

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

QUARTERLY MEETING

Alexandria, Virginia

Thursday, February 6, 2020

1 PARTICIPANTS:

2 PPAC Members:

3 JULIE MAR-SPINOLA, Chair

4 JENNIFER CAMACHO, Vice Chair

5 STEVEN CALTRIDER

6 BERNARD CASSIDY

7 JEREMIAH CHAN

8 TRACY G. DURKIN

9 MARK GOODSON

10 DAN LANG

11 JEFFREY SEARS

12 USPTO:

13 ANDREI IANCU, Under Secretary of Commerce for
Intellectual Property and Director of the USPTO

14 KIMBERLEY ALTON, Deputy Director, Office of
15 Governmental Affairs

16 SCOTT BOALICK, Chief Judge, Patent and Trial
and Appeal Board

17 JACKIE BONILLA, Deputy Chief Judge, Patent Trial
18 and Appeal Board

19 KAL DESHPANDE, Lead Judge, Patent Trial and
Appeal Board

20 ANDREW FAILE, Deputy Commissioner for Patent
21 Operations

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1 PARTICIPANTS (CONT'D):

2 JAY HOFFMAN, Chief Financial Officer

3 JAMIE HOLCOMBE, Chief Information Officer

4 STEFANOS KARMIS, Director, Office of Patent
5 Quality Assurance

6 TIM FINK, Deputy Vice Judge, Patent Trial and
Appeal Board

7 JANET GONGOLA, Deputy Vice Judge, Patent.
8 Trial and Appeal Board

9 NICK MATICH, Senior Legal Advisor

10 LAURA PETER, Deputy Under Secretary of Commerce
for Intellectual Property; Deputy Director
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11 MICHELLE PICARD, Senior Advisor for Financial
12 Management, Office of the Chief Information
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13 MARK POWELL, Deputy Commissioner for
14 International Patent Cooperation

15 BRANDEN RITCHIE, Senior Legal Advisor, Office of
16 the Under Secretary and Director

17 RAMAN SARNA, Portfolio Manager, PE2E

18 RICK SEIDEL, Deputy Commissioner of Patent
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21 COKE STEWART, Senior Policy Advisor; Acting
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22 and Director

1 PARTICIPANTS (CONT'D):

2 WILLIAM STRYJEWSKI, Patent Senior Information
3 Technology Expert

4 MATTHEW SUCH, Director, Technology Center 2800

5 VALENCIA MARTIN WALLACE, Deputy Commissioner
6 for Patent Quality

7 Other Participants:

8 BOB BAHR

9 KATHLEEN DUDA

10 DREW HIRSHFELD

11 DON WATSON

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1 P R O C E E D I N G S

2 (9:07 a.m.)

3 MS. MAR-SPINOLA: I would like to call
4 to order this first quarterly meeting of PPAC. I
5 want to wish everyone a happy new year. It's a
6 good year. I'm sure it'll be a good year. And I
7 also want to welcome our newest members of PPAC,
8 and that is Tracy Durkin and Jeremiah Chan, and
9 then Jeff Sears, who's been renominated and glad
10 you're here.

11 Thank you, and the rest of the committee
12 will introduce themselves in a minute.

13 But I just wanted to say that I am
14 honored for -- to be the Chair of the committee.
15 I recognize the importance of the PPAC's role to
16 review the policies, goals, performance, budget,
17 and user fees of patent operations. And the PPAC
18 will do our best to collect input from our diverse
19 users of the Patent Office to advise the Director
20 and the patent agency on these matters.

21 The theme that we've chosen for this
22 year is "20/20 Vision". In Optometry, 20/20 Vision

1 refers to the clarity and sharpness of vision
2 measured from a distance. And so, the goal that
3 we've set for this year's PPAC is to examine the
4 U.S. Patent Office operations from a point in the
5 future.

6 I believe this will help us identify the
7 necessary financial, IT infrastructure, policies,
8 and workforce metrics, needed for the overall
9 objective of improving quality, which I refer to
10 as the durability of the Patent Office's product,
11 in this case, the patent, as well as to
12 meaningfully increase the diversity of
13 inventorship for our inventorship community.

14 To this end, the PPAC has formed two new
15 subcommittees: The Artificial Intelligence
16 Subcommittee, as well as the Innovation Expansion
17 Subcommittee. And you'll hear about those things
18 a little bit more today.

19 Regarding the AI Subcommittee, the PPAC
20 wants to ensure that where AI technology tools are
21 needed that we can support the Patent Office on
22 that.

1 And then on Innovation Expansion, our
2 goal is to support the efforts of the National
3 Council that is led by Valencia Martin-Wallace,
4 and you'll hear more about that later, and to
5 identify and create incentivizing programs and
6 tools for the purpose of significantly increasing
7 inventorship among the less and under-represented
8 inventors.

9 So, we share and are committed to the
10 Director's vision and commitment to the
11 utilization of AI technologies throughout the
12 agency and to change the makeup of our
13 inventorship community.

14 So, with that I'd like to turn it to the
15 Director, Andrei, thank you.

16 MR. IANCU: Great, thank you, Julie, and
17 good morning, everybody. So good to see all of
18 you.

19 Julie, did you want folks to introduce
20 themselves now or afterwards?

21 MS. MAR-SPINOLA: How about we go around
22 the table?

1 MR. IANCU: Okay, so let's do that
2 first.

3 MS. MAR-SPINOLA: Let's start with
4 Cathy, please.

5 MS. FAINT: Catherine Faint, vice
6 president NTEU 245 and a member of PPAC.

7 MS. DUDA: Kathy Duda, president of POPA
8 on PPAC.

9 MR. CHAN: Jeremiah Chan, new member of
10 PPAC.

11 MS. DURKIN: And Tracy Durkin, also a
12 new member of the PPAC.

13 MR. CASSIDY: Barney Cassidy, PPAC.

14 MR. CALTRIDER: Steve Caltrider, PPAC.

15 MR. SEARS: Jeff Sears, PPAC.

16 MR. LANG: DanLang, PPAC.

17 MS. CAMACHO: Jennifer Camacho.

18 MR. HIRSHFELD: Drew Hirshfeld,
19 Commissioner for Patents.

20 MR. FAILE: Andy Faile, USPTO.

21 MR. BAHR: Bob Bahr, USPTO.

22 MR. POWELL: Mark Powell, USPTO.

1 MR. SEIDEL: Rick Seidel, USPTO.

2 MS. MARTIN-WALLACE: Valencia
3 Martin-Wallace, USPTO.

4 MR. IANCU: All right, great. Once
5 again, welcome, everybody.

6 Let me start with swearing in the new
7 members of PPAC, as well as the one returning
8 member who has had his term renewed.

9 So, first of all, Tracy Durkin is the
10 practice leader of the Mechanical and Design
11 Practice Group, and a member of the Trademark and
12 Brand Protection Practice at the law firm of
13 Sterne Kessler here in Washington, D.C.

14 Jeremiah Chan joins our committee from
15 Facebook, where he leads a team that works on IP
16 transactions, dispute resolution, and other risk
17 mitigation initiatives, as well as industry-wide
18 efforts to promote greater diversity in
19 innovation.

20 And as I mentioned, Jeff Sears. He was
21 appointed for a second term on PPAC. Welcome back
22 to Jeff as well. As folks know, Jeff serves as

1 associate general counsel and chief patent counsel
2 for Columbia University.

3 So, Jeremiah, Tracy, and Jeff, would you
4 please stand up and join me back here, and we will
5 do the swearing- in.

6 What do we do about the mic? Okay, I'll
7 hold this.

8 (Members sworn in.)

9 MR. IANCU: Congratulations, and welcome
10 once again.

11 (Applause) Great. Welcome once
12 again. And I also want to
13 congratulate Julie Mar-Spinola and
14 Jennifer Camacho who are now
15 serving as the new chair and
16 vice-chair of this committee,
17 respectively.

18 As always, we have an impressive lineup
19 of speakers and presentations today and from what
20 I see here, a jam-packed agenda. So, let me get
21 right to it.

22 In a nutshell, I anticipate a continued

1 emphasis on expanding the innovation ecosystem
2 among each of the groups that were identified in
3 the SUCCESS Act, including women, minorities, and
4 veterans.

5 As many of you know, the USPTO issued a
6 report to Congress on October 31 of last year
7 about the participation rates of these groups. In
8 that report, the Agency made a series of
9 recommendations regarding legislation and
10 initiatives that can help increase awareness among
11 these groups of the importance of IP and
12 facilitate their participation in the patent
13 system. Beyond that, we also want to make sure
14 that innovation is expanded geographically and
15 economically throughout the United States in
16 addition to demographically.

17 As I've said many times publicly,
18 including in this committee, if the United States
19 is to maintain its technological leadership, it
20 cannot compete with one hand tied behind its back.
21 In today's highly competitive global economy, it
22 is critically important that we work to ensure

1 that all Americans have the opportunity to invent,
2 to start new companies, to succeed in established
3 companies, and ultimately to achieve the American
4 dream. In short, we need all hands on deck.

5 To that end, the SUCCESS Act aligns
6 perfectly with our ongoing focus on ensuring that
7 everyone in this country has effective access to
8 the IP systems. This emphasis is also in
9 alignment with many USPTO initiatives, including
10 our long- standing partnership with the National
11 Inventors Hall of Fame, our educational outreach
12 efforts, and the variety of stakeholder events,
13 including the Women's Entrepreneurship Summit and
14 many others.

15 Additionally, I anticipate that there
16 will be a heightened emphasis throughout 2020 on
17 the importance of enhanced IT systems and
18 artificial intelligence, and overall, the
19 importance of intellectual property innovation.

20 It is clear that there is widespread
21 agreement throughout the United States that
22 innovation is important. But it is also important

1 to emphasize the inextricable connection between
2 innovation and intellectual property rights.
3 Predictable and reliable IP rights are a necessary
4 component of a robust innovation economy.

5 Last night -- yesterday, actually, the
6 U.S. Chamber of Commerce, the GIPC unit of the
7 U.S. Chamber of Commerce issued its 2020 report
8 ranking the various countries around the world
9 when it comes to intellectual property. And last
10 night they had their presentation ceremony. I was
11 honored to speak there briefly.

12 The results are extremely encouraging
13 for the United States and I was very proud of the
14 achievements. Among other things, the United
15 States is ranked as the leader among all of the
16 nations in the world as the number one for overall
17 intellectual property, and our lead has increased
18 in the past year. We are ranked first on
19 trademarks with a perfect score. We are ranked
20 second on patents in a four-way tie. You might
21 recall that last year we were also ranked second,
22 up from number 12 two years ago. But last year

1 for our second-place tie, there were, I believe,
2 10 to 12 countries. Now, in the second place,
3 there's only a four-way tie.

4 We are first -- ranked first in
5 enforcement. First in system efficiency, first in
6 treaty ratification, and also in the leading -- or
7 among the leaders in various other areas including
8 first in copyright as well.

9 So, the work that the administration and
10 American industry have done together is being
11 recognized and we are very proud of that.

12 Before getting into more details about
13 the operations of the PTO, let me mention that --
14 a few senior level changes at the PTO. Yesterday,
15 we were very proud to announce that David Gooder
16 will assume the role of Commissioner for
17 Trademarks effective March 2nd.

18 For over 25 years, David has
19 demonstrated a passion for IP and has a
20 well-developed reputation as a dynamic leader of
21 teams. He has worked in the IP community and
22 dealt with a myriad of brand protection challenges

1 facing iconic global brands. Upon David's arrival
2 at the USPTO next month, Meryl Hershkowitz, who
3 has been serving as the Acting Commissioner for
4 Trademarks, will return to her duties as Deputy
5 Commissioner.

6 Additionally, you may have heard that we
7 welcomed our new Chief Financial Officer Jay
8 Hoffman last month. Jay joins us with more than
9 22 years of federal financial management
10 experience, including 15 years as a member of the
11 senior executive staff. For the last eight years,
12 Jay served as the CFO for the U.S. Consumer
13 Protection Safety Commission where he was the
14 principal advisor to the CPSC, chairman on all
15 aspects of financial management. You'll hear a
16 lot more from Jay later this afternoon when he
17 provides an update on the USPTO's budget. So,
18 please stay tuned to that.

19 In other senior staffing news, John
20 Cabeca, a thirty-year veteran of the USPTO
21 recently announced that he will be leaving his
22 role as Director of the Silicon Valley Regional

1 Office, but he will still be with us in a
2 different role. He has accepted a diplomatic post
3 as the IP attaché for South Asia, where he will
4 serve U.S. industries doing business in South Asia
5 and advocate for effective IP policies to support
6 the strong and vibrant IP system globally.

7 During this time of transition, Chris
8 Shipp, who was previously serving as my Chief of
9 Staff, will provide leadership to the Silicon
10 Valley Regional Office until the director role is
11 permanently filled. As you probably know, that
12 office serves as an innovation ambassador in the
13 region, which includes Alaska, Arizona,
14 California, Hawaii, Nevada, Oregon, and Washington
15 state.

16 Filling Chris' shoes on an interim basis
17 here at the USPTO as Chief of Staff is Coke
18 Stewart, who previously served as my senior policy
19 advisor on a variety of patent policy issues.
20 Coke has worked at the USPTO since 2011 in a
21 number of important roles, including as associate
22 solicitor, acting deputy solicitor, senior advisor

1 to the director, as I mentioned, and acting chief
2 of staff.

3 So, we're very excited about the various
4 folks assuming important roles and I think the
5 agency and the United States IP community will be
6 very well served.

7 Turning just briefly to IP policy,
8 patent policy in particular, Section 101 of the
9 Patent Code remains the top issue when it comes to
10 patent policy in the United States. The PTO did
11 our part, I believe, with issuance of guidance a
12 year ago and then again updated guidance in
13 October of 2019.

14 The results have been extremely good and
15 in a variety of ways. We hear at least
16 anecdotally the improvement that this has made in
17 the examination process and with our 8,500-plus
18 examiners. We know from our statistics that the
19 results have been extremely good. The number of
20 rejections under 101 in the areas that matter most
21 is dramatically lower. The consistency of results
22 between various examiners applying Section 101 is

1 dramatically higher. And all that is very, very
2 good news for the American patent system.

3 Of course, our guidance is not binding
4 on the courts and it remains to be seen what the
5 courts will do. To the extent that there is a
6 legislative process with respect to Section 101,
7 as we know that there was in 2019, but to the
8 extent that continues into 2020 and beyond, we
9 stand ready to help as necessary.

10 Turning now to pendency issues. At the
11 end of 2019, we achieved fabulous long-standing
12 goals with first office action pendency to below
13 15 months and total average pendency to below 24
14 months. By 2025, the USPTO expects to meet 90
15 percent of all applicable patent term adjustment
16 timeframes.

17 As this committee recommended in your
18 2019 PPAC Annual Report, the USPTO is focused on
19 its transition plan toward the refined pendency
20 measures based on patent term adjustment
21 timeframes. This will reduce the need for patent
22 term adjustments and give all applicants greater

1 certainty of the pendency of their own cases. And
2 while we are moving towards the 90 percent
3 compliance with PTA timeframes, we also expect to
4 maintain first action pendency below 15 months and
5 total pendency below 24 months, and hopefully
6 improve even beyond those numbers.

7 This improvement in workflow and
8 pendency is due in large part to a new process
9 that will improve the routing and the signing of
10 patent applications to patent examiners. More
11 specifically, the process will automatically match
12 each application to the examiner best suited to
13 examine the application. In doing so, it will
14 take into account the complete technological
15 profile of each application, the work experience
16 of each patent examiner, and the workload
17 balancing needs of the agency. This is a
18 capability that we expect will be fully
19 implemented for the first time in October 2020.

20 Now, I know I don't need to remind
21 anyone in this room that IP rights are an
22 important element of the American economy and

1 contribute enormously to global economic growth.
2 On that note, patent total serialized filings
3 increased 4.6 percent in the first quarter of
4 fiscal year 2020 as compared to the same quarter a
5 year ago. As noted in the fiscal year 2021 Office
6 of Management and Budget submission, the USPTO
7 long-term forecast projects steady growth for
8 patent serialized applications between fiscal year
9 2021 through 2025.

10 On another note, you may have heard that
11 I traveled last week to Mexico City. I was there
12 with United States Secretary of Commerce Wilbur
13 Ross. We met with our respective counterparts and
14 while there, I signed a new agreement with my
15 Mexican counterpart, Juan Lozano, that will make
16 it easier for those with U.S. patents to get
17 corresponding ones in Mexico.

18 Under the new work sharing agreement,
19 our two agencies, the USPTO and the Mexican
20 Institute of Industrial Property known as IMPI,
21 will implement a parallel patent grant framework
22 that will enable IMPI to have access to USPTO

1 search and examination results when examining the
2 application for a counterpart Mexican patent. The
3 goal of the agreement is to dramatically shorten
4 the application review time in Mexico and to use
5 fewer institutional resources.

6 The USPTO strongly supports
7 collaboration around the globe to protect and
8 promote intellectual property. We have
9 collaboration agreements with many offices around
10 the world and we stand ready to extend our
11 collaboration with other countries around the
12 world interested in enhancing intellectual
13 property rights.

14 We are particularly proud of our close
15 collaboration with IMPI and we believe that the
16 memorandum of agreement that was signed last
17 Tuesday between the U.S. and Mexico stands as a
18 model for bilateral cooperation. So, I'll leave
19 it there for now. You will hear much more
20 throughout the day. And, of course, throughout
21 the process we welcome your comments, questions,
22 feedback, and so on.

1 I'd like to thank each of you, not just
2 on behalf of the Agency, of course, I do thank you
3 on behalf of the USPTO, but also on behalf of our
4 nation and its inventors. The continued
5 collaboration between the USPTO and PPAC is
6 enormously important and your insight and guidance
7 are invaluable.

8 Thank you, and if we have time, Julie, I
9 would be happy to answer any questions.

10 MS. MAR-SPINOLA: Thank you, Director.
11 Are there any questions from PPAC? Okay, with
12 that I know you have a tight schedule too. So,
13 thank you and I believe that our next speaker is
14 going to be Nick Matich, is that right?

15 Okay, hi, Nick. And Nick will be --
16 Nick is Senior Legal Advisor, Office of the
17 Undersecretary and Director. And he'll be giving
18 us an update on the Arthrex matter.

19 MR. MATICH: Thank you very much. Yes,
20 my name is Nick Matich, and I have been asked to
21 address the committee on updates regarding the
22 Arthrex and appointment -- the Arthrex case and

1 Appointments Clause challenges that the PTAB has
2 been facing in recent months.

3 So, as most of the folks in this room
4 are likely aware, the federal circuit recently
5 held that the administrative patent judges of the
6 PTAB were unconstitutionally appointed.

7 The bottom-line impact from this ruling
8 is that a number of PTAB decisions that are
9 currently before the federal circuit will have to
10 be remanded and reheard by new panels absent a
11 change in the federal circuit's jurisprudence.

12 At the USPTO, we have been actively
13 involved in these cases. We filed an en banc
14 petition in Arthrex itself and as appellants
15 before the federal circuit have been filing
16 motions based on Arthrex or addressing it in their
17 briefs, we have been intervening in those cases to
18 continue to press our arguments.

19 So, to understand the case a little bit,
20 it requires a little bit of con law refresher or
21 maybe an introduction for those of you who aren't
22 lawyers. The Constitution lays out who gets to

1 make decisions for the executive branch. And it
2 says that important decisions have to be made by
3 officers of the United States. And so, anyone
4 who, as the supreme court said, "wields
5 significant authority" under federal law must be a
6 properly appointed officer of the United States.

7 The Constitution then lays out two
8 mechanisms for appointment: One for principal
9 officers and one for inferior officers. Principal
10 officers must be appointed by the President with
11 the advice and consent of the Senate. They are
12 known in Washington speak as PAS officials. And
13 then inferior officers are others and they --
14 Congress may vest their appointment in the
15 President alone, the heads of departments, or the
16 courts of law. Here what is relevant is the heads
17 of departments.

18 So, what is the difference between a
19 principal and an inferior officer? The supreme
20 court has not laid out a definitive test, but it
21 has used the word, inferior, to suggest that an
22 inferior officer is one who has a superior. And

1 it depends upon whether or not they are directed
2 and supervised at some level by someone who is a
3 PAS official.

4 So, with that background, what happened
5 in Arthrex? In Arthrex, the court held -- said
6 that the director does not exercise sufficient
7 direction and supervision over the APJs to render
8 them inferior officers. Of particular concern to
9 the court was the court's view that the director
10 lacks the ability to unilaterally vacate or review
11 a final decision issued by APJs, and that they
12 have removal protections and career protections
13 under Title 5 of the U.S. Code, which is basically
14 your ordinary civil service protections.

15 Since the PTAB judges are appointed by
16 the Secretary of Commerce, they are appointed in a
17 manner consistent with being inferior officers,
18 but not consistent with being principal officers.
19 Since the court viewed them as principal officers,
20 it held that they were unconstitutionally
21 appointed. The remedy the court said was to
22 strike the Title 5 removal protections as they

1 applied to APJs from the statute and then remand
2 the case for a hearing before a new panel. So, we
3 here at USPTO, as I said, have been involved in
4 this. We filed an en banc petition with the
5 federal circuit in December. The initial ruling
6 came down at the end of October. It was a
7 Halloween surprise. And we argued that the
8 director does have adequate control over the
9 board. We pointed to his general oversight
10 authority, his ability to assign who -- which
11 judges get appointed to hear particular cases, his
12 unfettered, or mostly unfettered discretion to
13 decide which cases to take in to begin with.

14 And then we also importantly questioned
15 the remedy. In Arthrex itself, the petitioner had
16 -- or the appellant had not raised the
17 constitutional question before the board so in our
18 view, the issue was forfeited. If we were to win
19 on that argument, it obviously wouldn't affect the
20 underlying holding, but it would substantially
21 affect the workload on the remands that would
22 affect the board.

1 And then we've been intervening in other
2 cases as it gets raised. There have been a very
3 significant number of those cases since October.

4 What has the federal circuit been doing?
5 So, the Federal circuit has been addressing those
6 other cases, each of which can raise unique issues
7 that are slightly different from Arthrex and
8 that's been defining the scope of what will be
9 ultimately remanded, if anything, to the board.

10 So, for example, the federal circuit
11 said you had to have raised the Arthrex issue in
12 your opening brief so appellants whose cases were
13 fully briefed up prior to the Arthrex decision are
14 not able to take advantage of it. They have
15 recently held that IPR petitioners could not take
16 advantage of the Arthrex decision, and we've been
17 getting other various decisions and requests for
18 briefing on sort of the follow-on issues from
19 Arthrex.

20 The en banc briefing is complete at this
21 point. Actually, all parties to the Arthrex
22 decision have sought en banc review and there have

1 been other parties that have sought en banc review
2 of the same issue. We expect a decision in the
3 Arthrex -- on our petition at any time, but
4 obviously, courts don't tell us when they're going
5 to render their decisions.

