, very critical. So many of the things we would like to do it'll make things so much easier both for stakeholders, and certainly offices, I mean it's just, you know, something that's overdue in my view.

MS. MAR-SPINOLA: Actually is there a timeline for completing this whole transition and requirement for text?

MR. STRYJEWSKI: I think we're working on the timeline as it relates to the fee package change.

MS. MAR-SPINOLA: As it relates to the fee?

MR. STRYJEWSKI: To the new rules package for the fees. Sorry, did I say that right? Yeah.

MS. MAR-SPINOLA: Okay. Thanks.

CHAIR JENKINS: Thank you. Thank you all, very positive report. We appreciate that on the user community side, and I'm sure the office

does as well on the inside, so to speak. So thank you very much. Great. Thank you.

We are plodding right along. It is 1:30. I see though my legislative update is here. Kimberley, are you ready to come on board?

While you're getting settled I will also note that we got an email this morning to the PPAC from Jeff Hardin, and also I believe his wife, Patricia Duren from Inventa's Rights with respect to the Success Act. So we're also reviewing. Again, we appreciate the submission. We are also reviewing that as a PPAC, and we will have some questions of our own actually on the Success Act as well. And I know you're presenting on that. So with that segue, does that help you at all? Great.

MS. ALTON: Good afternoon. My name is Kimberley Alton, I'm the Deputy Director of the Office of Government Affairs. And I'm joined by my colleague, Tamara Foley. We will be presenting an update on behalf of the Office of Government Affairs.

The Office has been very busy this past spring and summer. There's been a lot of

activity on Capitol Hill related to IP issues, so there are just a couple of things we just want to update you on.

Most recently, on May 9th, Director Iancu testified in front of the House Judiciary IP Subcommittee. It was a general oversight hearing that covered really a range of issues from PTAB Section 101 reform as well as China trademark filings. So that hearing in May really led to another hearing in front of the same committee just last month where our Trademark Commissioner, Mary Denison, testified and really provided really good data for the committee related to the surge in trademark filings that we're seeing from China.

So that was just a few weeks ago that we provided that information, and we'll continue to follow up with the committee. They're very interested in the surge and what we're seeing come from China.

And then of course Section 101, the Senate Judiciary Committee in June really held what is unprecedented, three days of back-to-back hearings with 45 witnesses really providing their

thoughts on what changes, if any, are needed to Section 101. The USPTO did not testify but we certainly have been monitoring this issue, talking to staffers. And the expectation is that Senator Tillis and Coons, who are the Chair and Ranking Member of that IP Subcommittee in the Senate, will be releasing draft testimony in September when Congress returns from their summer recess. So we will continue to monitor and weigh in on that legislation.

Again, some of the hot topics that we're seeing up on Capitol Hill right now relate to drug pricing. The full House of Representatives has passed a couple of bills related to Orange Book and Purple Book, making improvements to those two books. And we have been providing technical assistance and really educating a lot of Hill staffers as to the role that patents play in the whole drug pricing conversation.

So there's a lot of education that we're doing now, a lot of technical assistance that we're providing as staffers and members of Congress introduce bills. They're reaching out to our office for our technical expertise and so

we're doing a lot of work to provide that.

So the expectation is that both the House and Senate, in the fall, will move forward on drug pricing legislation. These bills do have, many of them do have bipartisan support so it is viewed as one of the issue areas where we will see movement, hopefully by the end of the year and we will see something enacted, and ultimately becoming law.

In addition to drug pricing we also saw some movement last month in a Senate Judiciary Committee related to sovereign immunity. And the Senate Judiciary Committee passed a bill, it's a last bullet, the PACED Act, that deals with the St. Regis Mohawk Tribe issue that we heard a lot about last year. So that did pass out of the committee and it is possible we'll see that also move to the full Senate when they return in September.

Another topic that I want to touch on is certainly diversity in innovation. There's been a lot of interest in patent diversity applications that we receive here at the Agency. The Success Act that became law last year required

the PTO to produce a report. That report is being prepared by our Office of the Chief Economist, Andy Toole is leading up that effort. Andy's team held hearings this spring and this summer, three hearings here at Alexandria, also in Detroit and in San Jose. And his office has received testimony from over 35 witnesses and has received over 70 written comments. So he is in the process of pulling all of that data together, looking at all of the publicly available data that really talks about underrepresented communities, so that's women, people of color, Veterans, and what are some of the challenges to those groups really entering the patent process.