6 So, with that I'm happy to take any
7 questions that the committee may have about
8 Arthrex.

9 MR. SEARS: Hi, I've got a question for
10 you. Other agencies have administrative law
11 judges.

12 Patent Office is not unique in that
13 regard. Has this issue been raised against any
14 other agencies' ALJs?

15 MR. MATICH: So, other administrative
16 agencies do have ALJs. Obviously, we're the only
17 ones that have APJs. The possibility that similar
18 challenges could be raised against ALJs is
19 obviously something we have thought of, but how it
20 would apply in another case is uncertain because
21 the statutory scheme is different. The ability of
22 other secretaries to review particular decisions,

1 decide the dockets, those are all not necessarily
2 -- those are all potentially different.
3 Additionally, the protections, the career
4 protections that apply to ALJs are different.

5 So, bottom line, the general thrust may
6 or may not apply, but the facts of the particular
7 statutes are going to vary. And also, those cases
8 could arise outside the federal circuit, which,
9 you know, would be another factor as well.

10 MS. MAR-SPINOLA: Nick, thank you. That
11 actually was quite helpful and I appreciate that
12 and I'm now refreshed on constitutional law.
13 (Laughter) So, thank you. It's been a little
14 while.

15 Can you elaborate a little bit on the
16 Patent Office's specific position in this issue?

17 MR. MATICH: Yeah, so in the -- in both
18 our initial briefing in the Arthrex matter and in
19 the en banc petition, which raised basically
20 similar arguments because it's generally frowned
21 upon to raise totally new arguments in an en banc
22 petition, we just walk through the statute and go

1 through the various controls that the director
2 does have over the board. Which are the ones that
3 I mentioned, the beginning of the Patent Act, I
4 think it's Section 3, gives him general policy
5 oversight over the whole office and the PTAB is
6 obviously part of the Office. He gets to decide
7 whether or not to institute a case.

8 And we talked about the POP policy and
9 how he's been issuing presidential decisions. And
10 significantly -- and this is one of the things
11 that we talked about in our en banc petition, the
12 panel actually recognized that those authorities
13 are very significant. The panel apparently just
14 thought that the Title 5 coupled with what it
15 viewed as the inability to review a decision after
16 it issued is -- overcame those. We, of course,
17 pointed out that that's part of what the POP panel
18 was about, but that was not persuasive to the
19 panel. And we're hopeful that those arguments
20 would be more persuasive to the whole court.

21 MS. MAR-SPINOLA: Thank you. Any
22 further questions, Steve?

1 MR. CALTRIDER: Yeah, just to follow-up
2 on that. If the court disagrees and maintains its
3 holding that they are principal officers, did the
4 PTO take a position on whether the remedy is
5 sufficient that the federal circuit put in place?

6 MR. MATRICH: So, our position in
7 Arthrex with respect to the remedy is that because
8 the appellant in Arthrex didn't raise the issue
9 below, they should be entitled to no remedy. And
10 that would substantially limit the impact of the
11 case and have, well, large benefits for the agency
12 if the court were to adopt that.

13 As for a case where it was properly
14 preserved, and there are such cases, we -- the
15 court requested remedial briefing and we suggested
16 a number of different alternatives below. I'm not
17 sure and I don't think I should speak to what we
18 may say if the court were to grant en banc about
19 which remedy we might advocate for at that point
20 because, obviously, at this point we've also
21 gotten some additional experience and insight into
22 the practicalities of it, which might affect what

1 positions we take.

2 MS. MAR-SPINOLA: Okay, any other
3 questions? All right, we're going to move on.
4 Thank you, Nick.

5 MR. MATRICH: Thank you very much.

6 MS. MAR-SPINOLA: That was very, very
7 helpful and we look forward to further updates.

8 Okay, we are now going to have the PTAB
9 Subcommittee. Jeff Sears is the Chair for the
10 subcommittee for PPAC and then we have Scott
11 Boalick, Chief Judge, and Jackie Bonilla, Deputy
12 Chief Judge, Tim Fink, and Kal -- forgive me in
13 advance, Deshpande?

14 MR. DESHPANDE: Deshpande.

15 MS. MAR-SPINOLA: Deshpande, thank you.
16 And we have until 10:45, just to keep on the
17 schedule. Jeff?

18 MR. SEARS: Thanks very much, Julie. I
19 look forward to a good presentation today from the
20 PTAB on AIA trials, ex parte appeals, and other
21 proceedings before the board. I turn it over to
22 the PTAB.

1 MR. BOALICK: All right. Thank you,
2 Jeff. So, we have a couple of folks who are going
3 to present on some things that are happening here
4 at PTAB. So, we have our agenda, which is going
5 to start out with an update on our motion to amend
6 both the pilot program and the notice of proposed
7 rulemaking. We'll talk about precedential
8 informative cases, the area of multiple petitions
9 challenges.

10 Then we're going to talk about a couple
11 of new things. We have a new data visualization
12 in our monthly statistics that we'll show you, and
13 also just introduce a new to PTAB toolkit that
14 we've got on our website.

15 So, the first item is going to be Deputy
16 Chief Judge Jackie Bonilla to talk to you about
17 the motions to amend area.

18 MS. BONILLA: Hi, good morning. We
19 wanted to just give an update on recently back in
20 October we published a notice of proposed
21 rulemaking relating to motions to amend and
22 specifically, the burdens of persuasion on the

1 different parties in relations to motions to
2 amend.

3 In that notice of proposed rulemaking,
4 we proposed to assign the burden on patent owner
5 to show that a motion to amend meets certain
6 statutory regulatory requirements as an initial
7 matter. And also, to assign the burden of
8 persuasion in relation to patentability on the
9 petitioner in relation to substitute claims in a
10 motion to amend. The rule also points out,
11 however, that irrespective of the burdens that the
12 Office, and particularly the PTAB panel in the
13 interest of justice can actually step in and
14 exercise its discretion to grant or deny a motion
15 to amend for any reason supported by evidence of
16 the record.

17 And as noted in the NPRM, the Notice of
18 Proposed Rulemaking, this rule is consistent with
19 what our current practice is right now. It's
20 consistent with the burdens that are described in
21 our precedential decision, the Electronics decision
22 that you see there. So that published back in

1 October. The comment period for that Notice of
2 Proposed Rulemaking ended on December 13. Since
3 that time, we had 18 comments. The comments were
4 mixed. Overall, the comments did suggest that we
5 should, in fact, engage in rulemaking on this
6 issue. Other than that, they were quite mixed.
7 We're reviewing all those comments now and we
8 expect to issue a final rule some time in the near
9 future.

10 As another update, we wanted to talk a
11 little bit about the motion to amend pilot. That
12 started back in March. Just to give everybody an
13 update, it's been almost a year. And just as a
14 reminder to everyone, this particular pilot offers
15 two options that didn't exist before under the
16 pilot in relation to the motion to amend.

17 The first one is that the patent owner
18 if it wishes, can ask for the board to issue what
19 we're calling preliminary guidance. This is
20 information that's preliminary and non-binding in
21 nature, just to give the parties after a motion to
22 amend has been filed and an opposition has been

1 filed, to give some feedback to the parties about
2 where the board thinks things stand preliminarily.

3 Whether they file -- whether they
4 request preliminary guidance or not, the patent
5 owner can choose after the due dates to file a
6 revised motion to amend. So, for example, it
7 could take into account what's in the opposition
8 and the preliminary guidance from the parties and
9 revise its motion to amend.

10 And just so we know where we are again,
11 this pilot started back in March, so it was any
12 case that was instituted after that date. The
13 first time anybody could file a motion to amend
14 under the pilot was back in June. The first time
15 anybody filed a motion to amend requesting
16 preliminary guidance was on June 25th -- yes, June
17 25th of last year.

18 So far, there have been 47 motions to
19 amend that have been filed under the pilot. Out
20 of those 47, 39 of them have requested preliminary
21 guidance. So, it's the majority of them. We have
22 the -- the board has issued 16 preliminary

1 guidances so far. And so far, patent owners have
2 taken advantage of filing a revised motion to
3 amend 11 times.

4 And as of -- recently, we have had
5 hearings in relations to motions to amend. One
6 related to where there was no -- they didn't ask
7 for any information from the board. And then we
8 just recently last week had a hearing in relation
9 to a motion to amend that involved preliminary
10 guidance.

11 So, basically, the first time that
12 anyone who could take advantage of the pilot where
13 a motion to amend would be -- excuse me, where a
14 final written decision on the motion to amend
15 would take place is in March. And the first time
16 that we would see a final written decision where
17 preliminary guidance has been requested would be
18 in April.

19 MR. BOALICK: All right, and our next
20 topic talking about new POP decisions,
21 precedential and informative cases, our Lead Judge
22 Kal Deshpande.

1 MR. DESPANDE: Hi, thank you. Let me
2 start with a little bit of background. The board
3 has a standard operating procedure too. In
4 September of 2018, it was revised to sort of
5 dictate how the board designates cases as
6 precedential and informative. To quickly define
7 the terms, precedential is something we determine
8 to be a binding authority. It generally involves
9 issues of exceptional importance. Informative
10 cases, or informative designation, deals with
11 something that's reoccurring at the board, just
12 gives general guidance as to board policies and
13 procedures.

14 Since we've revised the standard
15 operating procedure too, we've had 19 cases
16 designated as precedential and 13 as informative.
17 The standard operating procedure identifies two
18 different pathways towards designation. It has
19 pathway one, which is the POP process, and a
20 pathway two, which is our designation process.
21 So, using the designation process, we've actually
22 designated 16 cases as precedential and the POP

1 has dealt with three issues so far, and is
2 currently dealing with a fourth.

3 In December of last year, the POP issued
4 a new decision in the Hulu decision. It's the
5 third one on the list. Just something to note
6 from this list is the fourth case, Hunting Titan
7 is still currently pending before the POP. It
8 deals with the motion to amend process at the
9 board and it is scheduled for an oral hearing on
10 February 18th at 1:15 p.m. Here in the Madison
11 building.

12 The decision in the Hulu decision -- the
13 issue that the POP took up is the -- what is
14 required for a petitioner to establish that an
15 asserted reference qualifies as a printed
16 publication at the institution stage. After
17 receiving -- following the POP process, which
18 involves receiving briefing from the parties,
19 allowing for amicus briefing and having an oral
20 hearing, the POP held the oral hearing on June
21 18th, and issued a decision in December.

22 The POP concluded that a petitioner must

1 identify with particularity sufficient evidence to
2 establish a reasonable likelihood that the
3 asserted reference was publicly assessable before
4 the critical date. Importantly, also in the
5 decision is the POP clarified that there is no
6 presumption in favor of institution or in favor in
7 finding that there was a presumption that
8 something was a printed publication.

9 Using the standard operating procedure
10 two, we've also designated three cases as
11 informative in the last few months. The first one
12 deals with 101. In this case, it was a speech
13 transcription process where the board ultimately
14 determined that the claims did not rise -- or
15 sight a mental process or a method of organizing
16 human activity. And even if it were, it was
17 integrated into a practical application. Another
18 version of the Hulu decision -- it's not the same
19 one we just talked about. This is a different
20 case. But this one deals with obviousness and
21 rationale to combine. This is a final written
22 decision. This is where the board determined that

1 by a preponderance of the evidence, the petitioner
2 did not establish that there was a rationale to
3 combine the references.

4 This is sort of another mixture of the
5 same flavor that deals with obviousness to
6 combine. This was an institution decision that
7 the board found there was not a reasonable
8 likelihood that there was a rationale to combine
9 and this decision focused on a mere demonstration
10 that if references are analogous and could be
11 combined, isn't sufficient to actually determine
12 that there was a rationale to combine by a
13 reasonable likelihood.

14 MR. BOALICK: All right, thank you. And
15 our next Vice Chief Judge Tim Fink will talk about
16 the developments in the multiple challenge area of
17 AIA trials.

18 MR. FINK: Yes, so this particular topic
19 is really maybe more broadly directed at --
20 focused on what is -- how the Office exercises
21 discretion in AIA proceedings. Whether or not to
22 institute the proceeding. So, largely that comes

1 under the rubric of multiple challenges. There's
2 a few other things that we'll talk about in here
3 as well.

4 So, to start out, the serial petition
5 topic, we included General Plastic here. Everyone
6 has heard about it I think at this point. It's a
7 couple years old. But we really included it for
8 context because I think many recognize General
9 Plastic as being sort of the -- if not the
10 earliest, a very important case in exercise of
11 discretion that talks about efficiency and
12 fairness and really looks at system efficiency and
13 fairness as part of the discretion inquiry under
14 Section 314.

15 So, General Plastic itself, and you'll
16 see, by the way, that that's sort of a theme
17 throughout this particular discussion is the
18 efficiency and fairness as a way of deciding
19 whether or not to institute an AIA proceeding. So
20 General Plastic itself set forth a multi-factor
21 test to determine whether or not a serial petition
22 should be instituted. Serial petition being there

1 was already one petition challenging a patent,
2 along comes either the same or a different
3 petitioner challenging the patent again.
4 Sometimes this went on several times.

5 So, I think that with respect to the
6 same petitioner challenging a patent serially,
7 General Plastic has largely curtailed that
8 practice and really requires a particular
9 petitioner to kind of get it -- get their
10 challenge right the first time. And not bring
11 successive challenges as a way of fixing up the
12 first challenge.

13 One thing that General Plastic was a
14 little bit -- it's a little bit ambiguous on is
15 what happens if it's a different petitioner? So
16 that's where the Valve decision comes from. I
17 happened to sit on the case with the Director.
18 But the issue there was a first petition that was
19 denied and then a second petition came along from
20 a different petitioner. The first petitioner --
21 the second petitioner came in and tried to rectify
22 a deficiency in the first petition.

1 And what the panel held there was that
2 there was evidence of a close relationship between
3 the two parties. They had been sued together in
4 district court. They were a licensee and licensor
5 of the technology. And so, based on that tight
6 relationship, the panel viewed this as really a
7 serial petition within the context of General
8 Plastic.

9 Oh, we took time to point out that
10 really the first General Plastic factor shouldn't
11 be read to require identity of petitioners. So,
12 really in the serial petition context, we have to
13 look at the relationship between the parties. So
14 that decision was made precedential.

15 Another decision that was made
16 precedential last year was NHK. And NHK is a
17 little bit different because it really deals with
18 efficiency in the context of parallel proceedings
19 in a district court. And so, it's recognized as
20 being the case that says that where a district
21 court is scheduled to complete first that at least
22 there is a possibility that the board should not

1 be instituting a review, especially if there is
2 significant overlap in the questions presented to
3 the board and the district court, and especially
4 if the district court is in an advanced state.

5 In the case of NHK, the district court
6 had already construed claims, and the challenges
7 were nearly identical. So, in that case the board
8 held -- or the panel held that the advanced state
9 of the district court proceeding, it would be
10 inefficient to institute an inter parties review
11 in that case, and so institution was denied. I
12 should point out that 325(d) was -- which we'll
13 talk about in a minute, was also a basis for
14 denying institution. But I think it's important
15 to say that we don't require -- we don't read NHK
16 so narrowly as to say that has be -- that that has
17 to be a fact that's an issue in other cases. So,
18 in other words, don't read NHK so narrowly as to
19 require a 325(d) argument. The advanced district
20 court proceeding may be enough on its own
21 depending on the facts. So, General Plastic, we
22 talked about addressed the issue of serial

1 petitioning. Another issue that's been raised
2 frequently is what about lots of petitions
3 challenging the same patent at the same time. And
4 not infrequently, we're confronted with three or
5 more petitions challenging a single patent at
6 once.

7 So, we took the opportunity in the July
8 2019 trial practice update to set forth a new
9 procedure to address that. And what the Trial
10 Practice Guide recognized is is that in most cases
11 -- and in most cases, our experience is that one
12 petition is sufficient to challenge a patent.
13 However, there are times when either due to a
14 large number of claims that are at issue or in
15 some cases, a petitioner needs to compartmentalize
16 their prior art due to priority date, questions,
17 or claim construction questions, there may be a
18 need for a second petition. But the experience is
19 is that three or more petitions would be -- would
20 be pretty rare.

21 So, what happens if a petitioner feels
22 the need to file multiple petitions at once? So,

1 the Trial Practice Guide also sets forth a
2 procedure, which is designed to help focus the
3 dispute and determine whether or not two or more
4 petitions are necessary. In the case of multiple
5 parallel petitions, the petitioner should file a
6 separate paper explaining the need for separate
7 petitions, and provide a ranking of which are the
8 best challenges or which it thinks we should look
9 at first and why, and then what are the
10 differences? And so, this provides some clarity
11 to the panel as to whether or not additional
12 petitions are necessary.

13 The patent owner gets a responsive paper
14 where the patent owner is encouraged to point out
15 whether or not it's really disputing some of the
16 issues that may be driving the petitioner's
17 concern. So, if the petitioner is concerned about
18 the prior art being antedated, there might be an
19 argument that the petitioner is leery of, the
20 patent owner can take an opportunity to, if it
21 thinks the argument isn't something that it wants
22 to fight about, to narrow the number of disputes

1 before the board by saying this isn't an issue.

2 And patent owners have taken us up on
3 that. In a number of cases, they have said we
4 don't challenge this particular issue the
5 petitioner's worried about. So, if you're going
6 to institute, one petition is sufficient.

7 All right, this is a little bit
8 unrelated to the multiple petition or the multiple
9 challenge context, but it does come in under the
10 idea of the emphasis on system efficiency. And
11 so, this what we call here SAS-related denials
12 really is an issue that comes up due to SAS. SAS
13 says that an institution is an all or nothing
14 proposition. So, what happens if there's one
15 claim that meets the institution standard, but a
16 whole bunch of claims that the board thinks don't
17 meet the institution standard? Once it
18 institutes, there's no narrowing of the dispute
19 other than the parties deciding if they want to
20 narrow the dispute.

21 So, the board under the Chevron and
22 Deeper cases, which have been made precedential,

1 the board in these cases found that a large
2 majority of claims or grounds in the dispute were
3 not meeting the institution standard. And so even
4 though a subset of claims, or a small subset of
5 claims met the standard, the board in its
6 discretion did not go forward. And so, as a
7 matter of -- for the sake of efficiency.

8 So, 325(d) is as I alluded to earlier,
9 is for just refresh memories, 325(d) is the
10 statute that narrowly focuses on whether or not
11 the same prior art or arguments, the same or
12 substantially the same prior art arguments were
13 previously before the Office. And if they were,
14 the director may exercise discretion not to
15 institute.

16 So, it is under the rubric of multiple
17 challenges because in the case of 325(d), the
18 argument is that the Office has already looked at
19 this particular challenge or something that's
20 substantially similar, and the patent is still
21 here so no need to do it again. No need to redo
22 on the same or substantially the same prior art.

1 And so, Becton Dickinson is a
2 precedential decision that identifies six factors
3 that the board uses in determining whether or not
4 institution should be granted. And I think I'm
5 going to avoid reading them all out loud to you
6 the factors, but I think it's worth to point out
7 two things about Becton Dickinson. And that is
8 what the question really comes down to in this
9 case is whether or not it's the same or
10 substantially the same prior art that's been -- or
11 argument that's been considered before. And if
12 so, whether or not the petitioner is pointing to
13 some error by the Office. So, with something
14 that's compelling about this prior art that means
15 that suggests that we should go forward anyway.

16 The other thing I'd like to point out
17 about Becton Dickinson is although it's couched in
18 terms of examination, it really applies to -- it
19 really can apply to the AIA context as well. So,
20 if a challenge was brought under the AIA and then
21 a -- and ultimately not successful, and then
22 another challenge comes along and it's pretty

1 close, the same or substantially the same, the
2 board may exercise its discretion not to go
3 forward in that context.

4 So, I'd just like to point out that the
5 consolidated Trial Practice Guide, which brings
6 together all of the updates and the original Trial
7 Practice Guide includes, I think, all of these
8 cases are either cited or discussed in the
9 consolidated Trial Practice Guide, so one
10 convenient place. I think it starts on page 55,
11 but don't quote me on that.

12 MR. BOALICK: All right, I think maybe
13 before moving to our next section, maybe we'll
14 pause here and see if anybody has any questions on
15 any of the topics presented so far.

16 MR. LANG: Maybe I missed it, but do we
17 have statistics on the motion to amend program and
18 how the new features are being used in the pilot?

19 MS. BONILLA: Those statistics aren't
20 published. We haven't put that together yet in a
21 presentation other than what you saw today. We've
22 been telling people orally what I presented today.

1 We obviously will.

2 I mean, the idea is that the pilot would
3 go on for a year and we would revisit it and
4 figure out what's going on. We're waiting still
5 to see. We have yet to even have a final written
6 decision that takes it, you know, where somebody's
7 taken advantage of the pilot. So, we want to get
8 some feedback on that and then decide what we're
9 going to do going forward.

10 MR. BOALICK: It does look like at least
11 based on the numbers we have so far, that the
12 pilot's been fairly popular, and a number of
13 people have taken advantage of both the
14 preliminary guidance and the chance to revise the
15 motion to amend. As Jackie said, the results are
16 still sort of forthcoming. So, we'll see how this
17 all ends up. That'll play out over, you know, the
18 coming months. We didn't have a slide with
19 statistics.

20 MR. LANG: I may have missed, but is
21 there an increase in motions to amend generally?

22 MS. BONILLA: Generally speaking, it's

1 been about the same as it was before in terms of
2 the raw numbers of motions to amend filed.

3 MR. LANG: Okay, thank you.

4 MR. BOALICK: Any other questions?

5 MR. CALTRIDER: Yeah, just a question
6 and really an expression of gratitude for the
7 guidance on serial and multiple petitions. That
8 was an area that was a great uncertainty for
9 patent owners, and the need to have quiet title,
10 if you will, and some certainty on how you deal
11 with multiple petitions, particularly serial
12 petitions, is very much appreciated. And I am
13 encouraged that the PTAB to continue to take cases
14 on their facts and when appropriate, issue
15 precedential and informative decisions to provide
16 even more clarity in that space.

17 MR. BOALICK: Well, thank you. And I
18 know that's, you know, even know we've done quite
19 a bit, you know, we're still, you know, continuing
20 to look to give further guidance and just a nod to
21 the presentation that Kal made. We're always on
22 the lookout for nominations for more precedential

1 or informative decisions in either the multiple
2 petitions or any other area.

3 MS. MAR-SPINOLA: Jeff, questions?

4 MR. SEARS: No, thanks.

5 MS. MAR-SPINOLA: Jennifer?

6 MS. CAMACHO: I have no questions.

7 MR. BOALICK: Okay, so we can move --

8 MS. MAR-SPINOLA: Great, thank you.

9 MR. BOALICK: -- move on to the --

10 right, (inaudible). So, the next thing that we
11 wanted to present is a new data visualization.
12 This is something that is now starting with the
13 December statistics. It's going to be part of our
14 monthly AIA trial statistics on the website. So,
15 we just wanted to show you the new graphic and
16 what it is. And so, this is attempting to help
17 draw some things that we used to say verbally
18 about our famous waterfall chart, the one that had
19 the status of all petitions, but sometimes was a
20 little confusing to interpret.