So that report is due to Congress by October 31st. We are working to meet that deadline and really present a good product that has recommendations on possible legislative ideas on how to see more representation within these different groups.

And sort of piggybacking on that, the IDEA Act was also introduced in the House and Senate. This is a bill that would require the USPTO to start to collect this data voluntarily

from our applicants so that we would get information in term of gender, race, ethnicity, national origin, sexual orientation, age, military status, educational level attained, income level. There's a lot of information that this bill would require us to collect. So we will continue to talk to staff about providing feedback on the best way to actually collect this information.

MS. CAMACHO: Kimberley, may I stop you there?

MS. ALTON: Yes.

MS. CAMACHO: So as Marylee had mentioned, we've gotten some comments from the public that we're talking a look into. But in particular there's a comment related to economically disadvantaged inventors, and the point being made that, you know, there's a cost and clear perceived risk associated with not only filing the application, but protecting it thereafter in PTAB.

And the point being made that there's less inventors in that subpopulation that will be entering into the patent application process.

And so while you're collecting information on the applicants, there's this issue of missing data so that you're not able to collect data on inventors that are in that population, economically disadvantaged, that aren't entering the arena.

And I think that that presents an obstacle to identifying risk factors or avenues in which we can increase the likelihood that that population of inventors can participate in the patent process.

So the question is not only how are you doing to collect the data on the patent applicants, but how are you going to identify those would-be applicants that aren't able to enter the arena simply because of that disadvantage.

MS. ALTON: Right. And I think that that certainly will be a challenge. Right now the PTO, and the report does talk about this. Our Chief Economist has pulled together sort of an outline where we talk about the resources that we have here at the Agency to try to reach that population, the pro bono assistance, the pro se assistance programs.

And so I think that it is our intent to really look at the population that uses the pro bono and the pro se to see how do we really get to that population that is economically disadvantaged, to try to make sure that they are brought in and they are part of this process. So we did receive testimony, I believe certainly at the hearing that was held here at Headquarters, from people who did share that concern, so that is something that we will touch on in the report.

CHAIR JENKINS: I know the hearing was right after our PPAC meeting in May. And personally I didn't know about it, and if I had known about it I probably would have come back that following week to try to participate in it.

So are you done, or are you doing more hearings, are you doing more outreach, you know? So I think it would be helpful for the user community to sort of understand some of the processes that are going on within the Office.

MS. ALTON: Okay.

CHAIR JENKINS: If you can. I don't know. Who's leading the charge on this, maybe that's another way to put it, you know, so.

MS. ALTON: So our Office of the Chief Economist is taking the lead on the drafting of this report, the hearings that we held across the country. And I apologize that you were not notified about the public hearings that we held. I regret that oversight.

We did, within the Office, have a group that met to try to figure out how do we make sure that the right folks know about this hearing, that we have good turnout. And it was something that was sort of a learning process for us of how to reach the right audience. So there were a lot of lessons learned for us, and I think we got better when we had our last hearing in Detroit. I think that hearing had the most participation. But it was based off of many of the lessons that we learned from the hearing that was held here, and then even the one in San Jose. So we got better is what I'm saying, in terms of outreach.

And I will talk to our Chief Economist, because he does have a timeline. We did have Federal Register notice that went out to alert the public that we were having these hearings. But often the audiences that we're looking for, they

don't read the Federal Register, and so that meant we had to do a little bit more, you know, just posting it on our website, sending it to some of the usual suspects that just didn't cut it. So we really worked hard with the affinity groups that we have here at the USPTO, as well as some of the other offices that do outreach, to really say can you look at your rolodex, look at your contacts, and who should we be touching as we go to these different places.

So as I said, we got better, we learned a lot of lessons about how to reach these communities and how we can do a better job. But moving forward we did have a comment period that closed, I think, back in June for the public to submit comments if they were not able to attend one of those hearings to provide testimony. And so now the Chief Economist is compiling, summarizing all of that and pulling that together for this report that's due at the end of the year.

I will talk to him in terms of if there are additional comments or feedback, if there's a process to incorporate that between now and the publication date. I will find that out and I'm

happy to share that information with you all.

MS. MAR-SPINOLA: So one thought is, it depends on how big the size of the response was that you were able to get. If it's a small pool, if there's an opportunity to, not to do a re-do, but at least reopen for comments now that the hearing and the report has been more fully disclosed or brought to people's attention, including PPAC. Then maybe there is an opportunity for folks who are now aware to be able to provide their comments.

Because the report is so important and we all know that it is the Director's, one of his top objectives for the patent office, and PPAC supports that supremely. So that would be a suggestion.

MS. ALTON: Okay.

MS. MAR-SPINOLA: Is to reopen for comment period, maybe even give guidance on the issues that maybe you didn't get comments on and could use more data points on. So more refined survey or something like that could help.

And I haven't seen it, but I wonder if to the extent that you can ask about income,

income levels, that might help promoting or being able to identify some solutions for addressing lower income with the inventors.

MS. ALTON: Okay. I will definitely take all of this back and work with our Chief Economist on answers to that. The Office of the Chief Economist is the office that earlier this year issued their report that looked at women and trends related to women and patent activity. So they're very focused on this issue and they've done a lot of work.

So let me just talk to them in terms of a process of where they are now and how to incorporate some of these suggestions into the final product.

MR. POWELL: Yes, indeed, the AIA, the American Invents Act, actually had a provision requiring studies to be done early on. I believe those have been completed some many years ago now that I'm not sure what the follow up on that was. But it is a topic that has been at hand for quite a while, and rightfully so.

MS. MAR-SPINOLA: When we were first, the Success Act and the discussions were going on,

at least my natural assumption about that was about underrepresentation, neither, you know, gender or backgrounds or Veterans or whatever. But I think what came out of some of these hearings, and I was not there personally, so this is indirect, is that some of these underrepresented individuals, in particular women, were discouraged from filing patents because post-grant, you know, you might get a patent, but post-grant maybe it gets taken away. The other issue is whether or not they have qualified representation to assist them in these things, right?

So those are specific things that are issues that I think are valid in the sense of it is hard to find qualified counsel if you don't know where to go. And even for our lawyers, we tend to network and ask who's good and who's not. Maybe not the last question, but. And so I think these are the things that, when they bubble up, given the efforts that the patent office has made, it would be great to be able to have more pointed responses to those.

MS. ALTON: Yeah, that makes sense.

And I know just this past spring there was a real push within our office of communications to revamp our website, the home page, so that there's, I think when you go to our website it's prominently featured, are you an inventor, are you an independent inventor, learn about the resources in your state, in your city. There's a map of the United States, and you click on that and all of the pro bono, all of the pro se, all of those resources are there. And so that was a big effort that really was at the direction of Director Iancu to say let's make sure that this information is front and center for people who may not have the resources or the background, and we want them to know how to do that and not have to click on link after link after link on our website to find this information, but have it very prominently featured.

So that's something Congress had asked about, and we're proud that we were able to revamp our website to feature that information prominently.

Any other questions on this?

MR. GOODSON: Yeah, I met this morning

with Laura Peter and with your Chief Economist. And really, they're kind of like the canary in the mine, sensing the bad gas, poison. The problem, per se, is not at the Agency, but it does indicate there is a societal problem. You know, the gender they're on top of, but how to look at a name on a patent application and determine melon and skin levels is pretty tough. And then Veteran status, I mean, and they want to do a good job, it's how you do it. How do you look at an application and tell if a guy or woman had a DD214? That's going to require some, you know, quite a bit of work to get this ready by October, number one.

Number two, I was very happy, there had been someone corresponding with me from the public, that insisted this Agency has bias, gender bias. And that applicants are being treated differently based on their gender. And this morning the Chief Economist put all that, he laid it all out, and said this is why the study that they produced is ineffective, and why it's wrong. And that was good to hear that.

I just can't imagine any examiner here

treating an applicant different because of their gender and race. They don't know, and they're sure not going to know if it's a Veteran status. But we do appreciate the work that the Chief Economist and Laura Peter are doing to get this done and to comply with the wishes of Congress.

Anyway, God speed, get it done. Thank you.

MS. ALTON: Thank you, will do.