21 So, what we've done is we've pulled all
22 of the active cases out of, you know, out of

1 consideration. And what we're showing you here
2 are cases that have come to a conclusion in one
3 way, shape, or another.

4 There's a couple of ways that the cases
5 end. The major categories are that either
6 institution is denied, they settle, either pre or
7 post-institution. These two are lumped together.
8 There's a request for adverse judgment by the
9 patent owner. And then the last category is that
10 they reach final written decision.

11 So, what we've shown you here is the
12 orange are cases where institution is denied.
13 That ends up of all of our concluded proceedings
14 happening, you know, 33 percent of those we have
15 the institution denied. The settlements, again
16 pre and post-institution, were 30 percent. Four
17 percent were requests for adverse judgment.

18 Then the remaining 33 percent, which are
19 the three shades of blue that represents all the
20 cases that went to final written decision. And
21 then the blue shading indicates the outcomes in
22 the final written decision.

1 So, the lightest shade of blue is where
2 all the claims were found -- all the challenged
3 claims I should say are found patentable. That
4 was a 6 percent of the time of these concluded
5 proceedings that happened. Six percent, there
6 were mixed results, and then the remaining 21
7 percent were where we had final written decisions
8 for all the challenged claims were found
9 unpatentable. And you can see the blue slices in
10 context of the overall set of outcomes.

11 Then what we did is we took a breakout
12 just looking only at the final written decision,
13 just to sort of show how this relates to the end
14 of the waterfall slide. You can see that there in
15 that rectangular area is what we used to show you
16 with the outcome of final written decisions in the
17 waterfall. And then you can see how the
18 percentages change. So, the numbers are exactly
19 the same. But the percentage if you consider it
20 as part of only final written decisions, then you
21 can see the percentages jump up so that its 19
22 percent found patentable, 18 percent mixed, 63

1 percent all unpatentable.

2 And if you wanted to consider it even a
3 further way, if you were to take out the settled
4 and the requests for adverse judgment part of the
5 pie, and you were to look at it again, then what's
6 kind of interesting is that exactly 50 percent had
7 the -- would have institution denied, and 50
8 percent would go to final written decision. And
9 your percentages of the outcome of final written
10 decisions would be 10 percent all patentable, 9
11 percent mixed, and 31 percent all unpatentable.
12 All of which is to show with the same numbers
13 depending on what you consider the results, you
14 know, can sort of change.

15 So, that's what we were hoping to show
16 with this particular graphic. We still do have
17 the waterfall, you know, in our statistics pack,
18 but we just wanted to show this chart is one that
19 we have kind of joining the traditional
20 statistics.

21 MS. CAMACHO: Thanks, Scott. We
22 appreciate that. Oh, go ahead, Jeff.

1 MR. SEARS: No, go ahead.

2 MS. CAMACHO: We all love your waterfall
3 slides, but I --

4 MR. BOALICK: Oh, thank you, thank you.
5 Well, the waterfall is still there.

6 MS. CAMACHO: Everybody loves a good pie
7 though, Scott, so. (Laughter)

8 Thank you very much for putting
9 something like this together. Is this available
10 on the data visualization website?

11 MS. BONILLA: It's at the very end.

12 MR. BOALICK: So, it's actually on the
13 PTAB website under our statistics page in AIA
14 trials. There's a -- we have a monthly statistic
15 pack that we put out. In fact, and it goes
16 through, you know, all the trial statistics. This
17 is now the very last slide of that on our website,
18 which I'm, you know, happy to provide a link to
19 that.

20 MS. CAMACHO: I think that would be
21 great to provide a link. I also think it would be
22 great to incorporate it into the main data

1 visualization page. You know, it's a little
2 challenging to find, but once you find it, there
3 is a lot of information there. And I think
4 something like this is digestible by someone who
5 doesn't do this every day, and that's important.
6 They wouldn't be looking necessarily on the PTAB
7 and go down the various levels to find it. But
8 it's useful information to someone who is in this
9 process, but not necessarily so steeped in it that
10 they can find their way around the PTO website.

11 MR. BOALICK: Sure, and we'd be happy
12 to, you know, provide a link on the data
13 visualization page as well, so.

14 MS. CAMACHO: Perfect. Perfect, that
15 would be great because then that pulls them into
16 the waterfall slides.

17 MR. BOALICK: Yep.

18 MS. CAMACHO: And --

19 MR. BOALICK: That's right.

20 MS. CAMACHO: -- to the additional
21 information that's available there. Thanks.

22 MR. BOALICK: Okay, sure.

1 MR. SEARS: Before you move on, I'd like
2 to suggest some additional slides.

3 MR. BOALICK: Oh, sure.

4 MR. SEARS: This is a great one. To me,
5 it would be helpful to see something like just the
6 last 12 months. This is retrospective over seven
7 years. Trends change over time so, just the same
8 pie chart over the last 12 months I think would be
9 really helpful. I'd be really curious to see what
10 the FWD breakdown is. You know, what percentage,
11 particularly are claims are still being held up,
12 all unpatentable.

13 Also, on the institution denied slice,
14 it might be interesting to see, you know, what the
15 general categories are. Are there 325(d) denials?
16 You know, what are the broad brushstrokes on
17 institution denial?

18 MR. BOALICK: Okay, no, thanks for the
19 suggestions. And that's something we can, you
20 know, look to further develop. And you're right,
21 you know, the time slice is something that we've
22 been working on to define to take a look at just

1 because there have been changes and adjustments in
2 the rules and case law developments and all that.
3 So, you know, I agree, I think it would be -- it's
4 something that we're working on to look at the
5 last couple years.

6 And since we're a little ahead of time,
7 I thought if we had a moment, maybe we'd do a
8 quick call an audible here and ask Janet Gongola
9 to present the next slide on our new to PTAB
10 website because she's really been the one who is
11 developing this. So, I'll pass the clicker on to
12 Janet here.

13 MS. GONGOLA: Good morning, everyone.
14 Thank you for giving me the opportunity to tell
15 you about our new to PTAB toolkit as we're calling
16 it.

17 Essentially, the toolkit is a webpage
18 where we attempted to house a whole host of
19 information for those who are new to our
20 proceedings. So, particularly, independent
21 inventors, start-ups, small businesses, those who
22 haven't been involved in a prior appeal or an AIA

1 trial.

2 What we've done on this page is break
3 out our types of proceedings into the most basic
4 of terminology to explain the process and the
5 opportunities that the parties have to participate
6 in that process. We've included side sets,
7 videos, along with a whole host of frequently
8 asked questions. Additionally, we have a section
9 about our hearing procedures because those are
10 common to both of our types of proceedings, so
11 that parties know how to more effectively appear
12 in front of the board, both in their briefing, but
13 most importantly, in their oral arguments. This
14 page is a continuing development for us. So, we
15 plan to update it with more information as time
16 goes along. And, certainly, if you all have
17 suggestions for us as to content that you think
18 would be helpful, perhaps, Jennifer, as you
19 indicated maybe including the pie chart at its
20 very basic level on this landing page would be
21 something that we could do to even make it a more
22 useful tool for our newbie community.

1 So, I think that concludes -- I'll take
2 questions about the new to PTAB toolkit if you
3 have any. And please do help us spread the word
4 about the toolkit because we want it to be a
5 useful resource to the community.

6 MS. MAR-SPINOLA: So, Janet, thank you
7 for that. Would you, since we do have some time,
8 would you go over the topics that are available
9 for the folks that are on audio?

10 MS. GONGOLA: Sure. Although it's
11 difficult to see on the slide, we begin the page
12 with an overview of who the PTAB is, who are the
13 judges, what are our backgrounds.

14 Then the second section is all about ex
15 parte appeals. What are the steps involved in an
16 ex parte appeal? What are the briefings? What's
17 the timing?

18 The third section is about AIA trials.
19 Again, we walk through what is the process, what
20 are entailed in each of the briefing documents,
21 timeframes for responding. The fourth section is
22 on AIA trials -- oh, I'm sorry -- on hearings.

1 And on the hearings page, we talk about what are
2 the procedures for appearing in front of the
3 board? What council should know about decorum in
4 their presentations, and then we offer some tips
5 to help parties make arguments to the board.

6 And then the very last section is an
7 encyclopedia of frequently asked questions, broken
8 down by those same topics.

9 So, we actually to compile these
10 questions, we have four law clerks who are working
11 for us this year. And I thought, well, they're
12 new to the board, they're new to our proceedings.
13 Let's have them draft up a set of questions for us
14 and we will answer. They were probably pretty
15 reflective of what new users might want to know.
16 So, that's how we developed the frequently asked
17 questions. And we try to capture from a very,
18 very basic plain language throughout this page.

19 MS. MAR-SPINOLA: Thank you. Questions?

20 MS. CAMACHO: I don't have a question
21 for Janet, but a question has come in for Scott.
22 A request for some additional information at the

1 last -- for the next meeting.

2 MS. MAR-SPINOLA: Thank you, Janet.

3 MR. BOALICK: Sure.

4 MS. CAMACHO: This was from the public.

5 How many patents have been reviewed in a final
6 written decision? Is some information like for
7 the next meeting? And how many patents have had
8 one or more claims invalidated in a final written
9 decision? Do you have that information now?

10 MR. BOALICK: So, I don't have the handy
11 with me, but it is information that we do have.
12 You know, the total number of patents, I mean, off
13 the top of my head, I'm just not sure. I know
14 we've done this, but I'd rather maybe next time --

15 MS. MAR-SPINOLA: Okay.

16 MR. BOALICK: -- give you the accurate
17 information, rather than my probably faulty
18 recollection.

19 MS. CAMACHO: That's okay, we can make
20 an action item on that to make sure it's covered.

21 MR. BOALICK: Sure.

22 MS. MAR-SPINOLA: And one additional

1 request. If you would consider start reporting
2 your results based on patents, rather than
3 petitions.

4 MR. BOALICK: That is another thing that
5 we're looking into, so that is another, you know,
6 graphic that we are looking to develop. That one
7 turns out to be a little trickier just based on
8 the state of our ability to gather data, but it is
9 something that we can do, although we may not be
10 able to provide that monthly, but we could --
11 something we're looking to provide periodically.

12 MS. CAMACHO: Thank you, Scott.

13 MR. BOALICK: Sure. All right, any
14 other questions, Julie?

15 MS. MAR-SPINOLA: Well, let me see. Let
16 me ask, Lee. You put us ahead of time.

17 MR. BOALICK: Because we're going to
18 stick around for the next portion too, so we're
19 not really leaving, we're --

20 MS. MAR-SPINOLA: Yeah, yeah, yeah, I
21 definitely will do that.

22 I don't know if it's ready for prime

1 time about young attorneys?

2 MR. BOALICK: So, it's something that
3 we're looking into and I think we'll have, you
4 know, a little bit more to report, but we are
5 looking, you know, to efforts that are going on in
6 certain district courts around the country on ways
7 to try to incentivize, you know, participation
8 and, you know, speaking roles in trials for
9 attorneys who are newer to the practice. And so,
10 we don't have anything concrete to report, but we
11 are looking into that and to see what we could do
12 especially in the AIA trials.

13 MS. MAR-SPINOLA: All right, you know, I
14 have a little bit of experience in that and, you
15 know, we do have a similar concern in the District
16 Courts about how best to give young attorneys the
17 opportunity and experience to appear and argue
18 matters. It was a sensitive issue, right?
19 Because clients need to be assured that whoever is
20 representing them in oral argument is prepared.
21 So, there are courts that throughout, I think, the
22 country, district courts, who have adopted actual

1 rules, local rules where they encourage young
2 attorneys to come and argue before their court.
3 Some provide extra time for advocacy, and most
4 requirements include having a senior attorney
5 supervising or the extra time could be used to
6 have the senior counsel maybe cover something that
7 was missed.

8 The great thing that I've seen at quite
9 a few of these proceedings are that the judges are
10 really good. They don't quite hand hold the young
11 attorneys, but instead they guide the attorneys on
12 how to improve their presentations to the court;
13 it's a great experience for all involved. So, I
14 think that to make this available or potentially
15 available for oral arguments before PTAB is a
16 great idea and would support it fully.

17 I suspect that there will be folks who
18 have been practicing for a while including patent
19 prosecution counsel, but who have not had
20 experience doing it and would like to build that
21 practice. It would be a great opportunity for
22 them as well.

1 So, we look forward to hearing more
2 about that. I'm excited about it, personally, and
3 I know you all are too. Any other questions?
4 Steve?

5 MR. CALTRIDER: Yes, I wanted to
6 follow-up on Jennifer's question because I think
7 we may have been -- at least I wasn't
8 understanding your earlier characterization, the
9 data. The pie chart that you presented and the
10 numbers that were recorded on that pie chart, that
11 number is a count of the petitions?

12 MR. BOALICK: That's our -- that's
13 right, I'm sorry if that was unclear. That is --
14 this is by petition, not by patent. So, there is
15 some overlap when a patent was challenged more
16 than once. That includes the sum of those
17 petitions. So, this is not a by patent view.
18 That's a view that we're working on, but we don't
19 currently have ready to go, at least not an
20 updated version.

21 In about 2017, we had done as part of a
22 multiple petition study, we looked at outcomes by

1 petition and by patent. But we haven't updated
2 those charts since that time, and so that's
3 something that we are working on updating.

4 MR. CALTRIDER: Okay, just one
5 additional follow-up. If you have multiple
6 petitions that are consolidated into a single
7 final written decision, is that counted as one or
8 is that counted as how many petitions were
9 combined?

10 MR. BOALICK: So, I believe that's what
11 counted as what? Well, I think if it's one
12 decision that's consolidated, I believe it's
13 probably counted once because I think we looked at
14 the final written decisions. But I will
15 double-check to see. If that's not right, I'll
16 update you next time.

17 MS. MAR-SPINOLA: Okay, if there aren't
18 any other questions, I'm going to thank the PTAB
19 for their presentation. And the new pie chart,
20 loved it. And if we -- let's just make sure that
21 we follow-up on some of the questions that were
22 raised and get some answers to those for the next

1 meeting. I would appreciate that greatly, thank
2 you.

3 So, we have extra time and we can either
4 continue. Shall we do that? Everybody okay with
5 that? Okay.

6 MR. BOALICK: I think that we were
7 staying on to at least --

8 MS. MAR-SPINOLA: Yes.

9 MR. BOALICK: -- be part of the next
10 presentation.

11 MS. MAR-SPINOLA: Okay, so let's --

12 MR. BOALICK: That's fine so we'll just
13 stay here.

14 MS. MAR-SPINOLA: -- get the next
15 subcommittee up and that is going to be Pendency
16 and Quality.

17 The chair for PPAC is Steve Caltrider
18 and on the panel we're going to continue with
19 Scott Boalick, Jackie Bonilla, and then in
20 addition, we have Andy Faile, Deputy Commissioner
21 for Patent Operations, Valencia Martin-Wallace,
22 Deputy Commissioner for Patent Quality, and also

1 Stefanos Karmis and Director of the Office of
2 Patent Quality Assurance.

3 So, welcome, and we have until 11:20 for
4 this section. Steve?

5 MR. CALTRIDER: Great, thank you. I'll
6 start off with perhaps what's new. And that is
7 that quality and pendency have been combined this
8 year, which I think is terrific news because it's
9 important to consider both quality and pendency
10 together. A quality patent that's not timely
11 isn't very helpful to the patent owner community.
12 And the timely patent that doesn't have high
13 quality is not very helpful to the patent
14 community. So, it is important to consider those
15 together.

16 And the Director really characterized
17 what I consider to be a quality patent when he
18 said it was predictable and reliable. And I would
19 add to that timely, which I think most undoubtedly
20 the Director implicitly was including timely as
21 well.

22 Predictable and reliable really goes

1 beyond the examining core. And one of the reasons
2 we have is our panelists and will continue to have
3 our panelists when we talk about pendency and
4 quality is the PTAB because from a patent owner's
5 perspective, if the examining core issues a patent
6 and the PTAB invalidates the patent, then there's
7 an inconsistency there. The system is not
8 predictable and reliable in terms of those patent
9 rights.

10 So, today we're going to learn about how
11 the PTAB and the examining core in the patents
12 division are collaborating to ensure a higher
13 level of consistency. And with that bit of
14 introduction, I'll turn it over, I think,
15 Stefanos, you're leading the discussion.

16 MR. KARMIS: Thank you, Steven. I
17 appreciate that. I am going to lead the
18 discussion today on some of the efforts that the
19 PTAB Business Unit and the Patents Business Unit
20 are doing together to collaborate. Thank you to
21 Scott and Jackie here for hanging out to help
22 answer any questions.

1 Let me advance the slides. Okay, so
2 again, I'm going to talk about some of the efforts
3 we do to collaborate, really with a focus on
4 consistency within the Patent Office and overall,
5 just continuous quality improvement. And the
6 areas I'm going to touch on today really focus
7 heavily on some of the training that we do
8 together and how we learn from each other in
9 training, some of the stakeholder engagement we do
10 together, and also some of the data studies that
11 we are undertaking together.

12 So, I'm going to start with training
13 here and the first one on the list is probably a
14 little bit bigger than just training. It's really
15 more of a policy and training. And as Director
16 Iancu noted earlier this morning, the revised
17 subject matter eligibility guidance was one of the
18 big initiatives over the past year. And one of
19 the big things to come out of that was consistency
20 between examiners. But when we were doing the
21 guidance, we also wanted consistency between
22 examiners and PTAB.

1 And so, throughout the development of
2 the guidance and development of training, one of
3 the ways that we collaborated was we had
4 representatives, 101 representatives from PTAB and
5 Patents working together on this training to help
6 ensure that when it came out, we would have, you
7 know, consistent decisions on 101 issues.

8 Another area that we are collaborating
9 that started in 2019, is through our examiner
10 quality chat series. What that series essentially
11 is, it is run through our Office of Patent
12 Training. It is for our examiners. It's
13 basically a one-hour webinar with about a
14 30-minute presentation and 30 minutes saved for
15 questions and answers. We present to them on
16 various quality topics.

17 Last year, what we decided to do was
18 partner with PTAB and try to develop some sort of
19 regular appearance by PTAB at these trainings for
20 our examiners. So, last year we started with two
21 trainings. They were providing rationale under
22 103 was the first one that we did. And the second

1 one was just sort of considerations that impact
2 success in appeal. And so far this year, we've
3 done one that was an introduction to PTAB trials.

4 And in these trainings what we really
5 see is the examiners like hearing that feedback
6 from the board on how they can be successful when
7 they get to appeal. It's a good reminder for
8 examiners also that when they communicate with
9 applicants, there is another party that may be
10 reading their decision and making decisions based
11 off that written prosecution record. So, it's a
12 good training for our examiners and also what we
13 found at the end was examiners are just very
14 interested in the PTAB. The questions often
15 deviated from those topics. They're very curious
16 to learn about the things that PTAB are doing.

17 And so, we have three more planned for
18 this year. We are going to talk with examiners
19 about AIA trials and the institution standard.
20 And also 35 U.S.C. 325(d), which was touched on in
21 the last session. You know, our examiners now
22 have access to the prosecution history of

1 post-grant trials when they have a case that is a
2 continuation of a case that's undergoing a trial.
3 So, they are looking at those prosecution
4 histories now. So, the more that we can educate
5 them on what is going on in these trials, and what
6 is going on in the prosecution history, just the
7 overall, you know, quality will improve.

8 We're also going to talk with them about
9 the Precedential Opinion Panel process. It is a
10 process they have heard about and maybe are not
11 totally familiar with. And we are going to talk
12 with them about precedential and informative
13 decisions. And the PTAB is going to go through
14 some of them and also lay out sort of what they
15 expect with these precedential informative
16 decisions should examiners be citing these when
17 they go to the board or does PTAB expect to see
18 that. So, that would be a great training for our
19 examiners also through this series.

20 So, not only do we, you know, train
21 internal for our examiners, but we also train the
22 external in sort of similar formats, in that

1 webinar format where we do about 30 minutes of
2 like a training and then answer questions.
3 Patents has our own. We call that our Patent
4 Quality Chat series. PTAB has the Boardside Chat,
5 which is theirs geared for external stakeholders.
6 And one of the things we do is that, you know, we
7 will often be guest speakers at the other's chats
8 for the external stakeholders.

9 So, you know, for ours PTAB has come and
10 talked about the motions to amend pilot and they
11 have gone over the AIA trial statistics. We have
12 visited PTAB's Boardside Chats and gone over the
13 subject matter eligibility guidance, and also
14 talked about reissue and reexamination. So, it's
15 another way where we are just trying to
16 collaborate in what we talk about with our
17 stakeholders.

18 I will give a plug. If you are
19 interested in these, you can always sign up for
20 patent alerts to find out when the next ones are
21 coming.

22 Something that's been going on for a

1 long time, actually, is the technology center
2 training from the APJs. So, a lot of the
3 technology centers do have relationships where
4 they will invite the APJs in to sort of, you know,
5 give a talk on what they see, what some of the
6 trends they see are, what the technologies, some
7 best practices. And those have been ongoing for
8 years where, you know, the APJs come in.

9 And another thing that's relatively new
10 is hearings. So, you know, recently we made an
11 effort to have examiners be able to attend various
12 hearings that PTAB are having. We did a big one
13 with the POP panel process. It was a small group
14 that came, but it was a very high-profile hearing.
15 PTAB was great in that they invited
16 representatives from patents in, gave us a
17 briefing of what was going on in the case, told us
18 a little bit about the prosecution history, and
19 then we went in and watched the POP hearing. I
20 think there's another one, hopefully, coming up
21 pretty soon along those lines.

22 And then also just our -- the regular

1 PTAB oral hearings that are going on in ex parte
2 appeals. We have partnered with PTAB and our
3 Office of Patent Training, and one of the groups
4 in the Office that really works on engagement to
5 figure out how to offer these things in a virtual
6 way for our examiners to attend and watch and see
7 what's going on in these virtual hearings to get a
8 flavor for them. So, they can now go on our
9 training website, sign up to attend a hearing
10 virtually, and sit in and watch and see how these
11 things go.

12 Still going along the lines of training,
13 one of the things that PTAB does is they offer
14 career developmental details to our examiners.
15 And, essentially, what happens is an examiner will
16 split their time, 80 percent with PTAB, 20 percent
17 with examining, and they will go work under an
18 administrative patent judge helping them, you
19 know, with their day-to-day and various decisions
20 that they make. This is a great learning program
21 for examiners, something that I myself
22 participated in back when I was a new supervisor.

1 So, I learned a lot on this detail. I think it
2 was a great learning experience to have that, you
3 know, even though it was only four months, the
4 amount that I learned in that four months just,
5 you know, working hand-in-hand with multiple APJs
6 was a great learning experience. And they
7 continue to do that program today.

8 In 2018, also PTAB launched a law clerk
9 program, which is similar to the law clerk
10 programs that federal courts use. We have had
11 some examiners actually get -- or go into that
12 program. They have a couple of former examiners
13 in there. You know, the students that are part of
14 that program are getting a great education on
15 patents, and I'm sure we will probably be seeing
16 some of them apply to the patents corps once they
17 are done with their law clerk program.

18 Stakeholder collaborations, so, you
19 know, we do have a history of going out and
20 speaking together, and it's not uncommon when
21 Patents is doing even a speaking engagement by
22 ourselves that we get asked about PTAB questions.

1 But the more and more that we can go out together,
2 obviously, our customers want to hear about all
3 the things that are going on in the Office, not
4 just the things that are going on in Patents.

5 With last year really being a lot going
6 on within Patents, and as you heard over the last
7 session, there's a lot going on in PTAB. We
8 thought it would be great to restart some of these
9 roadshows. So, we partnered with AIPLA and we
10 went and did a few roadshows in Seattle, Houston,
11 and Boston, and we are still looking to continue
12 that and talk about, you know, some of these
13 issues up here. We talked about our quality
14 initiatives, incoming application quality, subject
15 matter eligibility, the motions to amend pilot,
16 AIA statistics also, and the POP process. So, it
17 was a great discussion with stakeholders,
18 especially in cities that we don't get to quite as
19 often as maybe we would like.

20 One of the other ways that we
21 collaborate is on data studies that we both have
22 statisticians in our organizations, and we're

1 always trying to figure out, especially the way
2 technology is now, it's not so mechanical and
3 electrical. The lines are getting more blurred
4 and we have switched over to a combined patent
5 classification system.

6 We've been talking with PTAB about what
7 is the best way for us to consistently present
8 data to our stakeholders both internal and
9 external so that it makes sense so that people
10 understand it, and that it's consistent. We've
11 also helped PTAB with, you know, some of the
12 things that they're looking at. We have reviewers
13 in our Office of Patent Quality Assurance that can
14 help, you know, review file histories. And we've
15 spent some time looking at things like 325(d) to
16 help support their efforts.

17 And then another study that we've been
18 working on recently is the AIA prior art study.
19 So, you know, search and prior art have been a big
20 focus in the Office recently, and we have never
21 really done a comprehensive study on what sort of
22 prior art is being used in AIA trials and what we

1 can take away from that and what we can learn from
2 that.

3 So we're spending some time right now
4 evaluating the prior art references that are used
5 in AIA trials trying to compare it to what we
6 find, you know, our examiners are doing here in
7 the corps on a daily basis, figure out what gaps
8 there are and maybe why there are gaps if there
9 are gaps. And see what sort of improvements we
10 can make. This is, you know, relatively new so
11 we're still sort of churning through this data,
12 but this is another way that we're sort of
13 collaborating together and staying in discussion
14 of, you know, not only just getting the data, but
15 also anecdotal feedback from the judges on what
16 they see what the prior art that is applied and
17 how it's applied.

18 MR. SEARS: I've got a question for you
19 about the 325(d) study. Do you have a sense of
20 the timeline of when you will be ready to present
21 it?

22 MR. KARMIS: I maybe would have to defer

1 to PTAB on that. We did a lot of the data
2 collection for it.

3 MR. BOALICK: I think also that study
4 was done, the data set we used this was done and
5 in fact, we mentioned it in the annual PPAC report
6 this past year. But the data actually is
7 predating a lot of our efforts. It ended in April
8 of 2018, and we've really -- right about the time
9 where our, you know, renewed case law and guidance
10 efforts on 325(d) appeared. So, I think that
11 study was good to take a look at the early
12 practice of 325(d), something that we might look
13 at, perhaps renewing, you know, given that the
14 practice has, you know, shifted and there's been a
15 lot more guidance, you know, in that area.
16 Jackie, other --

17 MS. BONILLA: And I was just going to
18 add one of the outcomes of just the preliminary
19 look of the study was that we probably did need to
20 give more guidance to stakeholders about the
21 parameters of 325(d), which did lead to us making
22 Beckon Dickinson precedential and a number of

1 other decisions informative. So, in that sense,
2 the data was probably too early to really be
3 useful today, but the information that we got out
4 of it in terms of next steps, I think, was very
5 useful.

6 MS. MAR-SPINOLA: So, I would encourage
7 the PTAB to continue that study to show current
8 trend. It is an issue, I believe, that is going
9 to stay in front of the questions from the
10 external stakeholders. And it is something that I
11 think we all can benefit from. So, if we can have
12 that covered in our next meeting as
13 comprehensively as possible, that would be
14 appreciated.

15 We know that, you know, that being able
16 to follow those studies and given the workload
17 that the PTAB has, certainly given SAS and Arthrex
18 I think, you know, you have quite a load. And I
19 know this is an ask, but I would -- maybe we can
20 prioritize what the asks are and see if we can
21 continue. Since that study, which started in the
22 Special Projects Subcommittee that we have -- that

1 retired this year, you know, we would like to
2 continue to pursue that particular study and would
3 appreciate it from PTAB. I want to go back to
4 Stefanos -- Stefanos?

5 MR. KARMIS: Yes.

6 MS. MAR-SPINOLA: Okay, thank you.
7 About the training, I applaud this collaboration
8 of training because I think it's so important to
9 try to continue to bridge the relationship, the
10 access to information, and also just what both
11 sides of the Office do; by sides I mean
12 Examination and PTAB.

13 So, this is important and I like that
14 cross- training. I think, and maybe I missed it,
15 that the cross- training seems to be coming from
16 Patents, where examiners are coming to the PTAB --
17 sorry, I misspoke. It's coming from PTAB where
18 the examiners are able to observe and learn more
19 about the PTAB process, right?

20 MR. KARMIS: Yes.

21 MS. MAR-SPINOLA: Is there reciprocal
22 training where PTAB judges, and I know how busy

1 they are, but still -- and I also recognize that
2 there are a lot of the judges who are former
3 examiners. So, they may already be quite expert
4 at those processes. To the extent there are judges
5 that don't have that background, is there training
6 the other way around?

7 MR. BOALICK: I guess one thing I would
8 say is that, you know, as far as training on some
9 of the latest, you know, procedures, for example,
10 the 101 training and some of the -- the 112
11 training, and some of the other trainings.
12 Examining corps is done. Has been, you know, made
13 available to the judges so they've, you know, been
14 kind enough to invite us to attend those examiner
15 training sessions.

16 Also, the technology center
17 collaborations that Stefanos mentioned, that's
18 actually a two-way exchange. That's not just one
19 way. There's feedback from the examiners, you
20 know, to the judges as well. And I know that the
21 examining corps has a program sort of a day in the
22 life, if you will, you know, of an examiner, you

1 know, training that's available. Some of our
2 folks have taken advantage of that, you know,
3 especially those who weren't prior examiners. So,
4 we have had people from the board go through, you
5 know, that training as well. So, there are a
6 couple of things that, you know, are still, you
7 know, ongoing that are coming, you know, from
8 Patents to PTAB.

9 MS. MAR-SPINOLA: So, and I think that's
10 great. You know, I mentor a lot of young
11 attorneys who are interested in the patent
12 practice and I'll get some that say I want to
13 prosecute patents. And I say, okay, go litigate,
14 get some experience in patent litigation. And
15 then those that say they want to practice in
16 patent litigation, I advise them to do patent
17 prosecution. And the reason is, obviously, it's
18 the value of knowing the other side, how patents
19 are challenged, how patents are decided, and so, I
20 think it's important.

21 And maybe in the 325 context, if there
22 is an addition or an expansion of the day in the

1 life of an examiner is more focused on the prior
2 art search, the prior art consideration, what was
3 cited in a prosecution, and how substantial that
4 was because when there is a post-grant challenge,
5 and when there are patents that are being asserted
6 in the post-grant proceeding that were cited,
7 maybe in the IDS or mentioned in office actions,
8 it'd be nice to be able to have a full
9 appreciation from both sides on how that works.
10 And maybe it'll provide or inform or provide
11 guidance on 325 decisions as well.

12 MR. BOALICK: I might mention sort of
13 two other things. So, one in, you know, the
14 examiner details. That's not just a one-way
15 learning. The judges who work with the examiners
16 who are here on detail learn a lot, even those who
17 were former examiners learning a practices change
18 over time, so they can kind of get a sense of
19 what's currently happening.

20 We also have a regular judge training
21 series that we hold, you know, at least once a
22 week. And we've had over the past year, you know,

1 each of the deputy commissioners has come to speak
2 to the judges about their area and then sometimes
3 we've drilled down even a little further into the
4 organization to have, you know, other folks come
5 speak to the judges about what that area of
6 patents does, so.

7 MR. HIRSHFELD: If I can just chime in
8 at a very, very high level with a quick comment.

9 As far as my tenure in management goes,
10 dating way back to, you know, well, upper
11 management about 2008 or so, I think that the
12 interactions between the patents corps and the
13 PTAB are at an all time high. And, certainly, I
14 think Scott and Jackie deserve a lot of that
15 credit. I know that Scott and I meet weekly just
16 even to discuss some of these issues, and at all
17 levels we're trying to figure out how we can
18 better collaborate. And it just -- it's really
19 nice to be able to sit back and say, okay, look at
20 all the things that we are doing. Would more be
21 helpful? Of course, it would be and I think
22 that's always a goal, but, certainly kudos to them

1 and the rest of the team for really working well
2 together.

3 MS. MARTIN-WALLACE: Absolutely.

4 MR. CALTRIDER: A couple questions.
5 First, is really a comment and it kind of echoes a
6 little bit what Drew just said because the PPAC
7 and the public certainly appreciate the level of
8 collaboration because I think it improves the
9 overall quality and it's a very important
10 dimension.

11 The data study collaborations are
12 terrific. I would encourage more of those. I'm
13 going to ask a follow-up question to the prior
14 arts study in it's the same one that was asked on
15 the data consistency on 325(d). When do you
16 expect that to be reported out? And then the
17 second question is, you've mentioned a significant
18 amount of training, and again, it's applauded to
19 have that collaboration and cross- communication.
20 Can you give us a sense of how much uptake there
21 are in terms of the PTAB judges' participation as
22 well as the examiners' participation? Is it

1 everybody's attending? Is it a fraction is
2 attending? Can you give us some sense of the
3 uptake on that? Topics.

4 MR. KARMIS: Sure.

5 MR. CALTRIDER: Completely unrelated.

6 MR. KARMIS: I'll start with the second
7 question first. So, when we do those examiner
8 quality chats, we have to cap it at around 700
9 examiners for each session. For each topic we do
10 two sessions, and they always are completely
11 filled. We have too many people trying to get
12 into those sessions from our examining corps. So,
13 what we do do though is we make the presentation
14 available and a video of it available so that
15 those that can't get in live can go back and watch
16 it and at least see the presentation and hear what
17 questions were asked.

18 You know, with respect to the judges
19 that have participated on that, it has been, you
20 know, a different group of judges each time, so we
21 are getting -- I think you need perspectives with
22 each one that we're doing there.

1 As far as the prior art AIA trial study
2 that we've been doing, we have collected a bunch
3 of the data. We are sort of validating some of
4 that data now and looking through what we have
5 found. And we're sort of putting it together in a
6 way that makes sense so that when we present it it
7 actually tells you, you know, the right story and
8 people are getting meaningful feedback.

9 So, I'm not exactly sure on a timeline
10 when it'll be presented, but, you know, hopefully
11 next time. Maybe next time we'll see.

12 MS. MARTIN-WALLACE: So, I'll just add
13 to what Stefano was saying on the AIA prior art
14 study. Where similar to what Jackie mentioned
15 about the 325(d) where the initial studies brought
16 about a lot more questions that we really need to
17 have answered and to dig deeper into in order to
18 as Stephano mentioned, to have a responsible
19 comprehensive report out on what we're doing. So,
20 that's where we are now and hopefully we will have
21 that for you at a future session.

22 MS. MAR-SPINOLA: We're through --

1 MS. DURKIN: May I ask one more
2 question?

3 MS. MAR-SPINOLA: Oh, sure, of course,
4 Tracy.

5 MS. DURKIN: So, another statistical
6 question. I don't recall ever seeing statistics
7 on the USPTO website the same way they're being
8 capped on inter parties petitions on ex parte
9 appeals in terms of outcome. Are they there?
10 I've pendency, but I haven't seen really outcomes.

11 MR. BOALICK: So, as far, you mean, the
12 appeal outcomes. We do have a slide I believe
13 it's in our -- I'm not sure if it's in our monthly
14 data set, but we do have a slide. In fact, one of
15 the things we may do is present, you know, some
16 more of the ex parte statistics, you know, if
17 you'd like at a future meeting. I was just going
18 to look through real quick to see if we had some
19 backup slides to the last presentation. I don't
20 know -- actually, we do have that. I don't know
21 if it's possible to go back to the prior
22 presentation, but we do have an FY '20 appeal

1 outcome slide.

2 But if it's not possible to back up,
3 basically, the examiner was affirmed in nearly 60
4 percent of the appeals in FY '20 and they were
5 reversed in about 30 percent, and there was a
6 partial affirmance in 8.6 percent. So, and then
7 there's a small number of administrative
8 categories.

9 Yes, this is the -- yeah, just back a
10 couple more here. Back up past the (inaudible).
11 This one here. So, this is the appeal outcomes.
12 And I believe we have this, but it doesn't change
13 monthly, but we do periodically publish this
14 appeal outcome statistic.

15 MS. DURKIN: Thank you.

16 MR. BOALICK: Sure.

17 MR. CALTRIDER: Julie, if time permits,
18 perhaps I could circle back to some of the
19 Directors' comments and ask Andy to comment a
20 little bit further.

21 But he made reference to pendency and
22 meeting the pendency goals last year. And

1 congratulations, again, to the Office. We talked
2 about that last quarter and it was a significant
3 accomplishment. And he made reference to the PTA
4 pendency goals and the transition to that and I
5 thought, Andy, if you could expand a bit more in
6 terms of the plans there that would be much
7 appreciated.

8 MR. FAILE: Okay, sure, I'd be happy to.
9 So, flipping back to pendency, as the Director
10 said, we had an agency priority goal for pendency
11 for the last couple years, and it was to be less
12 than 15 months to first action, less than 24
13 months overall. We hit those goals at the end of
14 last fiscal year. And that was the two-year cycle
15 run of that particular agency priority goal.

16 All the time kind of in the background
17 we had been looking at PTA, patent term
18 adjustment, as another dimension of pendency as
19 well. The five different categories in patent
20 term adjustment, 14, the 3-4s, and 36 seem to
21 provide another way to look at pendency and how
22 we're doing with respect to moving of cases

1 through the pipeline. So, we've always been
2 looking at our performance in PTA and we wanted to
3 kind of highlight more as a pendency measure the
4 performance in each one of those categories.

5 So, you heard the Director say that
6 we're looking at PTA as a goal framework for
7 pendency and you heard the number 90. I'll
8 explain what the 90 means. But by way of
9 background, we have the traditional pendency,
10 which is basically an average pendency. You know,
11 you look at the case when it's finished in
12 whatever particular timeframe you're looking at,
13 and then you run those data points up and you have
14 an average pendency of X. That's a spread
15 throughout the corps. It can be, obviously,
16 broken down per TC, per work group, per art unit,
17 et cetera. But we're generally reporting out at
18 the aggregate level of the pendency at less than
19 15, less than 24.

20 So, in looking at patent term adjustment
21 timeframes, what we are moving towards is trying
22 to look at the entire PTA performance across the

1 entire spectrum. And you heard the number 90, and
2 90 has actually two components to it.

3 So, the first is we want to have 90
4 percent of our total PTA in the actions that we do
5 be compliant with those particular timeframes.

6 The second 90 percent we're looking at
7 is the actual inventory. So, we're looking at the
8 actual inventory, 90 percent of the inventory
9 living under the patent term adjustment
10 timeframes. And what this gives us is the actuals
11 actually show where we've been. We've had
12 performance in these particular categories at a
13 certain number. In the inventory is our look
14 internally on where we're going. An inventory
15 stacking up in a certain way might have us react
16 differently in terms of operations to move that
17 inventory considering an inventory that might be
18 stacked up in a completely different shape.

19 So, our basic framework is we have a
20 five-year plan and it's by 2025, fiscal year 2025,
21 we want to have a 90 percent compliant of our
22 total PTA in the actual cases that we're doing in

1 those timeframes. And then we also want to have
2 90 percent of our inventory within those
3 timeframes. So that's what we're marching to in
4 FY '25.

5 We are also, as the Director mentioned,
6 we are also still cognizant of our traditional
7 pendency measures. So, we want to keep adhering
8 to the average pendency goals of less than 15 and
9 less than 24 during that timeframe.

10 So, we're kind of looking at pendency in
11 a couple different dimensions, the traditional
12 average pendency and then we're actually moving
13 towards more of a patent term adjustment timeframe
14 to gauge our operations internally and report out
15 on our pendency measures.

16 MR. CALTRIDER: Thank you.

17 MR. HIRSHFELD: I'll just add, and I
18 know this reiterating some of what Andy just said.
19 But we think that this is a much more refined and
20 more meaningful approach to pendency for our
21 applicants, right? And so, when you have well
22 over 8,000 examiners and well over 600 different

1 art units, when you report out an average pendency
2 of what's mailed, you have art units all over the
3 place, so is that really meaningful for the
4 public?

5 It's somewhat meaningful, of course, and
6 I think it was great to have these goals when we
7 had very, very long pendencies as a way to drive
8 down pendency in general. But now that we are
9 making very good progress in the pendencies
10 getting much more refined and trying to stick to
11 the patent term adjustment and that five-year goal
12 of getting to 90 percent compliance across the
13 board of when we issue patent term adjustment,
14 thus minimizing when we would actually issue
15 patent term adjustment, we think is a much smarter
16 approach.

17 MR. CALTRIDER: I agree completely, so
18 kudos. Please continue the good work.

19 MR. HIRSHFELD: And, I mean, I know that
20 PPAC has given us that feedback in the past so
21 thank you for steering us in that direction. We
22 know others have as well. I know also AIPLA has

1 weighed in and others have also weighed in and
2 said, really, this is a better approach, so we've
3 gotten input from many on this topic.

4 MS. MAR-SPINOLA: Any further questions
5 on pendency quality from the committee? Okay, we
6 are doing really well on time. I appreciate that.
7 I feel like we're covering quite a bit, which is
8 great. So, thank you to everyone on this last
9 panel.

10 The next one is going to be the
11 Innovation Expansion Subcommittee. You will hear
12 Innovation Expansion and inventorship diversity
13 used interchangeably; they have the same goal.

14 So, our chair for PPAC on this
15 subcommittee is Jennifer Camacho. And we have
16 Valencia Martin-Wallace and Kimberly Alton, Deputy
17 Director Office of Government Affairs.

18 MS. MARTIN-WALLACE: So, because we're
19 running a bit early --

20 MS. MAR-SPINOLA: Oh, sure.

21 MS. MARTIN-WALLACE: -- I don't believe
22 Kim was able to get here yet.

1 MS. MAR-SPINOLA: Okay. Yes, okay, well
2 then that allows us to take a break. Why don't we
3 take a break until Kimberly comes. Thank you.

4 (Recess)

5 MS. MAR-SPINOLA: Okay, welcome, Kim.
6 And so, I'm going to hand it over to Jennifer.

7 MS. CAMACHO: Thank you. So, Innovation
8 Expansion. This is a new subcommittee. There's
9 an awful lot of energy and excitement around this.
10 It may have its roots in the SUCCESS Act, the
11 report that the Patent Office prepared last year
12 and the follow-up that was focused on women
13 inventors. But this has grown significantly and
14 so Valencia is going to tell us about the National
15 Council for Expanding American Innovation, which
16 is the focus of what this subcommittee is looking
17 at as well.

18 There's a tremendous amount of
19 innovative spirit in this country, and we have
20 done a good job at tapping into many sectors of
21 that. But there are large parts of our population
22 that are underrepresented. Are they inventing?

1 Yes. Are they patenting? Maybe. Are they
2 commercializing? Not as often. You know, we need
3 to really be able to tap into all of that and
4 bring people to the table and provide education on
5 invention, innovation, entrepreneurialism, you
6 know, being able to capitalize your business,
7 build them up, provide jobs, get different
8 technologies out into the world.

9 We need to do a better job at that and
10 so this is a really big project we're starting.
11 And Valencia has a great analogy about putting
12 roots in the ground and growing from there, and we
13 really need to do that at the very -- at all
14 stages. So, we need to build out pipeline of
15 innovators and that starts with our youngest
16 generations. We've got to provide opportunities
17 to our own generation and get the -- get our
18 innovators out there and really building our
19 innovation ecosystem. So, Valencia, please.

20 MS. MARTIN-WALLACE: Thank you,
21 Jennifer. And, yes, you're exactly right.
22 There's so much energy around what we're doing now

1 in the IP community as a whole. And I'm going to
2 give a little bit of the background first as
3 Jennifer mentioned that this really started with
4 -- well, it started many, many years ago with a
5 lot of initiatives and programs, but this
6 particular initiative with the SUCCESS Act that
7 mandated that the USPTO look further into the lack
8 of underrepresented minorities, women, veterans in
9 inventorship and actually having their names on
10 patents that culminated in October 2019 a report
11 that came out from the USPTO.

12 And as part of that report, we really
13 set some initiatives for ourselves. But backing
14 up to the report just on a very high level, the
15 findings were that what I think we already know,
16 but just further establishing that there really
17 isn't a true representation within the innovation
18 ecosystem of the citizens that make up our nation.

19 Specifically, with women we found that
20 while we have made some strides in having them
21 within STEM, having them as inventors, actually
22 having their names on the patents, 12 percent,

1 which is not an accurate reflection of our
2 country.

3 We also found that try as we may to find
4 those statistics on minority groups, they really
5 just aren't there. In the work we did -- excuse
6 me -- in the women as inventors, we were able to
7 use an algorithm, a name-based attribution
8 algorithm that helped us in this. But really for
9 underrepresented minority groups, that make up is
10 Hispanics, African Americans, and Native
11 Americans. Where really there was no such
12 distinguishing factors that allowed us to get any
13 kind of accurate numbers. There are some out
14 there, but it's very, very hard to find. So, what
15 we'll talk about a little bit later is some of the
16 initiatives we're going to try and put in place in
17 order to do that as well as get more accurate
18 numbers on that.

19 So, as I mentioned, this isn't brand
20 new. The PTO, all of the IP community, but here
21 at the PTO, we have a number of programs that
22 we've put in place and that have been in place for

1 many, many years and that we're quite proud of in
2 assisting inventors. Our pro se assistance center
3 is dedicated to helping brand new inventors
4 navigate our IP system. We have a pro bono
5 program that has been very successful and we're
6 quite proud of to help the IP community attorneys
7 to support new inventors of a certain income level
8 to move forward with their inventions.

9 We have a law school clinic certificate
10 program, as well as university outreach programs
11 that really delve into not only IP, but also with
12 STEM and awareness in education for those K
13 through 12 in STEM and moving them through this
14 process to get to a greater awareness of the
15 science, engineering, mathematic fields, but then
16 how to turn that into further innovation.