MR. LANG: On the IDEA Act, has the PTO considered the practicality of collecting the demographic information that's being asked for in the proposed statute?

MS. ALTON: We have, and we're in the process now of providing suggestions on maybe an alternative way to kind of get the information that they are seeking. The IDEA Act is asking for this information on the front end as part of the application process, that would require us to collect this information and keep it separate from the application.

We have our concerns as to whether or not people will actually provide that information. And so our suggestion that we've

been debating internally within the PTO is whether it makes more sense to request this information at the end as part of a customer service survey that we already do, and just ask those different questions. So it's a debate that we're having internally. These are concerns that we've shared with Congressional offices and will continue to sort of give them our feedback on a better way to get -- I think we all want the same information, it's just how do we get there, how do we get the best response rate from our clients, from our applicants. And I think we don't believe that the IDEA Act really is ideal in terms of getting the best response rate.

MS. MAR-SPINOLA: I think another question in addition to how do you get that information, is why does the Agency want or need it. And I think that needs to be very clear so that individuals know or can decide whether or not to respond or not. You know, as an inventor, if I want to have access to the patents, not that they won't have access, but to the extent that, you know, if there are any concerns about it, what could help us assuage any of my concerns about the

data is why does the patent office want it, why does it need it.

And I think those are fair questions, but more importantly, it'll achieve the purpose that the patent office is looking to achieve, which is to get that data.

MS. ALTON: Right. No, I agree. Thank you.

CHAIR JENKINS: I personally thought that the scope and breadth of the questions of data that they want for the IDEA Act was over encompassing. I struggle with why the PTO needs to know all of that, and the cost and the high tech, IT solution in order to implement that access of data. And in this day and age, I mean what don't you know about me, right? And are there some things I don't want the Federal government to know just because I'm applying for a patent.

So, you know, we were discussing how does this apply if I have an inventor in the EU? So I understand the grandiose purpose here and obviously I thought about my practice when the Success Act came out, and how many women inventors

I have had before me, and it's not a lot. And for a variety of different reasons. But, you know, some of these "solutions" are just not well thought out, in my opinion.

MR. LANG: Yeah, another point that was raised by a number of the public is that to the extent that the collection of the information is on a voluntary basis, it's unlikely to be accurate. That people, for all kinds of reasons, are not going to be forthcoming with this detailed information, and the resulting aggregate picture won't be correct.

MS. ALTON: Those are all sort of concerns and debates that we've had internally, and continue to have conversations. I know the bill, the IDEA Act, would require us to collect this information twice a year. One of the ideas that we've been talking about is maybe this should be every other year. And so there's just a lot of discussions that we're having, that we're in the very early stages of thinking through the IT piece of it, just the practicality of how we would do it. So we're happy to keep you posted as we continue to have these conversations and even

work with the staffers on the Hill in terms of possible revisions and assistance that we provide to them to really improve the bill, in our view.

MR. POWELL: I just wanted to chime in. Among the many concerns that we would have on an application basis is what people do with data when it comes out of here, or how they interpret it, right? So somebody may, you know, pick Examiner X and TC Y and note that he or she granted X number of applications to men and X to women and, you know, it could imply as people do with data, that, you know, Examiner X is biased against men, or something. And so that's one of the biggest fears.

And then if that were the case, you have an examiner responding to that, feeling under pressure that they have to, you know, grant more applications to men. You know, it's simply information like that really has no place in the patch, it's just another part of the statute that says anyone other than a person should be entitled to rights. And the misuse of that is so easy.

There's still some data floating around the internet that says I have a case on that I owe

my supervisor and I've owed it for 25 years. And I'm not making that up.

MS. ALTON: Again, we're happy to keep you all posted on the work that we're doing related to the report that's due, as well as this legislation that's moving through Congress. We definitely want your input as we move forward with these two initiatives.

Any other questions on Success Act? All right. If not I will just wrap up with my final slide that just again highlights some of the legislative priorities for the Agency related to continuity of fees during a lapse of appropriation, investment authority of the PTO, elevating the rank of our IP attaches to counselor, as well as 101 reform, and of course drug pricing in patents.

So with that I will open the floor for any additional questions.

CHIEF JENKINS: Anything else? No? Steve.