17 So, part of the SUCCESS Act report
18 identified certain initiatives that the USPTO has
19 decided that we are going to move forward on. So,
20 those are listed here. First being the
21 Collaborative IP Program where we're creating an
22 IP toolkit that will help the citizens of our

1 nation really navigate the IP system, and how to
2 move through it. We have a very complex, as it
3 should be, complex system here that integrates
4 technology with law. And that's not very
5 intuitive to the layperson. So, this toolkit is
6 going to help identify those areas and what's
7 needed to help navigate that.

8 Also developing an award program that
9 will recognize companies, individuals as well as
10 organizations, who have made great strides in the
11 field of more inclusiveness of the
12 underrepresented groups. But not only that but
13 recognizing maybe some organizations that haven't
14 really been that successful in being more
15 inclusive that are making great strides in trying
16 to get up to where we want them to be, and making
17 sure that we recognize those efforts and pull from
18 those efforts the best practices that will help
19 everyone.

20 So, the next is the creation of the
21 Council for Innovation and Inclusiveness. And
22 that's where I have my main focus right now is to

1 identify the appropriate organizations that will
2 come together on this council to help build a
3 strategy. And I will talk about that a little bit
4 more, but just going quickly through some of the
5 other initiatives that we're going through. The
6 USPTO Educational Outreach Program where K through
7 12 we're going to expand upon the programs that
8 already exist with the USPTO and also partner with
9 other organizations who want to go into the K
10 through 12 educational systems and bring more
11 awareness, more education at that age to build
12 upon in the future.

13 And next, a workforce development where
14 we are combining with other government agencies to
15 help obtain -- put sort of that same guidance of
16 how they should be navigating through and
17 obtaining patents and the opportunities there for
18 their employees in moving forward in IP protection
19 and greater awareness.

20 And the last being increase professional
21 development IP training for educators. This is
22 where -- and there are a lot of programs out there

1 now and we do this some ourselves, but just
2 reinforcing how the educators can bring this on a
3 daily basis to the students that they are
4 responsible for and how they can better implement
5 programs, as well as integrate into their training
6 programs, their educational programs, intellectual
7 property, STEM, so that this is not something
8 that's brand new to any student. It's part of the
9 normal curriculum of any student going through a
10 school within the United States.

11 Okay, so getting back to the council
12 that we are standing up. So, the purpose of this
13 council is to develop a strategy, a national
14 strategy, as well as an action plan for addressing
15 the lack of certain underrepresented groups, and I
16 used the term underrepresented minorities earlier,
17 but moving to underrepresented groups. This goes
18 back to what Jennifer was saying, what Director
19 Iancu mentioned that it's not -- while the SUCCESS
20 Act Report gave a focus of women and certain
21 underrepresented minority groups and veterans, it
22 really is something that reaches out

1 geographically, economically as well. And if
2 we're going to make the impact that we want to
3 make in this nation in this field, then it is
4 being all- inclusive of awareness, education, and
5 support.

6 So, the purpose of the strategy that the
7 council will put together is to reach everyone in
8 this nation. There shouldn't be a single person
9 growing up in the United States that doesn't know
10 our intellectual property system, doesn't know the
11 brilliance of our STEM fields and that it should
12 be something that everyone has an opportunity to
13 partake in and to be part of. It should be just
14 as -- I mentioned yesterday to the subcommittee,
15 it should be just as popular as the sports teams
16 and everything else in this nation, although I do
17 have to admit I don't know much about sports
18 teams. I know a lot more about STEM and IP. But
19 it should be household conversations with
20 families, and that's what we're reaching for.

21 Now, the council is going to be
22 comprised of high- level officials from all

1 aspects of our IP and STEM communities. So,
2 industry, non-profit, and professional
3 organizations, government departments, and
4 academia coming together to help us build this
5 strategy. So, we are planning to have about 25,
6 no more than 25, as part of this council, and it
7 will include the Director of the USPTO as well as
8 a representative from the Department of Commerce,
9 the Office of the Secretary of Commerce, along
10 with many others.

11 So, we are at this point doing our
12 research and going out and identifying within
13 those sectors who should be part of this council.
14 So, I would ask that PPAC members, if you could
15 help us in identifying who you feel should be part
16 of this council as well.

17 We are hoping that by mid-spring that we
18 will have our inaugural meeting of this council to
19 get started on building this strategy.

20 MS. CAMACHO: Valencia, if we could go
21 back for one second.

22 MS. MARTIN-WALLACE: Yes.

1 MS. CAMACHO: So, you list a number of
2 different organizations where you're hoping to
3 find representation in the council. One thing we
4 spoke about very briefly yesterday, and I'm tying
5 it back to your objectives, which is to get
6 underrepresented groups as entrepreneurs. Do you
7 anticipate having representation from financing
8 sources, venture capital, folks who are in the
9 business of finding innovation and getting it out
10 there on the market, investment bankers, seed
11 investors, folks who are focused, micro-investors
12 on particular groups who fund, for example,
13 minority-based companies and that sort of thing?
14 I think that that's very important to have their
15 voice at the table as well.

16 MS. MARTIN-WALLACE: That's a great
17 point, great comment, Jennifer, and you're
18 absolutely right. Yes, we are reaching out to all
19 aspects of our IP community, and that is a very
20 important aspect of our IP community and
21 innovation ecosystem is the people who can lend
22 the support and mentor and counsel our new

1 inventors. And helping them to understand how
2 lucrative it can be to be an inventor, to be an
3 innovator, not only for our nation, but for the
4 individual. So, yes, we plan on also including
5 that arena as well.

6 And while I mention that our council,
7 because we do have to have certain limits even
8 though I would love to have everyone on the
9 council, we cannot. It will be no more than 25 in
10 order to move this ahead. But we are asking all
11 organizations to really be part of this effort.
12 So, whether they're on the council or not, we're
13 going to have some events and I'll talk about
14 those as well as just meetings that I am taking
15 that Director Iancu is taking, and several others
16 are taking to make sure that everyone has a voice
17 in what we're doing.

18 So, whether they're on the council or
19 not, we're asking for everyone within the system
20 to really give us their ideas, their comments,
21 their suggestions of what they've done, what they
22 haven't done that they feel should be done and

1 make this an inclusive process.

2 MS. CAMACHO: And is part of your
3 long-term comprehensive plan, does it go as early
4 as grade school? Is the National Council focusing
5 from literally from the entire pipeline of
6 innovators?

7 MS. MARTIN-WALLACE: So, you know, we've
8 been talking about that and while we have not set
9 a particular structure because we don't have the
10 council together yet. That's one of the things
11 that we're talking about that really this strategy
12 is telling a story. The story begins from the
13 very beginning, K through 12 on awareness and
14 education of STEM. And not just STEM, but on
15 inventorship at that point as well. And moving as
16 they move through the educational system to high
17 school, building on that education the entire
18 time, and in college as well building on that
19 education.

20 One of the things that really affects me
21 a lot is when I go out and speak at universities
22 and I have to start from the beginning with

1 engineering and science students on the patent
2 process, and how important it is to them and what
3 it should mean to them. So, it's building at that
4 college stage as well. And understanding for us
5 to have a better understanding so that we can give
6 better guidance on students that start in science
7 or engineering but seem to drop off during school.
8 Or even may graduate in the field, yet when they
9 go out into the working world then moving on to
10 marketing or sales or something outside of the
11 specific STEM field and moving on to inventor,
12 finding out why that's happening and help guiding.

13 So, this strategy would work through
14 that as well, and on to a start-up. And as you
15 were mentioning, you know, with VCs and the
16 finances and all, giving them the education there
17 to show them that this does not stop. It just
18 keeps moving. And not only that, how to reach
19 back and help others to once they see the success
20 of being an inventor, an innovator, and what it
21 does for them bringing others along with them.

22 So, it is a complete story that we're

1 looking to have. And as you mentioned earlier,
2 the roots. It's not just about putting a project
3 together or a report together that's going to sit
4 on someone's shelf and collect dust. It's about
5 keep telling that story and keep building on it.
6 And this is the time and this is the moment and
7 these are the people to make a change, a cultural
8 change, in this nation. And once those roots are
9 set, just keep blooming far beyond any of us that
10 are still part of this innovation ecosystem. It's
11 going to keep getting stronger.

12 MS. CAMACHO: Thank you.

13 MS. MAR-SPINOLA: Valencia, I am so
14 excited about this, what you're doing and the
15 focus here, because it is so important and it's
16 not exclusive. It doesn't exclude anyone. And I
17 think that's important. You know, it's about
18 making sure that those that don't have easy access
19 to information, to money, to just even advice, but
20 as you said, fundamentally it's even just to know
21 about the patent system, about patents and other
22 IP and what kinds of value those things carry for

1 someone, sometimes for a lifetime, you know?

2 You also mentioned that at the
3 university or college levels, it's true that many
4 engineers don't know much about patents, business
5 folks don't know much about patents. Law students
6 have a little more knowledge because the schools
7 are teaching IP law, patent law.

8 So, when you get someone on the council
9 from academia, it would be helpful for them to put
10 together a multi-discipline program, right?
11 Between the business school, the engineering
12 school, and the law school where the students
13 collaborate and they understand learn about IP and
14 patents from that 3-point perspective.

15 Almost an entrepreneurial type of
16 setting, right?

17 On the point of bringing patents and
18 other IP into the household conversation, maybe we
19 can think about developing a patent kit for the
20 science fair kids.

21 But the bottom line is that I think our
22 focus, your focus, this subcommittee's focus

1 should be on broadening the issue and looking at
2 them differently. We should take what we know now
3 and to find solutions that are different from the
4 solutions tried before. We already know prior
5 efforts, while well-intended, didn't move the
6 needle, so identifying and implementing new,
7 creative ideas could change the dynamic.

8 But to get back to your, I think, your
9 first slide about -- your first slide with the
10 various programs. One thing I would like to ask
11 is if someone is interested in taking advantage of
12 that program, where can they access it? How do
13 they access it? Can you share that with us?

14 MS. MARTIN-WALLACE: Oh, absolutely.
15 So, we actually if you go onto USPTO main page you
16 can put in, depending on what you're looking for,
17 if it's a STEM programming, if it's K through 12,
18 you could put that into a search box and it will
19 come up.

20 We have a SUCCESS Act report link as
21 well that will link you to some of the things that
22 we do. But on top of that coming in the near

1 future we're going to have a page on American
2 Innovation Expansion and as soon as it is live,
3 and that is something that Deputy Director Peter
4 is closely working on with her staff is that page
5 that's going to take you to toolkits and take you
6 to the educational programs that USPTO is running,
7 and to the Expansion Council as well that will be
8 running. So, as soon as it comes out, I will make
9 sure that everyone has that link.

10 But before that if you go onto USPTO and
11 put in whatever it is that you're looking for. If
12 it is a pro bono program, if it's pro se, it will
13 link you to the appropriate page. But coming soon
14 we will have that one-stop page.

15 MS. MAR-SPINOLA: And if you sign up for
16 alerts, will notifications be given through alerts
17 as well?

18 MS. MARTIN-WALLACE: Absolutely, thank
19 you for bringing that up.

20 If you sign up for the patent alerts and
21 every event that we have, you will receive an
22 alert to that event wherever it is around the

1 country.

2 So, speaking of events, some of the next
3 steps that we're doing is as we're doing the
4 research and pulling the council together, we're
5 going to have some roundtable events around the
6 country to help us to build a collection of best
7 practices. So, some of the events we're having is
8 we will have an event on Capitol Hill coming in
9 March. We also have a few roundtables, one in
10 Puerto Rico in April, one in Palo Alto, California
11 in April. We have an event coming in May in
12 Dallas, Texas as well as an event in May in Las
13 Vegas.

14 So, I'm going to be on the move.

15 (Laughter) Kim will run with me.
16 I hope that these events or others
17 that we will also put alerts out on
18 that you will be able to make or
19 you could please spread the word
20 for us because we're trying to
21 collect many of the best practices.
22 Not only best practices, but what

1 didn't work so that others won't
2 fall into those same traps to make
3 sure that everything that we're
4 doing, all the voices within this
5 community will be heard through
6 this strategy.

7 MR. LANG: Is the council, which is, I
8 mean, this is (inaudible) a great, great
9 initiative, by the way. Is there going to be a
10 dedicated staff for it and budget associated with
11 it?

12 MS. MARTIN-WALLACE: You at the USPTO
13 will be supporting it through staff as well as
14 through funds. So, yes, we will. And we will
15 have a charter that we're still drafting at this
16 point that will share those specifics. But, yes,
17 the PTO will be supporting the effort.

18 MR. LANG: Okay. And will there be
19 people full-time dedicated to it?

20 MS. MARTIN-WALLACE: So, we will have a
21 staff that is full-time to it, but at this point
22 we haven't really finalized how many that will be

1 or who it will be.

2 MR. LANG: Okay.

3 MS. MARTIN-WALLACE: At this point, I am
4 working on this as I'm still doing my present
5 duties. I do have my senior advisor, Tricia
6 Bianco, who is full-time working on that. And
7 also, just a great deal of very, very dedicated
8 managers and executives including Kim who have
9 been doing this along with their regular jobs.

10 And really I can't tell you the
11 dedication; I can't properly explain the
12 dedication that the USPTO staff has given to this
13 effort so far that we are constantly moving and
14 making sure that this is happening. It's
15 responsible. It's strong and it will include
16 everyone not beyond Tricia and I to dedicate a
17 staff to it, but we're making up the difference
18 with heart.

19 And just a last next step is we will be
20 publishing this strategy the fall of this year.
21 It is a very aggressive schedule, but it is
22 something that we can't waste time on. We have

1 got to move and strike while the iron is hot.
2 There's so much energy around these issues right
3 now and we want to make sure that we're doing our
4 part and getting the right guidance out to people
5 as soon as possible.

6 MR. CALTRIDER: A question on your
7 educational outreach, which I agree to really have
8 be successful and move the needle, you really need
9 to get embedded into the educational system.
10 Which leads to the question, departments of
11 education at the federal and/or state level, are
12 you reaching out to those organizations just to
13 get them on board and to partnership? Could you
14 describe that reach out a bit?

15 MS. MARTIN-WALLACE: So, we are reaching
16 out and working with Department of Education. We
17 have in the past and we will in the future of this
18 event. The local education we really have not set
19 how to do that state education because each state
20 does contribute differently to regulating that.
21 So, that's something that we're going to have to
22 look at as part of this council and strategy of

1 how to address that in an appropriate way. But
2 you're exactly right. We have to reach out, not
3 only on a federal level, but on the state and
4 local levels as well.

5 MR. CHAN: So, I'm very grateful for
6 your focus and attention on this very important
7 issue. It's also an issue that's quite complex.

8 MS. MARTIN-WALLACE: Yes.

9 MR. CHAN: And I think about, you know,
10 some of the studies in adjacent fields like
11 studies they've done with resumés where you can
12 associate certain names on the resumés with
13 particular underrepresented groups and how those
14 resumés are treated differently.

15 I know some academic institutions have
16 looked at a similar observation with patent
17 applications and names that are obviously
18 associated with women or underrepresented groups
19 and whether or not they are treated differently.
20 And my question for you is the issue of
21 unconscious bias and the training that we've now
22 found is extremely important. What's on the

1 roadmap for that?

2 MS. MARTIN-WALLACE: That's an excellent
3 point, and it is something that the committee has
4 talked about and as I'm reaching out to the
5 community, we have talked about unconscious bias
6 in schools, but in businesses across the arena of
7 STEM, as well as IP and innovation that not
8 knowing that you have this bias and bringing that
9 awareness to the people who are making the
10 decisions and how they make the decisions.

11 One of the conversations we had
12 yesterday was as we were saying as I mentioned
13 more women in certain science fields, not as much
14 in the electrical side and the computer as we have
15 in pharma and that they are growing, that they are
16 inventors. But somehow there is a drastic
17 decrease of percentage of inventors that are women
18 and inventors that are women that have their names
19 on patents. And why is that? So, it is an area
20 that we plan on exploring and having as part of
21 this strategy as well.

22 As we're doing our research, I've seen a

1 great deal of programs that some organizations,
2 universities, and companies already have started
3 along the arena of unconscious bias and it's
4 something that we are definitely going to tap
5 into.

6 So, next is call to action of everyone
7 in this room who's listening to us and in this
8 nation. As I mentioned, this is now is the time,
9 now is the place to keep going and moving forward
10 and it takes everyone. Just quoting Director
11 Iancu earlier today, "All hands on deck."
12 There's no one that should not be part of this.

13 I can just speak as growing up an
14 African American female in the deep south if not
15 for the people who spent the time, my family, my
16 teachers, the people in the first jobs that I had
17 and their support, their guidance, I would not be
18 here today. And there's not a single person in
19 this country that should not feel that level of
20 support in growing in sciences, in engineering, in
21 math, and becoming everything they want to be, and
22 knowing that the opportunities are there for them.

1 So, it is for us to do that. No one can say it's
2 someone else. It's you sitting in that chair
3 right now.

4 So, I am going to ask that all of your
5 ideas, all of your suggestions, if you could
6 please send them to InnovationCommittee@uspto.gov
7 because as I mentioned, we want to hear every
8 voice and we want that voice echoed in this
9 strategy. So, please share with everyone what
10 we're doing here and we're looking for advocates
11 across this nation to make sure that the roots are
12 set and this will keep going long after us.

13 MS. DURKIN: Quick question on that. To
14 the extent that we or anyone involved today has
15 suggestions on someone who might make a good
16 member of the council, I notice there isn't
17 anything on the PTO website yet other than the
18 mention of it in today's agenda. Where could we
19 direct people to get -- if they wanted to
20 understand the time commitment or the
21 expectations, where could we find that information
22 on that?

1 MS. MARTIN-WALLACE: Absolutely. So for
2 anyone listening, please send all of your
3 suggestions, even if it's someone that you feel
4 should be part of this on the council to
5 InnovationCommittee@USPTO.gov. We're constantly
6 looking there, but also -- I thought they were on
7 there. They're not on there. Our emails you can
8 send it directly to me. I want to hear from
9 everyone and I'd love to hear the suggestions of
10 who should be part of this council. If you just
11 put a dot between Valencia Martin and then
12 @USPTO.gov and the same with Kim,
13 Kimberly.Alton@USPTO.gov. Please send them
14 directly to us and we will make sure that we
15 consider all of the suggestions that you bring in.

16 MS. MAR-SPINOLA: Maybe what we can do
17 is update the presentation and when it gets posted
18 it'll be also available.

19 MS. MARTIN-WALLACE: Absolutely. Thank
20 you very much.

21 MS. MAR-SPINOLA: Okay. Well, so, thank
22 you for that. We're looking forward to continuing

1 that discussion and not just touching on it or
2 dancing around it, but really attacking it. So,
3 thank you for that. We have the right champions
4 on this. Champions not only Valencia and Kim, but
5 the entire Patent Office starting from the top and
6 you have our full support from PPAC too. So,
7 thank you.

8 We're going to take a break and actually
9 have a decent lunch time for us.

10 (Laughter) We're going to learn
11 about ethics or

12 Be reminded about ethics during our
13 lunch hour and we will resume at 1:00 p.m. to talk
14 about our new Subcommittee Artificial
15 Intelligence. Thank you.

16 (Recess)

17 MS. MAR-SPINOLA: Okay, good afternoon.
18 Hope everybody got something good to eat and had a
19 little break. It's 1:00 p.m. We want to stay on
20 schedule. It's been good.

21 So, our next subcommittee discussion
22 will be our new one, Artificial Intelligence.

1 We're excited about this. You've heard it from
2 the Director, and Barney Cassidy and Jeremiah Chan
3 are the co-chairs of AI. And we have Laura Peter
4 here who is leading the AI front for the Patent
5 Office, and we're excited to have Laura here to
6 give us guidance, but also to help us understand
7 along with Matt and Coke on the AI issues and how
8 we can help.

9 So, let me turn it over to Barney and
10 Jeremiah.

11 MR. CASSIDY: Could I borrow your
12 microphone? Oh, it's working? Oh, there it is,
13 thank you.

14 So, thank you very much, Julie, and
15 welcome, everyone.

16 Obviously, artificial intelligence is an
17 exciting topic. It's probably going to define in
18 many ways the decade that we have just begun in
19 many areas of commerce, in many academic
20 disciplines, and many sciences. And we're very
21 excited about the progress that's being made in
22 the Patent Office on it both in terms of the

1 Patent Office policies and the way that the Patent
2 Office is incorporating artificial intelligence
3 tools to improve its operations.

4 In terms of the subcommittee, Jeremiah
5 and I are co- chairs and today I'll be
6 representing the artificial part and he will be
7 representing intelligence. (Laughter) Oh, wait,
8 no, that's not it. Oh, today I'll be chairing
9 this meeting on behalf of the subcommittee and
10 next time Jeremiah will be chairing the meeting on
11 behalf of the subcommittee. We'll just take
12 turns.

13 But I was fortunate enough to go to a
14 talk last year by Dr. Siddhartha Mukherjee who
15 famously wrote the book, The Emperor of All
16 Maladies: A Biography of Cancer. He explained
17 that today there is an algorithm that can spot
18 skin cancer better than the oncology department at
19 Stanford Medical School. So, this is not a
20 trivial development in medicine. It certainly is
21 not in biotech where it's the hottest area.

22 People are using artificial intelligence

1 to find targets, to find gene sequences. There
2 are things that can be done through algorithms
3 that are impossible for individual humans or teams
4 of humans to do. It represents a brand-new area
5 that will no doubt yield great inventions and
6 hopefully great benefit for our species and for
7 our planet. So, we're looking very forward to
8 your presentations today and how we can assist in
9 our role to help the Office further develop in
10 this area.

11 So, I think, Matthew, you're going to go
12 next, or, Laura, did you want to speak?

13 MS. PETER: Let me just say a few words
14 to set the stage.

15 As Julie has said, the theme for this
16 year, it's Vision 2020, and with regard to
17 artificial intelligence, this agency is very
18 focused on how to deal with the new artificial
19 intelligence technologies in two ways. One is how
20 does the USPTO protect artificial intelligence
21 technologies in a way that will continue to
22 incentivize development in those areas so that we

1 get the next best cure to cancer or the next best
2 tool to find -- solve different problems.

3 So, the other part of this is how do we
4 use AI tools to allow our examiners to operate at
5 their highest and best use of their intelligence
6 and intellect and not be bogged down with some of
7 the more trivial, mundane items that often are
8 involved with processing a patent application.

9 So, it's all about making the patent
10 system and the patents more reliable, more stable,
11 and more predictable and to use Julie's word, more
12 durable from cradle to grave.

13 On the AI tool front, as we all are
14 aware, there has been an explosion of prior art
15 that's available to be searched by every examiner
16 for each piece of -- rather, for each invention
17 for which a patent application is filed. So,
18 there's been this explosion of prior art, and yet
19 we still only have one lady or gentleman
20 physically examining that patent application. And
21 how do we get through all of that mountain of
22 prior art in an efficient, timely way? We're

1 looking at AI tools to help with that. We're
2 looking at AI tools to help with the manual
3 processing to get the right application to the
4 right examiner.

5 We're exploring many tools, but what we
6 found is that AI technology is still in its
7 nascency in that some of the tools may not be
8 mature enough for us to do a lot with at the
9 beginning. So, we're trying to find low-hanging
10 fruit where we can extract some efficiency out of
11 the system, implement those early on and then look
12 at what else is out there that we may want to
13 implement in the next five years or something
14 along that timeline.

15 The other thing that I am very much
16 involvement [sic] in is the balance of
17 implementing some of the artificial intelligence
18 tools with our other priorities, which include IT
19 stabilization, with keeping a patent system
20 process moving forward for our stakeholders while
21 upgrading at the same time. What is it?
22 Upgrading in flight I believe, Barney, you used

1 the word. And that's a challenge to do in and of
2 itself because we're very aware that we are the
3 patent system that most innovation in America
4 relies on to protect their intellectual property
5 and we don't want to do anything that would
6 disrupt that process.

7 So, and on the policy side, we're
8 definitely exploring many of these new issues.
9 Not only how they impact inventors in America, but
10 we're getting feedback on how what we do here in
11 America may impact how the world views artificial
12 intelligence inventions.

13 So, we have an amazing team at the PTO
14 on both of these sides, the policy and the tools
15 side. And I'm going to turn it over to two of our
16 lead champions to discuss the details further.

17 MR. SUCH: Thank you, Laura. And thank
18 you to PPAC for the opportunity to present on
19 today's topic of artificial intelligence. I
20 appreciate the comments from the Chair in regards
21 to the potential of this technology for us over
22 the next decade. And I think you'll find today's

1 discussion very helpful to laying a foundation for
2 us to move forward in this new endeavor.

3 We certainly agree that artificial
4 intelligence is a transformative technology. It
5 holds the promise for tremendous social and
6 economic benefits. AI research and implementation
7 can advance national priorities on intellectual
8 property by contributing to ensuring strong,
9 predictable, and reliable patent rights, as was so
10 eloquently put forth by Deputy Director Laura
11 Peter.

12 We view artificial intelligence as an
13 opportunity for us to leapfrog our capabilities
14 for search and other use cases where the
15 application of this type of technology may be
16 appropriate. And Director Iancu and Deputy
17 Director Peter have certainly championed the use
18 of artificial intelligence for these types of
19 endeavors. They've provided us the necessary
20 leadership for us to focus our efforts in
21 developing AI, and the USPTO has been very busy
22 laying a foundation in order to rapidly implement

1 useful AI systems.

2 We are undertaking a shift in the way
3 that we do business where we seek to couple the
4 strengths of the artificial intelligence
5 technology with the strengths of our employees.
6 This is reflected in our strategic plan as you see
7 on the screen, which supports leveraging
8 artificial intelligence to advance our mission of
9 fostering innovation. And today, I wanted to
10 share some of the efforts that we're undertaking
11 to leverage AI in making improvements to our
12 operations and explain the strategies that we are
13 using to navigate some of the challenges to
14 actually operationalize these types of
15 technologies.

16 Before I get started, I'd like to just
17 comment briefly about a definition of artificial
18 intelligence. There's a myriad of different
19 definitions that you can read about in the
20 literature and they can be expansive from
21 philosophical types of definitions that talk about
22 AI from a very high-level esoteric perspective

1 down to very, very, technical definitions that
2 focus on specific capabilities or algorithms.

3 Today, we're going to be thinking about
4 it from the perspective of an operations for
5 patents. And I am a group director in the patent
6 operations area and so, what you'll see is as I go
7 through the talk, is how we're thinking about this
8 technology so that we can find the best ways to
9 leverage it within our business without, as was
10 mentioned earlier, disrupting our operations or
11 our quality.

12 So, the first thing I wanted to do is
13 talk about a few things that we need to be mindful
14 of with artificial intelligence. And, certainly,
15 the successful introduction of AI into the USPTO
16 can represent some challenges as it can represent
17 a potential shift in the way that we do business.
18 The USPTO being the sole owner of the complete
19 U.S. patent data, and I'm referring to both the
20 published and unpublished corpus of patent
21 documents, uniquely positions this agency to
22 leverage the information for the benefit of the IP

1 system. However, a clear understanding of the
2 challenges that implementing AI systems face is
3 necessary for us to make strategic investments
4 needed to ensure that the USPTO keeps pace with
5 these emerging technologies and realize sustained
6 benefits.

7 And the most fundamental issue that
8 needs to be understood about AI is that at the
9 most basic level, they are trained as opposed to
10 being preprogrammed. So, the outcomes of an AI
11 system may not be entirely deterministic or
12 predictable. And models underlying AI tools are
13 critically dependent upon the underlying data.
14 So, quality of the AI output requires quality in
15 our underlying data sets. Additionally, models
16 are frequently developed to address specific
17 problems and may not necessarily be generalizable
18 across all use cases. And as such, performance
19 may not be uniform across different domains even
20 within a single model.

21 Clearly, advantage of the approach of
22 leveraging AI is that we don't need to explicitly

1 develop logic steps for every single decision with
2 very complex systems and complex data sets. And
3 that is not something that needs to be directly
4 programmed into the machine, but rather we can
5 leverage this capability to sift through that
6 information and make some of those decisions
7 easier.

8 The machine can sift through impossibly
9 large amounts of data and discover patterns that
10 would be very difficult or even impossible for
11 programmers or business SMEs, subject matter
12 experts, to reasonably accomplish quickly.
13 However, this can contribute to the perception of
14 AI being a black box where end-users have
15 difficulty understanding the results. So, while
16 AI solutions do not necessarily have to be
17 completely transparent to a user and we have to
18 explain all of the details about how the inner
19 workings of the model actually operate, if it does
20 not provide enough information in context for our
21 end-users to be able to interact with that
22 information, they may be either discount the value

1 of the results or overlook something that's of
2 value in the result sets.

3 Furthermore, output from AI systems
4 needs to have at least some level of intellectual
5 validation to ensure that the models are reliable
6 and ready to be deployed as value-added products
7 or services. This can incur some expense and can
8 also be a reoccurring expense if models are
9 iteratively updated in order to either improve
10 reliability or meet the challenges of a changing
11 data landscape.

12 So, in order to navigate these
13 challenges, we are using some strategic approaches
14 to ensure that we deploy useful AI systems. And
15 to that end, the USPTO has been investigating AI
16 and machine learning in a variety of use cases for
17 several years. The development of internally
18 built proof of concepts allows us to understand
19 how AI systems work and employ best practices into
20 our production tools.

21 And we place tremendous value on the
22 curation of high-quality data sets in order to

1 support the training of AI systems and AI models.
2 And I'll give you an example. The term, virus, if
3 we were to envisage a synonym type of approach
4 where we have an AI system that would suggest
5 synonyms to examiners to help them define queries,
6 that term, virus, can mean something very, very
7 different to an examiner who works in the
8 bio-chemical arts as it does to an examiner that
9 works in network security. And to be useful, an
10 AI system would need to be able to account for
11 those types of differences and recognize those
12 differences across those different technology
13 domains.

14 We have shown that they can. For
15 example, recently published work performed at the
16 USPTO explored using an AI prototype to
17 automatically suggest synonyms for examiners and
18 found that the F1 scores, which is a measure of
19 accuracy, increased significantly when
20 technology-specific models were trained, as
21 opposed to training a generalizable model.

22 Additionally, prototype mechanisms that

1 incur an ability to capture user feedback can be
2 coupled with the output and if by doing so we can
3 improve the F1 scores or the accuracy of the
4 models even further. This demonstrated that using
5 from -- excuse me, learning from user interactions
6 is more tractable than relying solely on automated
7 word embedding-based approaches.

8 Furthermore, while AI is very data
9 hungry, we demonstrated that we can lesson the
10 heavy upfront data costs by designing tools and
11 processes to enable constant learning from user
12 interactions. And so, we view AI as something
13 that requires in order to best leverage it both a
14 technological component as well as a business
15 process and operational component. And those two
16 things should be designed together to work
17 synergistically.

18 The USPTO continues to expand our
19 practical knowledge of AI. For example, we are
20 currently providing in- depth training on
21 state-of-the-art AI tools and techniques,
22 including machine learning in cloud environments

1 to key personnel across the agency. And not only
2 does this include our IT professionals, but it
3 also includes some strategic positions within the
4 patents business such as those that are involved
5 with business analytics and those that rely on our
6 big data reservoir for improving patent quality.
7 This strategy is not only expanding our
8 capabilities to build AI systems from a technology
9 standpoint, but also advances the ability of our
10 business planners and end-users to recognize high
11 value use cases and design processes to be
12 synergistic with those use cases.

13 Oh, you can go back one, sorry, thanks.
14 We conduct outreach to academia as well as other
15 national IP offices, which gives us insight into
16 new capabilities that may be on the horizon and
17 contributes to increased harmonization of the IP
18 system globally.

19 We actively pursue extensive market
20 research on AI. For example, last year we issued
21 a request for information entitled, The USPTO's
22 Challenge to Improved Patent Search with

1 Artificial Intelligence. The response to this RFI
2 was extremely robust and included submissions from
3 across industry. A comprehensive review of the
4 submissions has concluded and the findings have
5 yielded very valuable insights that has critically
6 informed how the USPTO can utilize AI more
7 effectively.

8 Additionally, just last month the USPTO
9 issued a request for information relating to AI
10 capabilities to assist in the trademark business
11 area as well. And those activities are ongoing as
12 that RFI has closed.

13 For our examiners and our supervisors,
14 we conduct awareness campaigns about the AI
15 features that are already available to them and
16 plan to continue to do so as we get further along
17 this process and identify tools that are of use to
18 our examiners for the purposes of search or
19 support other business processes that we are
20 investigating. And this is more than just
21 training, but rather, it means involving users in
22 the design of our features and the validation of

1 models in the validation process. And we
2 emphasize an explainable AI as a core value in
3 their design criteria. Again, to enable the users
4 to be able to understand and contextualize the
5 output of what an AI system is providing them so
6 that they can best leverage that information and
7 make more informed decisions, whether it be about
8 patent search or some other use case.

9 So, our operational goal is to leverage
10 artificial intelligence to improve effectiveness
11 of the examiners in the agency. And we have a few
12 use cases that we are very heavily focused on
13 right now. So, the first is leveraging AI to
14 enhance search. This includes, as I mentioned,
15 awareness campaigns about tools that are available
16 to examiners currently and making sure that we
17 understand the scope of what they find most useful
18 to them, as well as understanding ways that we can
19 communicate with our examiners about how best to
20 use these features and disseminate those best
21 practices.

22 We're also investigating new AI

1 capabilities for search and that includes both the
2 semantic or text-based search capabilities, as
3 well as an interest in finding ways to leverage AI
4 to assist with image searching directly. Image
5 searching would have an AI system that could
6 reliably provide us valuable input and valuable
7 data back to an examiner about the -- patent
8 images would be opening up a whole new way for our
9 examiners to be able to access the prior art.

10 We're also looking at AI for our
11 Cooperative Patent Classification, or
12 classification system, to do auto- classification,
13 and that is to do a couple of things. One is to
14 improve the quality of the classification that we
15 use every day in our patent search, as well as the
16 quality of the classification that we use to
17 assign work to our examiners and identify the most
18 appropriate examiners for different technological
19 aspects of applications.

20 And we have on the screen here two
21 different items. One says full CPC classification
22 and that's in reference to providing CPC symbols

1 to patent documents that represent the content of
2 those documents as disclosed in the application.
3 And then below that you'll see the symbol C*
4 Detection, and that is a particular indicator
5 associated with certain CPC symbols that provide
6 us useful information for making determinations
7 about how to appropriately route an application to
8 an examiner when we move to a CPC-based routing
9 system this coming fiscal year.

10 So, that concludes my comments for this
11 afternoon. And I'm very interested to hear your
12 feedback and to hear any sort of insight that you
13 can provide us in terms of how we're looking at AI
14 for the development of tools and how we're looking
15 at developing strategies that it's going to
16 support the best most efficient use of AI in our
17 business processes and to support our examiners.
18 Thank you.

19 MR. SEARS: Thanks very much, Matt. I
20 have a question for you. I really appreciate the
21 presentation and really laud the Office for its
22 focus on AI priorities.

1 My question for you is about the CPC
2 auto- classification. I understand that it's
3 actually quite complex as there are over, I think,
4 it's a quarter million CPC codes. Can you tell us
5 what's involved in doing an auto- classification?

6 MR. SUCH: You're absolutely correct.
7 It's extremely complicated. So, you're correct in
8 that there's more than a quarter million codes
9 that could potentially be applied to any single
10 document and it becomes further compounded by the
11 fact that the codes are identified as appropriate
12 for documents based on the content of the
13 document. So, that could mean that one code could
14 be relevant or it could be dozens of codes,
15 depending on the overall amount of information
16 that's in any particular patent application.

17 And so, the exercise there requires,
18 certainly, a component of being able to train an
19 AI system to be able to recognize information
20 that's available in patent documents that are
21 associated with different CPC codes as they have
22 existed historically. And so that corpus of

1 information provides the foundation for training
2 an AI system to be able to do that.

3 But we have to be able to account for
4 more than just that information alone because the
5 CPC has in it a lot of rules that can inform the
6 decision of a patent classifier in order to be
7 able to make appropriate symbol determinations for
8 a patent document. And so, incorporating those
9 rules into the system, whether it be through a
10 machine learning heuristic method or whether it be
11 through logical programming that's incorporated on
12 top of an AI system is going to be important for
13 us to be able to navigate those complexities of
14 the patent classification system.

15 MR. CHAN: I think before you had
16 mentioned that the AI model is only good as the
17 training set, and so in that regard, on this kind
18 of in connection with the same question, have you
19 found with so many different labels in the
20 taxonomy that humans can actually consistently
21 label it such that we can actually provide a clear
22 training set to the models we're trying to teach?

1 MR. SUCH: So, you raise a very, very
2 interesting point about classification generally.
3 Classification is in some ways there's not
4 necessarily a single right answer for appropriate
5 classification on a document. And what I mean by
6 that is there are multiple different ways that one
7 may view through the classification rules which
8 symbols are appropriate. And it can depend a lot
9 on the state-of-the-art as well as some of the
10 other items that are related to the content of the
11 application and how much in depth that content
12 gets in terms of its description in the patent
13 document itself.

14 So, from the perspective of how we view
15 leveraging AI for patent classification, we're
16 looking at making sure that we are able to assign
17 symbols that are correct, consistent, and
18 complete, but reasonable within the realm of what
19 we would expect from a I'll say a human
20 classifier, right? And so that can mean a couple
21 of things. First off, we recognize that because
22 the classification system has some hierarchical

1 aspects to it, there may be multiple different
2 symbols depending on the viewpoint of an end-user
3 that could be appropriate. And they could be
4 equally appropriate depending on again the content
5 of application as well as the classification
6 rules. So, being able to identify those types of
7 flexibilities is going to be very, very important
8 for us.

9 On the other side, there are certainly
10 instances where very, very precise placement of
11 patent classification symbols does not offer that
12 flexibility due to maybe rules or maybe the depth
13 of information that's included in a patent
14 document. And in those cases, yes, the challenge
15 is going to be making sure that we have a way to
16 be able to identify what those are and a way to
17 ensure that we're able to do that consistently.
18 And at the precision level, that's necessary for
19 appropriate classification.

20 MR. CHAN: You also mentioned the
21 interest in image search, and I'm wondering kind
22 of where that stands in terms of the exploration.

1 I know you talked about the RIFs going out around
2 prior art search, but where is the Office on image
3 search?

4 MR. SUCH: So, right now we're in the
5 exploratory phases. We're trying to understand
6 the scope of what the technology can offer. One
7 of the challenges that we've discovered that we
8 face with image search is that patent drawings are
9 drawings, right? And so, we kind of have two
10 different use cases before us. One is in the
11 designs area where the drawings are -- they have
12 more consistent requirements because of the
13 intellectual property coverage is based very
14 heavily on that drawing.

15 And then in the utility space, the
16 drawings contend to be a little bit more
17 conceptual in nature. So, that offers the
18 applicants opportunities to be able to, you know,
19 identify conceptual relationships between
20 different elements in any manner that they so
21 choose, and the consistency requirements are not
22 as robust as they are in the designs area. And

1 so, that can introduce challenges because, you
2 know, you could have for instance an engine and it
3 could be displaying to an examiner the same thing
4 but could be from multiple different perspectives.
5 Or with different sorts of kind of I'll say
6 pictorial nomenclature that are used.

7 Additionally, since the, you know, the
8 patent drawings are they are that they're
9 drawings, if you think about that as compared to
10 say a photograph, there's a lot less information
11 in a sense in a black and white drawing than there
12 is in a photograph where you can take advantage
13 of, you know, colors and shading and all of those
14 types of things that can help an AI system to make
15 determinations about a classic example of being
16 able to identify a cat out of different drawings,
17 or photographs that are presented to it. And so,
18 we're at the point now where we're trying to
19 understand where the technology can fit in with
20 those particular constraints that we face in the
21 patent drawings world.

22 MS. DURKIN: I have a related question.

1 So, you mentioned the design area and it does seem
2 like this sort of image searching could be -- that
3 could be a great place to test particularly
4 comparing patent drawings to pending application
5 drawings. And we heard yesterday that maybe there
6 are some image search testing or piloting or
7 whatever that's going on on the trademark side,
8 and that to me also seems to be very similar. Is
9 there any coordination that's going on there? Or
10 is the patent side working on that independently
11 from the trademark side, for example?

12 MR. SUCH: No, there's absolutely
13 coordination. We speak with our colleagues in the
14 trademark side about this issue, particularly as
15 it relates to the designs question because we view
16 the designs area as being a use case that would be
17 a good stepping stone for us on the patent side in
18 preparation to tackling the more technically
19 challenging problem of the utility drawings.

20 MR. SEARS: Matt, I got another question
21 for you. I understand that auto-classification
22 will reduce pendency because there's a great time

1 savings involved compared to where we are
2 currently with manual classification to auto. Can
3 you expand on that? Like how quick will auto-
4 classification be compared to what we're doing
5 today?

6 MR. SUCH: So, there's a couple of
7 different aspects to that, and I'll start this
8 way. So, the -- we have a, you know, we have a
9 series of processes that we go through when we
10 intake an application. And classification is one
11 of those pieces of those processes that we do
12 before we release an application to an examiner.
13 So, to the extent that an auto- classification
14 system could potentially shorten that timeframe
15 within that larger context, then, yes, I think
16 that there may be opportunities provided we can
17 have an auto-classification system that can meet
18 the requirements in terms of quality that we would
19 need in order to be able to go forward.

20 The classification processes that we use
21 internally and in terms of those pre-exam
22 processes, excuse me, for getting applications

1 ready to be put on an examiner's docket, again,
2 are only one piece of that puzzle. And so, that's
3 something that we would need to look into very,
4 very carefully to understand the potential benefit
5 that might be before us if we were to be able to
6 achieve an auto-classification quality that would
7 meet our needs.

8 MS. CAMACHO: Matt, thank you for the
9 presentation. I have a question from the public
10 and then a question from myself as well. So,
11 we'll start with the public. There's a question
12 related to the error rate of machine learning as
13 compared to human classification. Is there a plan
14 to track that or to compare the two to ensure that
15 the AI has a lower error rate than what we
16 experience on manual classification?

17 MR. SUCH: Yes. Thank you for the
18 question from the public.

19 Yes, of course. Certainly, we would
20 want to build in systems that look at the -- this
21 error rate or basically look at the -- how
22 effective the classification system is in terms of

1 providing us quality classifications to support
2 our examiners in terms of search, as well as
3 routing of applications regardless of the source
4 of the data. And having the ability to capture
5 that feedback that we get either through an
6 explicit quality assurance process or through
7 feedback we get from examiners could be very, very
8 important for us in order to make sure that we're
9 able to maintain but also advance classification
10 quality in an AI system. And so, capturing that
11 feedback and incorporating that into models is
12 something that we would very much like to be able
13 to do.

14 MS. CAMACHO: Great, thank you. The
15 other question I have relates to the comparison of
16 our office with other IP5 offices on our state of
17 readiness to implement AI across our systems.
18 Have we -- I assume that we've had chats with our
19 counterpart offices. Are there opportunities to
20 collaborate, or leverage, learn from what others
21 are -- have been able to implement or learn?

22 MS. PETER: Well, since you kind of

1 looked at me I'll just jump in here in that we
2 definitely are having discussions with all of our
3 counterparts as to what their AI implementations
4 are. And I think the general consensus is
5 everyone is in exploratory stages and not always
6 willing to share everything that they're doing
7 because I think like us they're struggling with
8 what the right application for AI is and whether
9 it's good enough to actually put into production.

10 So, yes, we're talking to them, but
11 we're all kind of jockeying for who's going to be
12 in the lead. And we're feeling confident that we
13 are at least in the head of the pack as to looking
14 at AI tools and how we actually could get them to
15 production some time in the foreseeable near
16 future.

17 MR. CASSIDY: Thank you. So, as Chair,
18 I want to step in here and I want to make sure we
19 have enough time to hear from Coke. There may be
20 more questions, Matthew. Maybe we could reserve
21 those for after Coke has a question or present --
22 time to present and answer questions herself. But

1 I do want to thank you for an excellent
2 presentation.

3 MS. STEWART: Good afternoon. So, as
4 Laura said we kind of divide the artificial
5 intelligence strategy in the Office between tools
6 and the policy issues that we're working on. And
7 I think it's helpful for those on PPAC and the
8 public to understand how important AI is across
9 the entire government. I think we tend -- or I
10 sometimes tend to think of it as an issue that's
11 unique or particularly special to the USPTO, and
12 in many ways it is because of our role in the IP
13 system.

14 But AI policy is actually a huge part of
15 the discussion across the entire administration at
16 the highest levels. And those who are following
17 this area should be familiar with those kinds of
18 discussions that are happening, for example, at
19 the White House, with the National Science and
20 Technology Council, the Office of Science and
21 Technology Policy, the Chief Technology Officers.
22 We also have, you know, our other IP agencies, the

1 Copyright Office. We have NIST. And there's a
2 huge interest in this area, and there's a huge
3 regulatory potential in this area that the White
4 House is trying to oversee.

5 So, they issued an executive order in
6 February 2009 to kind of set some basic principles
7 as to, you know, where the administration should
8 be going or where the government should be going
9 with this. And I think an important thing for our
10 stakeholders to understand is that the main
11 priority from our perspective at the government is
12 to make sure that we are not overregulating in
13 this area in a way that's going to kind of
14 regulate it out of existence or slow down the
15 progress that we're having.