MR. CALTRIDER: On some of the more substantive type of issues, ones where the user community may not be of a single mind on, how does

the office form a policy position on? For example on the drug pricing, certainly there's an interest in lowering drug prices, I think it's something that's universally accepted. But at the same time you don't want to throw away innovation in the process of lowering drug prices.

So how does the office go about forming a policy position? Or even for that matter, even on 101. I understand how the office can share, here's the unintended consequences or intended consequences of certain legislative action. But in terms of more active engagement, how does the office form that policy?

MS. ALTON: There is, and this is with any legislation, a pretty complicated interagency process that the USPTO goes through. So what we have been providing so far on 101 and on drug pricing is really more sort of education to the staffers, and sort of walking them through the bills and giving them our thoughts on them. But in terms of proposals, there is a process where USPTO as part of the Department of Commerce, our policy team works with our counterparts at the

Department of Commerce. There's a process then within Commerce to then share any policy proposals. And again this applies to any policy, to other agencies that might have some equity as it relates to whatever policy.

And then ultimately going to the White House for clearance. So it's sort of a long process, but whenever you see sort of a position on anything that has the support of the Administration, it has gone through this very detailed interagency process.

CHAIR JENKINS: Okay. Well I think we covered a lot in that segment. Thank you.

MS. ALTON: All right. Thank you.

CHAIR JENKINS: We'll be watching. Jennifer, how are we doing on our finance? Are we good for finance? Yes? Great.

I cannot say in my two and a half years as Chair that we have been ever this early. So yippee.

MR. POWELL: It is just a tribute to excellent Chairmanship.

CHAIR JENKINS: Oh, yeah, there you go. Nice work.

MR. MILDREW: All right. Good afternoon. Glad to join you today. My name is Sean Mildrew, and I'm the Acting CFO here at United States Patent and Trademark Office.

We've got a fairly typical agenda, I think you guys know we usually cover three fiscal years during this briefing. We'll talk about 2019, 2020, and 2021. We'll also talk a little bit about our fee rulemaking situation and our biannual fee review.

To get into fiscal year 2019 status, year to date. So through June 30th, 2019 the Agency has collected a total of $2.5 billion in fees, approximately $2.2 billion of that would be collections on the patent side. We have spent $2.6 billion in total, and $2.3 billion on the patent side. This includes spending for both commitments and for obligations. And of that total spend, about $2.3 billion, about $100 million are on the commitment side. Which are for things that we planned to spend out funds on. And this is made up of mostly procurement items and other non-compensation items. So about $100 million in commitments.

Typically the USPTO is able to spend beyond its fee collection level due to its prior year operating reserve balance and other income. And I'll talk about the other income collections on the next slide here.

So fiscal year 2019 end of year. So our estimated fee collection plan has been updated since we last met, and we refreshed our estimates, using our latest assumptions in June. So as of June 30th our total projected fee collections is $3.368 billion, of which just over $3 billion is on the patent side. We're projected to spend $3.4 billion, again just over $3 billion, so this is on the patent side.

As I mentioned before, in addition to fee collections the Agency is authorized to spend other income for patents, this is about $34 million. And that includes recoveries and things like refunds. And then obviously our carry over, and for patents it was about $311 million from last year.

We're projected total end of year operating reserve of $412 million. And of this we would have roughly just under $300 million on

the patent side. And just as a footnote, our minimum operating reserve level is $300 million. This is just slightly below that level.

The end of year projection for our operating reserve is our best estimate based on known assumptions as related to projected fee collections and spending requirements.

So current projections show that we will dip about $15 million into our patent operating reserve by the end of the year. Not bad.

So this next slide shows our 2019 status for fees. And just to give you some orientation, two slides there, two charts. The first chart shows two years of actual, so that's '17 an '18, and then the '19 column shows our planned amount for the full year. And then that second group of charts show all actuals, year to date actuals as of June 30th. So '17, '18, and '19 are actual amounts as of the end of third quarter, June 30th.

The 2019 end of year fee estimate, which as we noted on the last slide, has recently been updated, is.6 percent above the 2018 actual collections. Fee collections through June 20th

are.2 percent higher than fee collections last year through June 30.