16 And after this executive order came out
17 just recently, the OSTP that I referenced earlier
18 issued this draft kind of regulatory guidance
19 memorandum with 10 guiding principles on the
20 regulation of AI. So, I recommend those
21 interested to take a look at that draft document
22 and I believe the comment period -- the comment

1 period is still open so you have an opportunity to
2 provide feedback on that.

3 But again, the overarching goal of that
4 document is to ensure that we're not -- we're
5 removing impediments to private sector innovation
6 and growth.

7 MS. MAR-SPINOLA: Coke, where is that
8 available?

9 MS. STEWART: I can send a link out to
10 that. But it's easily obtainable and it's been --
11 obtained some news coverage as well so we can find
12 the link if you Google it as well.

13 So, turning to really what the USPTO's
14 piece of this puzzle is, you know, one of the
15 points that I think Andrei and Laura have been
16 trying to make is that AI is a priority for this
17 agency, but AI has been something that this agency
18 has been dealing with for decades. I mean, it's
19 certainly the expansion of AI has been radical,
20 but it is something that we're familiar with. You
21 know, we have art units that are focusing on AI
22 and have been focusing on AI for a long time.

1 So, what we're trying to do as an agency
2 is to make sure that we're kind of keeping pace
3 with the growth in this area, that we're
4 constantly evaluating whether we need more
5 policies, any new regulations, and even if you've
6 taken a look at our RFC, which I'll discuss later,
7 you know, we want people thinking, you know, in
8 alignment with what Julie is saying about the
9 future, you know, do we need new forms of
10 intellectual property or new types of protection
11 to ensure that we're encouraging innovation in
12 this area? And those are the kinds of topics that
13 the USPTO is helping to advise the government on.

14 So, I thought this was an interesting
15 statistic just to see the growth. This is patent
16 applications growth from 2000 to the present. So,
17 you can see, you know, over the past several years
18 it's really taken off. And then if you look at
19 grants, you could see a similar curve in this
20 area. So, you know as stated, we've been dealing
21 with it, but just the growth is so radical that we
22 want to make sure that we're staying on top of it.

1 MS. MAR-SPINOLA: May I ask a question
2 right there?

3 MS. STEWART: Sure.

4 MS. MAR-SPINOLA: From these two charts,
5 are these pure AI inventions or is there a human
6 element to these? On these patents?

7 MS. STEWART: Right. Well, that's a
8 great question. So, I think when we're trying to
9 evaluate which patents are addressing AI, we're
10 looking for ones that are touching on AI. And
11 we'll talk a little bit about AI as an inventor,
12 but these are really applications where they are
13 trying to patent some aspect of an AI tool, AI
14 being used as a tool. And so, that's what it's
15 part of this study that we're doing internally is
16 to try and figure out the impact of AI on our
17 existing body of patents and patent applications.

18 But we're going to move to this
19 question, you know, as Andrei was saying, you
20 know, what seems to be the hot topic today, Julie,
21 is just what you've stated, which is what about AI
22 as an inventor, as a creator, as an author? And

1 this is Andrei speaking at CES just recently in
2 January about this topic.

3 I posted this picture, which is kind of
4 funny and a little bit charming about the monkey
5 selfie photos because it really raises a lot of
6 the issues in an interesting way that we have to
7 deal with, which is the subject matter in the
8 litigation that ensued from these photos were
9 really -- was really two-fold. One, did the
10 photographer inject enough of his own creativity
11 into the making of these photographs to be able to
12 obtain a copyright on them and own the copyright?
13 And then the other question was to the extent one
14 can say that's a non-human, whether it be an
15 artificial intelligent machine or an animal, is
16 itself injecting creativity into the process? Is
17 there a mechanism for that to be recognized?

18 And these are very interesting
19 questions, difficult questions. In the case of
20 these particular photographs, the Copyright Office
21 found that -- and it was litigated by PETA if you
22 followed it. But the Copyright Office found that

1 works created by non-humans are not eligible for
2 copyright protection. And I don't think the
3 question was actually ultimately resolved about
4 whether the photographer could obtain protection
5 because if you remember the news articles, the
6 monkey actually was clicking on the remote device
7 to stage and take his own photograph. So, it was
8 a very interesting question.

9 So, we're looking at this question about
10 -- we may not be there yet, but we're trying to
11 look ahead. You know, as the artificially
12 intelligent machines are taking more and more
13 responsibility for conception of inventions, we
14 want to make sure those kinds of inventions
15 continue to be recognized. And we want to make
16 sure we're recognizing the human contributions and
17 how to measure and recognize, if possible, any
18 other contributions.

19 MS. MAR-SPINOLA: So, and I appreciate
20 that. And I don't practice in the copyright
21 space, so I don't know if there's the equivalent
22 duty of candor for copyrights that there is in

1 patents. And so, one of the -- there's two
2 questions always in my mind when I think about
3 inventorship for AI, pure AI created innovation,
4 and that is, you know, how do you satisfy the duty
5 of candor? And also, how does it surpass or
6 overcome 101 rejections? So, I think those are
7 two things that maybe copyright doesn't quite
8 address and that could be addressed.

9 The ownership issue my guess is whoever
10 owned the AI is the owner, but that seems to me to
11 be a different question. But the duty of candor
12 and 101 patent eligibility seems to me that those
13 are things that we need to get a good handle on.

14 MS. STEWART: Yes, actually we were at
15 the copy -- Andrei and I were at the Copyright
16 Office yesterday. They had an all-day symposium
17 on artificial intelligence. And Andrei reminded
18 me that, you know, when digital -- not when
19 digital cameras, when cameras first came out,
20 there was a lot of litigations and questions over
21 whether photographers -- whether one could even
22 obtain a copyright of in a photograph. Because

1 what exactly was the human contribution to that?
2 Now, we take that for granted. Of course,
3 photographs are copyrighted and it's a
4 well-recognized form of intellectual property. I
5 think that same debate is probably something that
6 we're going to be dealing with in the future.

7 And in terms of, you know, the duty of
8 candor, I think it's fair to say the way the
9 Office is seeing it at this point is they see AI
10 as a tool, much like a surgeon and a scalpel or a
11 photographer with a camera, that's being used to
12 conceive of inventions. We're not really seeing
13 artificial intelligent machines spontaneously
14 creating. I don't think that's where we are as a
15 society quite yet, but it may be in the near
16 future. Yes?

17 MR. CASSIDY: We are intruding into the
18 IT group at this point. Maybe we could steal five
19 minutes more if you can finish your presentation
20 in that time out of deference to the other groups.

21 MS. STEWART: Yes.

22 MR. CASSIDY: Thank you.

1 MS. STEWART: So, this part, I think, is
2 going to be -- move a little bit more quickly
3 because really what we just want to do is recap
4 the efforts to engage with the public on this
5 question.

6 So, we had a conference last year, which
7 was very successful and I have a link to some of
8 the remarks that the Director made there. We've
9 issued two sets of requests for comments late last
10 summer and then in the fall. One focuses almost
11 exclusively on patents and we've received a lot of
12 responses in response to that first RFC, and a lot
13 of interest. And there are a variety of
14 questions. It's very short so, I would recommend
15 those who might be interested to pick it up. It's
16 only a page or two. And then the second set that
17 we issued in October was really focusing on the
18 breadth of IP, patents, copyrights, trade secrets,
19 data protection, and all different ways that
20 artificial intelligence can impact the IP
21 community.

22 And then really the next steps as we've

1 been hearing a lot from the public and you all
2 probably have as well, is, you know, what's going
3 to happen with the comments? When are you going
4 to make them available? The USPTO is working on a
5 report that we hope we'll issue some time in the
6 spring and when we do that, we'll make all the
7 comments available.

8 But the feedback has really been
9 incredible. We've gotten almost 100 individual
10 comments with respect to the -- from different
11 patent agencies across the world, from
12 corporations, academia, individual practitioners.
13 The feedback has really been incredible. So,
14 we're processing all that. We'll issue a report
15 and then we'll make those comments available to
16 the public. That's all I have.

17 MR. CASSIDY: Are there any questions?
18 Thank you both very much.

19 MS. STEWART: Thank you.

20 MS. PETER: Thank you.

21 MS. MAR-SPINOLA: Okay. So, next we
22 have IT to follow and our Chair for PPAC -- thank

1 you, Laura.

2 MS. PETER: Thank you.

3 MS. MAR-SPINOLA: Our Chair for PPAC on
4 this, Mark Goodson, could not make it today.

5 So, PPAC will as a whole try to conduct
6 this and let me just introduce Jamie Holcombe,
7 Chief Information Officer, Debbie Stephens, Deputy
8 Chief Information Officer, Raman Sarna, Portfolio
9 Manager, PE2E, and William Stry (phonetic)
10 (Laughter) I'm so sorry, you're not the first
11 one that I've had trouble, and it's my fault.
12 Stry --

13 MR. STRYJEWSKI: Bill is fine.

14 MS. MAR-SPINOLA: Okay. Well, all
15 right, Bill. I got William right though. Okay,
16 and Patent Senior Information Technology Expert.
17 So, thank you, and we look forward to the
18 discussion today.

19 MR. HOLCOMBE: Well, I'd like to start
20 off -- wow, you can blow that out.

21 I can do a little segue in between the
22 AI and the IT. And I say that because I've been

1 involved with artificial intelligence almost 30
2 years myself. So, I actually programmed in the
3 Lisp programming language, L-I-S-P, which turned
4 out to be a real big dud. Nothing happened.

5 The other thing I'd like to say is from
6 the '90's there was this thing called fuzzy logic.
7 Do we remember that? And where is it now? It's
8 embedded, okay? So, one of the things I've been
9 forcing in my crew is to say artificial
10 intelligence what? What does it mean? What is it
11 really about? And for me right now it's about
12 super algorithms. Another words, taking what we
13 know and learning. The machine learning part of
14 AI is real. That's training a bot to do something
15 over and over again to recognize patterns. But it
16 all depends upon what we program and what
17 programming language we're using to do that.

18 So, we have a lot of initiatives
19 underway right now with robotic process
20 automation, which some people call AI, but I
21 don't. I just call it superscripting. So, from
22 the reality of, you know, from AI and all its

1 promise that's great, but we have to make it real,
2 and that's what IT does.

3 So, in order to make it real, I'll turn
4 it over to my Deputy -- or to Bill? Sorry. I'll
5 turn it over to Bill so how he's making it real
6 for us.

7 MR. STRYJEWSKI: Can you go to the next
8 slide? Oh, there you go.

9 So, despite the fact that I work with
10 Matt Such every day, we didn't coordinate the
11 slides that well because he certainly covered most
12 of my talking points, so.

13 Auto-classification is clearly something
14 that was talked about in the last agenda item.
15 And we are doing machine learning for
16 classification for incoming patent applications as
17 we receive over 600,000 a year. And right now, as
18 it was mentioned earlier, we do them manually with
19 a contractor.

20 The transition of CPC for us to assign
21 work to the examiners or to provide docket
22 information is targeted for October 1 of this

1 year. And we're looking to do the auto-
2 classification prior to that and prove it out in
3 small segments within the scheme and schedule of
4 CBC.

5 During that we're going to create a
6 thing called C*, which is going to address just
7 the claim subject matter to help the docketing.
8 And the auto-classification is going to address
9 both the full classification of the application
10 and the C* information. And that, like I said, is
11 progressing through the summer and hoping we're
12 going to have some strong results into the next
13 fiscal year.

14 The other place we're looking at using
15 AI is to help with search in finding information
16 for the examiner to consider. We've been
17 conducting surveys based on in-house tools that we
18 already have in our scientific libraries in which
19 they have AI capabilities to assist in finding
20 information. One of those is image-based so we're
21 kind of working through that and getting surveys
22 and feedback. Some preliminary discussion on is

1 this information valuable to the examiner and are
2 these capabilities valuable to the examiner?
3 We're continuing to explore the AI-based
4 capabilities to assist in prior art search and
5 integrating that with our new search system. So,
6 a lot of this is kind of the beginning stages of
7 understanding the impacts, understanding the
8 change management and the value that can come from
9 this. Any questions related to AI?

10 MS. STEPHENS: Sorry, slides are being
11 agile. Okay, so stabilization, obviously,
12 stabilizing our system, as well as making sure
13 they're secured in order to support, not only the
14 patents business operations, but enterprise-wide
15 is very important to the mission of the USPTO and
16 CIO, particularly. And what we've done to support
17 that is to take a look at the infrastructure
18 across the enterprise and better understand what
19 the hardware and software that we need to update
20 to minimize outage or any risk to operations
21 moving forward and on a day-to-day basis.

22 So, what did we do? We had a vendor

1 come in and conduct like a 90-day assessment on
2 our mission critical systems. They've developed a
3 plan for us that essentially took around 25
4 systems to ensure that we recognized the, I'll
5 call it out-datedness of those and how we would go
6 about updating them in due course. So, that is
7 where we are today. We've done the assessment.
8 We've selected the vendor to start some of that
9 work. We've also divided some of that work into
10 our own internal teams to take over some of that
11 stabilization effort.

12 So, next steps for us, certainly,
13 looking at stabilization of -- for the vendor
14 specifically, so as I said, we did our internal
15 teams are already completed some of the work and
16 still have some work to do through the summer.
17 But the vendor coming onboard has begun to look at
18 one patent system to stabilize and one trademark
19 system to stabilize. So, we're looking at that
20 work and how it has its interdependencies amongst
21 all of the other work we're doing.

22 And then finally, this is not just a one

1 and done type of effort. We look at this ongoing
2 now and we're looking to our next set of systems
3 for FY '21 and determining which set of systems we
4 need to update and secure for FY '21 IT planning.
5 So, that's in a nutshell stabilization update.
6 Any questions?

7 MS. MAR-SPINOLA: So, yes, thank you.
8 And again, and I apologize that Mark's not here,
9 but I'm informed that there were discussions from
10 our external stakeholders about the Private and
11 Public PAIR and the issues that are, I guess, the
12 slowness of the system or the disruption to
13 external practices. Can you address that?

14 MR. HOLCOMBE: Yes, I can.

15 MS. MAR-SPINOLA: Thank you.

16 MR. HOLCOMBE: One of the things that
17 was discerned or revealed in our research for
18 stabilization is the fact of security, ensuring
19 that all of our vulnerabilities are resolved. And
20 in doing that, one of the vulnerabilities was
21 allowing a lot of the Private PAIR query to be
22 automatically scraped, or for bots to take over.

1 And so, because that was a vulnerability, we
2 resolved that by taking that feature functionality
3 away. So, only if you have the customer number or
4 customer numbers can you do the Private PAIR
5 query. That forced a lot of people to go to Public
6 PAIR, which is not performing very well as we
7 speak.

8 MS. MAR-SPINOLA: Because of that?

9 MR. HOLCOMBE: It's just a volume thing
10 at that time. Although Public PAIR does what it's
11 supposed to do, it's been bogged down by a lot of
12 volume.

13 And besides that, people don't really
14 like it because it's designed as a single manual
15 interface because of the security software we put
16 in front of it called CAPTCHA. In essence, it
17 prevents bots from actually getting in without a
18 lot of effort. I'm not saying that bots don't do
19 it. I'm saying that there's a lot of effort
20 required in order to get that done.

21 What we would like to see is people go
22 to PEDS, which is the bulk download of electronic

1 information. The problem with that is, as I found
2 out, it is not a fully baked solution from a
3 customer support point of view. There's a lot of
4 things that customers want from it. So, we have
5 an immediate short-term and long-term action plan
6 for PAIR. Private PAIR immediately. The
7 performance issues need to be found out. We
8 really do need to know what's going on and we have
9 folks right now gathering that data so that we
10 don't address ghosts. Because there's a lot of
11 internet ghosts out there. I'm not going to
12 resolve ghosts, but I will find the real problems
13 and then we'll resolve those problems. That's
14 immediate.

15 The short-term thing with Public PAIR,
16 we'll try to figure out a better way to anticipate
17 load and take care of load. And then the
18 long-term we'll find out those requirements from
19 the customer, from the public, on the public
20 dissemination of bulk data.

21 In doing that we actually invited folks
22 to come and speak to us and gather information on

1 requirements. So, there has been a lot in the
2 press about that meeting and what was described
3 because at the time, we were unaware of a surge or
4 a large problem with Private PAIR. So, because
5 that was brought to my attention, we have taken
6 those actions to do immediate actions on Private
7 PAIR.

8 So, given that are there any questions?

9 MS. MAR-SPINOLA: I think you provided a
10 good roadmap for what you're going to do. How
11 about a timeline for near-term and long-term?

12 MR. HOLCOMBE: Sure. So, the Private
13 PAIR is immediate. As soon as we can find it,
14 we're going to resolve it. And those problems
15 will be taken care of as we find them. The Public
16 PAIR, however, I think we at least need to go out
17 to the public and find out what they need. So,
18 we'll probably hold a couple of seminars in the
19 future, three to four months out, and with an idea
20 that in six months we could get something actually
21 into operation. Now, the PEDS example we may be
22 able to do something within six months. That

1 actually takes the load off of Public PAIR and
2 puts it on to PEDS. I'm hoping that that's what
3 we can do.

4 MS. MAR-SPINOLA: So, what advice, if
5 any, can you give to the external stakeholder
6 about what to do in the interim?

7 MR. HOLCOMBE: Please tell us what your
8 -- performance issues you're having first of all
9 by defining in exact detail with specifics so we
10 don't have to find ghosts. Please just give that
11 information to the help desk. Make sure all that
12 technical information is there so we can actually
13 solve something. And then keep your ears open and
14 so forth for announcements of those public
15 meetings that are going to be upcoming.

16 MS. MAR-SPINOLA: Would it make sense to
17 have maybe like a questionnaire for those
18 externals to provide specific information,
19 pinpointing information to you to help identify
20 the problem or the solution?

21 MR. HOLCOMBE: Unfortunately, it seems
22 like everyone has their own customized case and

1 every little detail is different. So, I don't
2 have a general form other than tell me exactly
3 what happened.

4 MS. PETER: If I can just --

5 MR. HOLCOMBE: That's a good idea
6 though.

7 MS. PETER: If I can just chip in real
8 quick. I mean, we are all very aware that our
9 stakeholders are very dependent on Private PAIR
10 and this is a huge priority. I think what we're
11 -- what I'm hearing from the IT team they're
12 struggling with is having something that's
13 reproduceable. So, if someone's saying I'm
14 getting into PAIR and I'm getting bounced out, we
15 don't have the exact sequence of events that led
16 to that. So, we're looking for the stakeholders
17 to provide the details so we can reproduce the
18 problem so we can solve it. And if we went to
19 some kind of a survey, I think we'd get some
20 high-level, you know, information that could be
21 helpful but it would take too long for doing what
22 we need to do, which is to fix this within weeks

1 not months.

2 MS. MAR-SPINOLA: I was thinking more of
3 for reproducibility. You know, what kind of -- or
4 to make sure that whoever has that problem, the
5 ghosts, you know, and I don't know if they're
6 ghosts, but the individuals that have their
7 particularized problem to make sure that they are
8 providing enough details to you so that you can
9 reproduce it.

10 And sometimes I think people need
11 guidance on what information do you need so that
12 you can reproduce. So, not so much a survey,
13 although I think a survey in the end might be, you
14 know, that'll to the extent that there are
15 overlapping issues that can be fleshed out, that's
16 great for the survey. But if you want to
17 reproduce something in particular, I'm sure that
18 there's certain information that you might need,
19 right?

20 MR. HOLCOMBE: Yeah. I think what we
21 could do is -- it's not the first time you
22 experience it that you get really frustrated.

1 It's usually the second or third time that it's
2 bad. So, if you do have a PAIR instance of bad
3 performance or errors or whatever it might be, if
4 you could send that in and then we'd know, and
5 make sure it's characterized by PAIR problem, then
6 we could send back something, well, what happened
7 in this? So, the next time it happens to you, we
8 could capture all those fill in the blanks. If
9 that's what you're suggesting there. Look at
10 that, that's agile at work. Awesome.

11 MS. MAR-SPINOLA: Mine or yours?

12 MR. HOLCOMBE: No, yours. That was

13 (Laughter)

14 MR. CHAN: So, this question goes back
15 to stabilization. Debbie, you talked a bit about
16 the nine critical systems that are kind of in the
17 works on being stabilized. What was the -- I
18 think I might have missed the timeline for the --

19 MS. STEPHENS: Sure, so --

20 MR. CHAN: -- for the nine.

21 MS. STEPHENS: So, again, we have the
22 vendor on board.

1 MR. CHAN: Yes.

2 MS. STEPHENS: And they are in the
3 process of discussing the plan with our technical
4 team. And so those systems we're hopeful to have
5 them kind of in rolling order of, of course,
6 completion, but the target date is end of
7 September for the totality of them. But,
8 obviously, much like our systems that the internal
9 teams are working on, they're in stages of
10 completeness. So, but ultimately end of
11 September.

12 MR. SEARS: A question for you about
13 Global Dossier. I'm a frequent user. It's a
14 fabulous program. It makes life so much easier
15 for the IP5 jurisdictions, if you're looking for
16 information. I have a question for you.
17 Occasionally and intermittently, I will get an
18 error from Global Dossier that says the solar
19 servers are unresponsive. Are you familiar with
20 this error?

21 MR. HOLCOMBE: Not personally, but I can
22 take a guess at what it is. In essence, we're

1 experiencing a lot of bots that are screen
2 scraping, and so someone will sign in and just let
3 a bot run forever. And, unfortunately, that's not
4 fair to the other folks.

5 So, we're going through a lot of
6 different alternatives on ways that we can have
7 people cue up. First come first serve, you know,
8 there's a lot of different ways we can do this.
9 But it all requires some public comment, not for
10 consensus, but actually for some resolution
11 points. I do apologize, though, it's frustrating
12 as heck.

13 MS. CAMACHO: We have a couple of
14 questions from the public that relate to the same
15 topic, and that's with respect to the changes that
16 were made recently on Private PAIR for security
17 reasons. There's an awful lot of frustration in
18 not being able to access Public PAIR accessible
19 information while on Private PAIR, and then having
20 to go to Public PAIR, which is -- can be
21 incredibly slow if you're able to get into it.
22 And so, there's a question of whether there's a

1 plan to make the Public PAIR accessible
2 information accessible on Private PAIR.

3 MR. HOLCOMBE: Myself, personally, I do
4 not see a time when we will go back to that. And
5 the reason is is because it's not designed the
6 same way. But in doing so, we do have an
7 obligation to ensure that Public PAIR performs a
8 lot better. So, no, and, yes.

9 MS. MAR-SPINOLA: Okay, I think we have,
10 let me see, we have about eight minutes left.

11 MR. WATSON: Good afternoon. The
12 protection of intellectual property and business
13 operations from a systems infrastructure
14 perspective is important to us. I'm going to talk
15 real briefly as the cybersecurity state that we're
16 in currently and some of the planned enhancements
17 that we have in the works.

18 We have defense in depth deployed
19 everywhere for every level from our top-level
20 architecture down to our applications or end
21 points. We've deployed role-backs -- role-back,
22 which is role-based access control to do our

1 authentication and authorization of users. We do
2 have a very robust annual security and risk
3 assessment of all of our USPTO systems to make
4 sure we assess the security controls we have in
5 place and to make sure that we are remediating any
6 vulnerabilities discovered as they emerge.