As a reminder, we had adjusted our fees in January, 2018, so we collected fees at the higher rates for most of 2018. And this is the reason why you're seeing a big bump between '17 and '18, if you're looking at the change increase percentage.

Okay. So moving right along to our 2020 budget. So the House completed action on our bill and are recommending an appropriation of $3.45 billion, which aligns with our 2020 President's Budget request level, which is great news. We're still waiting on the Senate to take action. Once the Senate takes action both sides of Congress will get together on a conference bill and resolve any differences, and then hopefully move forward with a final past bill for the President to sign. As you know, our fiscal year ends on September 30th, so if we don't have an enacted bill or a continuing resolution on October 1st, that could be a potential shut down situation. So we're hopeful that there's still time for the Senate to take action and for that

conference to take place in time for the President to sign before October the 1st, again, the beginning of the fiscal year.

So looking ahead to the 2021 budget, PTO is working on that budget right now. We started months ago. It seems like just when you finish one budget you're starting another. And just as a note, the PPACs in the department will receive a draft review sometime in last August, later on this month, and that the final document is scheduled to be submitted to OMB on September the 9th.

This is all pre-decisional and within the Executive Branch only. The public will get to see the final PTO budget request as part of the President's Budget sometime in February, 2020. So by law the President has to submit a budget request by the first Monday in February, so we hope to be able to reveal the budget document to the public at that time.

So next up is our fee rulemaking process. The rulemaking is a result of a comprehensive biannual fee review that began back in 2017 where we analyzed the effects of proposed

fee changes on our operating model, and concluded that a fee adjustment was necessary to provide the resources to improve patent operations, including implementing the USPTO 2018/2022 Strategic Plan.

I'm sure that everyone is aware that the Notice of Proposed Rulemaking was released to the public on July 31st, last week. And that begins a 60 day comment period. Comments are due by September the 30th of this year. So that will conclude the 60 day comment period. And we've actually received some comments so far. So that's a good sign, and that's certainly what we want to make sure the public is aware of and can review and comment on that rulemaking proposal.

MR. LANG: So on the NPRM, you have any commentary about, you know, perhaps some of the more controversial aspects of the proposal? And in particular, maybe focus on the PTAB fees and their effect on smaller entities for one. And two, on the new OED rules.

MR. MILDREW: Sure, Dan. Again, it wasn't necessarily part of this presentation, the rulemaking is available for the public to review

and to comment on the proposed fee adjustments.

With regard to AIA trial fees with regard to smaller micro entities, USPTO currently doesn't have the statutory authority to offer smaller micro entity discounts for AIA trials. But, you know, if that's something that the IP community is interested in. I think, you know, receiving comments and feedback on that it would be welcome. And that's part of the reason why we pursued the transparency of a rulemaking process is to really involve not only our public advisory committees when we change rules, but also the public in general as well, specifically the IP community. So we really do want to hear from them, and we encourage them to take a look at the fee proposal.

I guess what I could say just in general is a broad brush, because I'm not a program expert so I don't want to go into a whole lot of detail about the fee proposals. But I guess what I want to say is that because we're seeking public comment on this, we really want all comments submitted through the fee.setting at USPTO.gov.fee.setting at USPTO.gov by September

30th. So that's the 60 day comment period.

Because all of those comments will become part of the public record for this rulemaking effort and that we'll be able to respond to them in the final rule. So there's some transparency as well. So capturing those in a controlled format really is what we're looking for.

And again, not to get into any specifics because I'm not a program expert in this area, but just to encourage folks to take a look at that proposed rulemaking and then give us their questions and comments that we can respond to is I think really helpful, and that's exactly what we're looking for.

MS. MAR-SPINOLA: I think we can put that in there, the micro entity thing, but because of the Success Act and the issues regarding the lower income individuals, that we can also look at it from implementation of any initiatives under the Success Act as well as on the fee side. Let me say it differently. The Success Act seems to me to be the right place to justify micro entity aimants or status so that the folks who are lower

income Einsteins, I think of them as that way, is that they at least have an opportunity to be able to put up a good fight as needed on post-grant proceedings.

CHAIR JENKINS: So everyone knows too, the PPAC is in the unique situation that we get to put together an annual report. So we're happy to put our comments in about the fees. And every report that we have done since I have been on this Committee for the last six years has talked about the importance of micro entity and small entity. And we recognize it's a statutory issue, but we again and again and again say that this is an important aspect to the inventor community. And I think the Success Act just augments that, that we have to be mindful of independent and individuals and disadvantaged who can't afford the patent system. And so we need to recognize that we are unto everyone. So it will be in our report and, you know, that's how we comment.

Our report won't be done by September 30th, we could try. We could submit the report in the box.

I have a question on -- and this is

something that I'm paying more attention to, is the reserve fund. So particularly with this October date looming I think we all need to be mindful of what position the office is in with respect to the reserve fund and having a very robust reserve fund is important for the office. Again, we've put that in every single report as well, as long as I can remember.

So it looks like on the numbers that were in the presentation that it looks like we're in a pretty good spot compared to where we were in, I guess December of last year.

MR. MILDREW: I would agree.

CHAIR JENKINS: Would you agree?

MR. MILDREW: Yes. And I also agree that that operating reserve aspect of our overall program here at PTO is key and it's actually been endorsed by the Government Accountability Office, GAO, for government entities that are fee funded to retain some of those revenues so they can set up an operating reserve account. So they would also echo, I think, the comments that we've heard through the years from the PPAC.

CHAIR JENKINS: We were also

commenting as well that there could be consideration of a special exemption if there's another budgetary crisis like that, that the PTO would have access to it to fund immediately rather than having to wait. So that's something else that has been discussed among the PPAC. So.

MR. MILDREW: Well we certainly appreciate the comments and the ideas that the PPAC is floating and is considering because that is helpful for the overall process.

CHAIR JENKINS: Any other questions? No?

MR. MILDREW: Just had one last slide before I conclude. And it's just our biannual fee review. So we've got the fee proposal going through now through the 60 day public comment period, as mentioned. And that hasn't stopped us from continuing our biannual review, which kicked off in January, 2019. So just as soon as we get one proposal going it looks like we're already studying possibilities for new proposals and ideas. So just to let everybody know that that process is ongoing, part of our biannual fee review.

And I'd be happy to address any other comments or questions at this time.

CHAIR JENKINS: I think it's important, that last slide is really important for the user community to truly understand that in a sense, I don't say this quite right. The PTO is always now, always now. Didn't used to be, so several years ago this is not the practice. But is always now looking at its budget and then looking at its budget again and looking at its budget again and looking at its budget again.

So in one sense it's a little confusing for stakeholders because they feel like haven't we just done this already, didn't you just fee increase us already? But as Andrei mentioned, it's really a two to three year process for any of this to be implemented. And I know there has been also discussion among the committee of, you know, is this something that would it make more sense to have a review once, you know, to have a different type of, you know, looking at the fees in a whole new way and giving it a whole new analysis and the whole fee structure so you wouldn't have to keep doing this over and over and

over again. So that's just something we've been talking about as well.

MR. MILDREW: Yeah, and I think that's open for continuing conversation, and obviously it's something that we're looking at as well. And our Director is one who really encourages that active dialogue in discussion to really make sure that we are postured as well as we can be for a future that really is yet to be discovered and revealed. And so it's exciting, and you're right, it's an ongoing process here at PTO.

MS. MAR-SPINOLA: Sean, would you, just to refresh us, is the timeline in process, right? So the request is out for comment, then there's the deadline for that. Then what happens?

CHAIR JENKINS: Just to be clear, comments for what, our hearing that we had last September?

MS. MAR-SPINOLA: Yeah.

CHAIR JENKINS: So just to give you a flavor, it took almost a year for that to happen. August.

MS. MAR-SPINOLA: Yeah.

MR. MILDREW: Correct. Right. It was about a year ago that we kicked off the proposal, and then the PPAC reviewed and then provided a written comment on the proposal. And then as it worked its way through the administration and clearance process, it's now at the point where we're proposing rules to the public and we have a comment period time. And then we'll take those comments back as we work toward a final rule. And then after the final rule is put together based on the comments, the feedback, not only from the PPAC, the public, the IT community, we'll put a final rule together and then there'll be an implementation. I believe it's 45 days after publish of the final rule.

MS. MAR-SPINOLA: How can the public see all the other comments?

MR. MILDREW: They will be included in the final rule. So the comments that we'll receive will be put together in the final rule and then they'll be an explanation of either acceptance, change, or reconsideration. So there'll be some response that they'll see from the PTO in that document.

MS. MAR-SPINOLA: But the final rule means that additional comments can still be made, or no?

MR. MILDREW: The final rule will be the final rule at that point.

MS. MAR-SPINOLA: Okay.

MR. MILDREW: I think we post, is that right, we post some of those comments that we receive on line?

MS. MAR-SPINOLA: I'm just thinking. You know, sometimes reading other people's comments can trigger or encourage others to comment.

MR. MILDREW: Sure.

MS. MAR-SPINOLA: And so is there an opportunity for folks to see what the other comments are before the final rule?

MR. BAHR: Hi. Do you mind if I sort of cut in? Normally what our practice is that when we get comments from the public we post them on line. Now obviously if someone submits comments now and we post them now, somebody else can see that comment before they comment. But if everybody comments on the last day then, you know,

there's no really effective ability to see somebody else's comment and then comment.

MS. MAR-SPINOLA: I understand what you just explained. And what I was thinking through was how helpful is that for the stakeholders?

MR. BAHR: Well, I would say first, you know, in this particular process we publish an initial proposal, we get comments on it, everybody's free to read those comments and submit their comments, you know, and keep those in mind when they submit now. Obviously if we have a comment period, post those comments and have another comment period and post those comments, at some point you have to stop. You know, and this is the point where it stops. You know, the next step would be the final rule that makes the changes that are made as a result of this rulemaking.

MS. MAR-SPINOLA: But there's one cycle, right?

MR. BAHR: Well actually there are two cycles.

MS. MAR-SPINOLA: There are two

cycles.

MR. BAHR: This is the second cycle.

MS. MAR-SPINOLA: Okay. Okay. And I bring it up only because obviously this is a really touchy point for the stakeholders. And I would assume, but I have no evidence to support it, that there would be a lot of comments coming in on the fees. But I don't know. Do we know how many, about?

MR. BAHR: Well I think what they just started.

MS. MAR-SPINOLA: On the second round.

MR. MILDREW: Yeah, I think we've got about 13 so far.

MS. MAR-SPINOLA: Thirteen comments?

MR. MILDREW: Thirteen comments. But again, keep in mind this kicked off with a public hearing back about a year ago and then we had the PPAC produce a report for us. And we've been working those comments through the administration to come up with this Notice of Proposed Rulemaking. Which is the first step in rulemaking. And this is just the comment period that's required by the rulemaking process to

allow the public to have another look and see the proposed rule.

MS. MAR-SPINOLA: Right. Right.

MR. MILDREW: And then to make any additional comments that they might have in addition to the comments that were made and received at the public hearing about a year ago. So this is like a second bite of the apple.

MS. MAR-SPINOLA: Right. And so it's not just 13 individuals who have commented, you have organizations that have commented, right?

MR. MILDREW: I don't have the exact understanding of who, I just know that we have about 13 comments so far.

MS. MAR-SPINOLA: Okay. Thank you.

MR. MILDREW: Sure. Any other questions?

CHAIR JENKINS: No? Okay. Thank you. Thank you.

MR. MILDREW: Thanks.

CHAIR JENKINS: Always so informative and obviously vitally important to the operation of the office.

I am noting that it is 2:23, we are

supposed to go to 2:40, but we early. So thank you all. This has been a great session, wonderful topics, great conversation, great questions, great dialogue, as always.

And with that I'd like to move to dismiss the meeting. Yes? Can I have a second?

MR. POWELL: Just on behalf of this side of the PPAC table just, yes, I think these meetings are excellently chaired of late, that's our finishing early. I just wanted to say on behalf of this side, you know, we've had Andrei for our Director now for right at 18 months and it's been an exciting 18 months. And I think that our cooperation with the PPAC has never been better because things move fast and we all need to hear every side of the equation for each of our many problems, right? And I think that this group is doing a fantastic job in fulfilling this statutory mandate for the Advisory Committee, and this has been fantastic. So thank you.

CHAIR JENKINS: Thank you, Mark, appreciate it. All right. With that I am going to dismiss the meeting. Thank you so much.

(Whereupon, at 3:35 p.m., the

PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: August 31, 2021

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