7 Penetration testing is important,
8 especially for external facing applications and
9 systems to detect and remediate vulnerabilities
10 and to ensure that bad actors can't do harm and
11 we're fixing those holes in those vulnerabilities
12 before they find them.

13 Data encryption within our data centers,
14 critically important. And just having a great
15 robust number of security controls and security
16 monitoring and instant response for our
17 infrastructure applications, our network through a
18 24/7 operations that we employ that's called the
19 CIL Command Center.

20 Some of the planned enhancements is
21 although we do have our back for providing our
22 identity access management capabilities, we are

1 looking at improved solutions for both our
2 internal and external users. And the improvements
3 would be to help us automate and manage a life
4 cycle of accounts. So, when people depart or
5 there is an account that's stale, that those
6 things are taken care of through an automated
7 process.

8 Zero Trust Architecture is an approach.
9 There's different ways you can implement this.
10 But that concept arised [sic] because most people
11 assume that if you're defending your network
12 perimeter, it's enough and that everything already
13 inside the perimeter is not a threat.

14 We do segment our systems within the
15 data center to ensure the right people have the
16 right access to the right systems at the right
17 time. But we will start on a roadmap to, and on a
18 journey to improve this through micro segmentation
19 both in our data center and in the cloud. It's an
20 approach to ensure that our applications are in
21 secure zones so we can isolate workloads and we
22 can improve security. That's all. Any questions,

1 think is very important, which is about the
2 failure over system and the status of what we're
3 doing to protect that going forward. What's the
4 roadmap to the extent you can share it? If you
5 can't that's fine too. But, more importantly, the
6 timeline.

7 MS. STEPHENS: I'll start and then I'll
8 pass it over to Jamie.

9 So, I think we're taking I'll say a
10 web-like approach in terms of our resiliency in
11 terms of our local failover. That's just on-site
12 on prem in our data center. Partial failover and
13 what does that mean in terms of our data, our
14 application layer? And then finally, how do we
15 achieve the full failover to perhaps an alternate
16 site?

17 So, our fearless leader here has set a
18 goal for July 2020 to test some of that
19 capability. So, I won't go into all of the
20 details, but it will be testing some of that
21 capability across those we'll call them three
22 levels of opportunity to prove out our resiliency.

1 MR. HOLCOMBE: Yes. I'd like to give
2 Debbie the chance to speak about all the work that
3 she's been doing in the past eight months, and we
4 have another five months to go. But she's very
5 excited about the opportunity to actually
6 failover. What she said was, of course, failover
7 in place first and then failover to our alternate
8 site.

9 So, we have not said what site or what
10 sites we'll pick, and there's a reason for that.
11 Maybe nobody should know. In fact, it should all
12 be behind the scenes and in an infrastructure way,
13 we will be moving to the cloud, but we're going to
14 be doing it very smartly.

15 And what do I mean by that? Many
16 agencies have gone to the cloud without the good
17 business case, without the good sense to figure
18 out what their costs will be, or at least their
19 anticipated cost. In many cases, agencies have
20 found that they're running out of money half-year
21 because they never understood the actual amount of
22 ingress and egress that it would create because as

1 soon as you make something available, it gets
2 used, i.e., Global Dossier, et cetera.

3 But, I mean, the fact of the matter is
4 is that we have a lot of systems that everybody
5 wants to use. We only have what we know right now
6 so we will make good educated guesses and good --
7 put a good business case together before we
8 actually go out into the cloud.

9 But before then we have to have
10 resilient systems. And in order to do that you
11 have to practice, practice, practice. And what
12 the folks have done and what Debbie's very humble
13 about is the fact that we've done some failover
14 exercises already in our labs, and to the chagrin
15 of a lot of people because, oh, I can't do work
16 anymore. We took down our entire lab earlier in
17 January and brought it back up. And that was the
18 first time that that was ever done and they didn't
19 know if some of the systems were going to come
20 back. They all came back.

21 So, it was a very good exercise and I
22 think people are developing more confidence. That

1 doesn't mean to say there's not hurdles, you know,
2 we're finding new things every day that surprise
3 me, so. But that's good because it makes it
4 challenging and makes it fun.

5 MR. CHAN: In order to get to that July
6 aspirational goal and cross that finish line, what
7 are some of the big -- you talked a little bit
8 about hurdles, Jamie, what are some of the big
9 ones that you anticipate needing to accomplish in
10 order to get that July -- to cross that July
11 finish line?

12 MR. HOLCOMBE: Well, we're not going to
13 go off-site until we can do it on-site very well.
14 So, the failover in place is very big. And in
15 doing that, the people practice for how they can
16 do it. And just because you're failing over from
17 one server to another, what's the difference
18 between that and an alternative site other than a
19 big network? Now, that big network, however, has
20 a lot of petabytes of data that it'd have to go
21 across. So, in doing our research and everything,
22 one of the big hurdles will be network. We'll

1 have to make sure we have enough network if we
2 want to do it en masse failover. That has proven
3 to be a large hurdle.

4 The other hurdle we'll have, of course,
5 is facilities. If we're not going to just lease
6 something for a little temporary time, but we're
7 going to do it permanently, we don't want to put
8 into a data center that we don't know what the
9 scalability is. So, a big hurdle will be the
10 facility sizing in both power, pipe, and ping.
11 Sorry, that's data center terms for just ensuring
12 that we have the right scaling to go from one
13 place to another.

14 Eventually, we would love to have a hot,
15 hot architecture. In other words, be load
16 balanced across the nation, one site near the
17 west, one site near the east. And, you know, west
18 could be Nebraska, east could be West Virginia.
19 It does matter, right? What matters is that
20 people can get to their applications when they
21 need to get to them.

22 MS. MAR-SPINOLA: Is there a reason

1 those two efforts can't be done in parallel?

2 MR. HOLCOMBE: They are being done in
3 parallel.

4 MR. CALTRIDER: I'd like to circle back
5 to AI just for a moment because we've heard
6 presentation on kind of the strategic focus at the
7 strategy level. And we've heard about the two
8 projects that are near-term, but we haven't heard
9 much about what's next after that. What's your
10 two, three, four, five-year vision for AI in terms
11 of -- what's the intermediate plan look like
12 beyond classification and search?

13 MR. HOLCOMBE: So, we're going to use AI
14 to our advantage. Search and classification are
15 great. There's also image on the trademark side
16 and we could use a lot of AI internally. As an
17 example, we're using robotic process automation to
18 look at server thresholds and once they exhibit a
19 certain amount of failures on processes, they seem
20 to break. So, we're doing a little machine
21 learning in that regard. And before they go down
22 or before they cause us an outage, we'll reboot

1 that server based on the machine learning. So,
2 we're doing that right now. So, the current
3 immediate step is to make sure we have those small
4 wins and we can scale on what works.

5 In the intermediate term, we're only
6 going to scale on what works. There's a lot of
7 hype about AI, and I'm not going to -- I'm not
8 going to fall prey to it. But in the long-term,
9 of course, we have a position open for artificial
10 intelligence in my shop. And we're looking for
11 the right candidate to lead us to that next step
12 because I think it'll be an innovation and
13 creativity position more than just AI.

14 MS. MAR-SPINOLA: Okay, no further
15 questions, but a great discussion. Thank you very
16 much.

17 MR. HOLCOMBE: Thanks a lot. Have a
18 great day.

19 MS. CAMACHO: Okay, moving forward to
20 the Finance/Budget section. We have Jay Hoffman
21 and Michelle Picard and Dan Lang, who is the Chair
22 of the Subcommittee for the PPAC.

1 MR. LANG: Sure, I think the main thing
2 is to welcome Jay to the OCFO and his what I think
3 will be a very fruitful cooperation with the PPAC.
4 And I'm very excited about Jay's arrival, looking
5 forward to the update. I think we're going to get
6 great visibility into the checkbook and the
7 financial state of the Patent Office now and
8 what's projected to happen over the next few
9 quarters. Thanks.

10 MR. HOFFMAN: Great. Well, Dan, thank
11 you for that warm introduction.

12 I am happy to be here. I've been here a
13 grand total of four weeks now, but I won't let
14 that stop me. I'm going to give you an overview
15 today of the budget status for the USPTO that will
16 include the current year execution, which is the
17 fiscal year that we're in, fiscal year 2020. I'll
18 give you a preview of our FY 2021 budget and we'll
19 end with a recap on our patent fee rulemaking that
20 I know has a lot of interest.

21 FY 2020, the USPTO like all federal
22 agencies, began the year funded by two continuing

1 resolutions. Fortunately, those were resolved on
2 December 20th. The USPTO received a full-year
3 appropriation of \$3.45 billion. The
4 appropriations bill that was passed provided the
5 agency with the authority to use the Patent and
6 Trademark fee reserve fund. This is the fund
7 where any fees in excess of the amounts
8 appropriated are parked in essence for future use
9 by the agency. It also provided direction to
10 transfer \$2 million to the Office of Inspector
11 General for audits and investigation.

12 The full year appropriation also
13 directed federal agencies to provide federal
14 employees with a 2.6 percent pay raise. For many
15 employees in the Washington, D.C. area, this
16 equated to a 3.52 percent pay raise with the
17 locality pay. I would note that while this was
18 not an assumption that was included in the FY 2020
19 budget because of some policy direction, it was a
20 risk scenario that the agency anticipated. We
21 were able to cover these extra budgeted, I will
22 call them, expenses and there'll be no impact to

1 operation as a result.

2 I would note that last fiscal year was
3 the first time in a number of years that the
4 agency actually collected fees above the
5 appropriated level. As a consequence of that we
6 did need to go to the Congress and request access
7 to those fees through a reprogramming. The total
8 amount was about \$28 million. And, of course, the
9 majority of that, \$24.7 million was
10 patent-related.

11 Do you want to take over the -- yeah.
12 Sorry, I don't have enough hands.

13 (Laughter) Let me give you a recap
14 on our FY

15 2020 status here to date of our fee
16 collections. Through December 31st we had planned
17 to collect 787 -- \$789 million in patent-related
18 fees. We are just a hair over that by about \$3
19 million. As of the end of the first quarter we've
20 collected about \$790 million in fees.

21 The actual spending is slightly ahead of
22 those fee collections. In patents we've spent

1 about \$900 million. That's not really cause for
2 concern. I'll describe the bar chart here on the
3 side real quickly. So, what you see here on the
4 right-hand side of the slide is the blue bars
5 represent the fees collected. The solid part of
6 the red bars represent obligations or amounts that
7 we have committed to spending. And then the fuzzy
8 red part are what we call accounting commitments.
9 And these are funds that we're planning to spend
10 or getting ready to obligate.

11 We do have, as you know, a reserve fund
12 and the purpose of that reserve fund is to balance
13 out some of these asymmetries that happen
14 throughout the year. Expenses don't perfectly
15 match revenues quarter to quarter. First quarter
16 tends to be a little bit higher expense quarter
17 than the subsequent quarters. So, there's no
18 cause for alarm in terms of the way the numbers
19 are coming in.

20 Next slide. In terms of the FY 2020
21 status, where we expect to be at year-end. As I
22 mentioned, we have a year-end estimate of total

1 fee collections of \$3.769 billion, which is \$320
2 million net over the appropriated level of \$3.45
3 billion. As a result of that, they'll be a fairly
4 substantial amount of funds in the
5 patent/trademark fee reserve fund at the end of
6 the year. And we will need to go through that
7 congressional reprogramming process as I mentioned
8 before to have access to those funds at the end of
9 the year.

10 Now, the reason we're going to be having
11 funds that are substantially higher than the
12 amounts appropriated are due to the fee
13 rulemaking. We predict or project that they'll be
14 an acceleration of fee collections in these third
15 and into the fourth quarter as applicants file
16 ahead of those fee increases. And, essentially,
17 we'll be collecting money in advance. We will be
18 collecting money we probably otherwise would have
19 collected in the first quarter of FY 2021. And
20 so, when we do our cash management, we'll account
21 for that in the next fiscal year budget. Next
22 slide, please.

1 MR. LANG: Can I just interject a
2 comment maybe for the benefit of the public that
3 the patent/trademark in reserve fund that's been
4 mentioned it is the mechanism that assures that
5 there is no fee diversion.

6 (inaudible) fees are collections
7 that exceed what PTO spends are
8 deposited -- what the PTO is
9 authorized to spend I should say,
10 are deposited into this fund, which
11 can't be used for other purposes.
12 But nonetheless, is only
13 reauthorized for use by the PTO by
14 the programming resolution. And so
15 far as I understand it every time
16 that a programming resolution has
17 been requested, it's been obtained.

18 MR. HOFFMAN: That's correct. And we've
19 already been giving some advance notification to
20 our Congressional Oversight Committees that this
21 is a likely scenario at the end of this fiscal
22 year and into the beginning of the next fiscal

1 year. So, they're well aware of it.

2 Just very quickly, this is a status of
3 our FY 2020 fee collections. As you can see in
4 the top table, we are planning to collect \$3.4
5 billion in patent-related fees in FY 2020. This
6 is 11.3 percent higher than we collected in FY
7 2019. The table below shows a quarter by quarter
8 comparison. So, in the ending of the first
9 quarter, which ended end of December of this past
10 year, collections were \$790 million, which was 2.3
11 percent above where we were in the prior quarter.

12 The chart on the right basically shows
13 that the plan and actuals are nearly a perfect
14 match so, that's consistent with the tables that I
15 just showed you. So, we're about \$3 million ahead
16 of schedule at this point. And, again, we expect
17 that to accelerate in the third and fourth
18 quarter.

19 Next slide, please. Actually, the
20 entire federal government along with the United
21 States Patent and Trademark Office is preparing to
22 submit their President's budget requests on

1 Monday, February 10. Usually they're submitted
2 the first Monday in February for those budget
3 watchers out there. So, the government's about a
4 week behind this year. We do anticipate that the
5 Hill will be reaching out to schedule hearings
6 with the agency either later this month or
7 certainly into the spring. We've already had some
8 initial inquiries from the House and we plan to be
9 meeting those next week. So, the budget will be
10 available and made available to the public on
11 Monday.

12 Next slide. And then lastly, just an
13 update on the fee rulemaking. As you know, the
14 USPTO is currently finalizing its patent
15 rulemaking package. A final rule is expected to
16 be published in the Federal Register in late
17 spring or early summer, and the proposed effective
18 date for the fee changes is anticipated to happen
19 some time in the time period July 2020 through
20 January 2021. There's a number of external
21 approvals that are out of our control, so we don't
22 have an exact date.

1 So, that concludes the presentation from
2 the Financial Management team. If there's any
3 questions we would be happy to try to answer them.

4 MS. CAMACHO: I have a couple of
5 questions that came in from the public, the same
6 general theme.

7 It's about the budgeting for AI, and
8 whether it's -- there's a specific budget for AI
9 on the both the tools and on the policy interest
10 as well as is it all part of IT? Is there a
11 separate budget for what's actually being
12 implemented in the IT? So, there's a bit of
13 concern about whether or not there's sufficient
14 funding for AI.

15 MR. HOFFMAN: Right. Well, what I can
16 say about that is that the artificial intelligence
17 work we're doing right now I would characterize
18 that work as at a pilot scale. These are specific
19 projects. And as Jamie was talking in the prior
20 session, we're looking to see how those play out.
21 The executive team will look at those and budget
22 appropriately in future quarters or future years.

1 But right now, I would characterize those as
2 fairly small line items that principally rest, you
3 know, in the IT area.

4 MR. LANG: Can you comment on the
5 evolution of the operating reserve throughout the
6 year?

7 MR. HOFFMAN: Can you be a little more
8 specific?

9 MR. LANG: Well, do we anticipate that
10 we're on a trajectory towards more fully funding
11 the operating reserve on a long-term basis?

12 MR. HOFFMAN: Do you want to take that,
13 Michelle?

14 MS. PICARD: Sure, I can take that one.
15 So, I think as we -- as Jay had talked about that
16 are fee collections are going to be higher than
17 originally anticipated with the shifting of
18 perhaps the date of the implementation of the fee
19 rule. Our operating reserve will grow
20 commensurately with that. We are above minimum
21 and on a trajectory to remain above minimum. We
22 are starting to kind of set our sights towards how

1 are we getting to optimal so we can start, you
2 know, using the funds on some more strategic
3 things and simply not just keeping the trains
4 running.

5 One of the things, as Jay had mentioned,
6 with the timing of the fee rule we look at cash
7 flow and he showed in -- because we're going to
8 collect fees in 2020 sooner than planned, we would
9 have originally planned for them in 2021, some of
10 those fees are operating reserve we're planning to
11 end the year relatively high, but mostly carrying
12 us into 2021 to fund our 2021 requirements.

13 So, even though the timing of those fees
14 are looking asymmetrical as Jay said, I do think
15 that it's just balancing out our requirements over
16 two years. So, I think that our operating reserve
17 is strong at this point in time.

18 MR. LANG: Thanks, that was very
19 helpful. We do look forward to the operating
20 reserve growing over time.

21 (Laughter)

22 MS. CAMACHO: Are there any other

1 questions? Thank you. (Pause) Okay.

2 So, we'll move forward into the
3 legislative section. And we have Branden Ritchie
4 and Kim joining us as well. So, Kim Alton. We
5 look forward to the update on the legislative
6 side. There's a considerable amount of
7 interesting things going on. We had a good
8 discussion yesterday.

9 MR. RITCHIE: Well, thank you for giving
10 us this opportunity. There are a lot of
11 IP-related issues being talked about on the Hill
12 right now, and that's been the case for the past
13 -- for the whole past year.

14 This Congress, there's been a lot of
15 interest. Some of those reasons are because they
16 reconstituted the Senate IP Subcommittee and so
17 there is an additional subcommittee that's focused
18 on IP issues. We had a record number of hearings
19 last year with PTO witnesses we believe. And a
20 lot of work went into that and it was good because
21 all the witnesses did a wonderful job and
22 represented the USPTO well. It was good to have

1 that opportunity to have the voice of the PTO
2 there.

3 So, let's see here. I guess I'll --
4 thank you, Kim. So, some of the hearings since we
5 last met that we've been helping with and
6 participating with. The House Judiciary Committee
7 IP Subcommittee held a hearing on the Appointments
8 Clause issue, basically on the Arthrex opinion.
9 And they had a number of witnesses and we attended
10 that and reported on that. They also, the Senate
11 Judiciary IP Subcommittee, did a hearing on the
12 fraudulent trademark submissions from overseas as
13 a follow-up to the House hearing. They did one
14 where Mary Denison, Commissioner Denison,
15 testified earlier in 2019 and this was the
16 Senate's hearing on that matter.

17 And then most recently in January, the
18 House Small Business Committee did a hearing on
19 the SUCCESS Act report and enhancing patent
20 diversity for America's innovators. And we were
21 able to talk with the staff of the committee and
22 get them information in preparation for that

1 hearing, and then followed-up with information
2 that we sent to them after the hearing. And I
3 think their jurisdiction typically doesn't cover
4 patents, but they're going to be a partner in
5 moving forward, which is great.

6 Let's see. Legislative activity, again,
7 there's a lot of activity on IP issues. A lot of
8 bills introduced. Some bills having hearings,
9 some bills having discussion behind the scenes.
10 Part of the reason for that is that the IP issues
11 don't break down along traditional party lines.
12 They're more -- they break down more based on
13 industry. So, these are issues that the Congress
14 can work on, even in times of, you know,
15 heightened partisanship or in not as heightened
16 partisanship times. So, we've seen a big uptick
17 in that.

18 So, some bills worthy of note at this
19 point are the Inventors' Rights Act that was
20 introduced and that would create some relief for
21 independent inventors with respect to certain
22 procedures in litigation procedures. That's been

1 introduced. Another bill is the Patents for
2 Humanity Improvement Act. So, the Patents for
3 Humanity program allows accelerated examination to
4 winners of -- who win awards for things that
5 improve the -- what am I looking for here, Kim?

6 MS. ALTON: The humanitarian --

7 MR. RITCHIE: The humanitarian
8 inventions, and they can get an accelerated
9 certificate for the next time they patent. And
10 this Improvement Act would allow that to be
11 transferrable. So, that's another bill that's
12 being talked about right now.

13 The Counterfeit Goods Seizure Act would
14 allow customs to seize infringing products that
15 infringe on design patents at the border. And
16 then, of course, we're -- we do a lot of work
17 monitoring the patent-related drug pricing
18 legislation to make sure that any legislation that
19 affects drug pricing or the intention is to affect
20 drug pricing, does not have damaging impacts on
21 the patent system and the incentives of the patent
22 system to encourage innovation. So, we've done a

1 lot of work with Congress to do briefings,
2 answered a lot of questions, just getting
3 information out there about how patents generate
4 innovation in -- broadly, but also in the drug
5 context. I'm going to defer to what Jay -- Jay
6 covered the federal budget issues, I'm sure, in
7 detail, so we'll skip over that.

8 Arthrex decision, so there is an
9 interest it seems like in Congress to address the
10 Arthrex decision. This hearing that they held
11 last year toward the end of the year they had
12 witnesses that had a broad spectrum of
13 recommendations of what -- how we -- how it could
14 be fixed ranging from clarifying the authority
15 that the director has to conduct sufficient
16 oversight of the PTAB, all the way to other ideas
17 including new presidentially appointed chief
18 patent judges. So, I think right now they're just
19 considering options, and I would expect they are
20 considering options in the spectrum of what the
21 witnesses said, among many others. But there's
22 interest in it, they're looking into it, but we

1 haven't seen any draft text or anything like that
2 yet.

3 Section 101 reform. So, that was the
4 big topic, of course, last year on the Hill,
5 especially on the Senate side. It has gone to a
6 different -- I'm trying -- different context now.
7 Right now, it's more, I think, organic. I think
8 more people are looking into what possible fix is
9 there, possible reforms that could work.
10 Stakeholders are getting together and having
11 discussions about that as well. But it's less
12 directed from Congress right now. It's more
13 outside groups trying to work out differences and
14 see if there's a way to get consensus. There are
15 still many differences of opinion on how to do it,
16 but there is still a desire to do it, but to do it
17 the right way. I think that's the best way to
18 summarize what's happening with Section 101 reform
19 right now. And, of course, we're monitoring these
20 and reporting as needed on all those issues.

21 Let's see here. So, you guys heard from
22 Kim and Valencia on the SUCCESS Act activities

1 already. There's a lot of interest in these. As
2 we mentioned, the Senate -- I mean, I'm sorry, the
3 House Small Business Committee hearing. A lot of
4 interest all around, and that's a good thing
5 because there's a lot of partners to work with on
6 this issue and a lot of stakeholders that are
7 working on it too. So, we're looking forward and
8 we think the SUCCESS Act helped bring the
9 conversation to the national level even more and
10 hopefully even more in new partners will come in
11 and help us solve this problem and get more people
12 inventing from the underrepresented groups. So,
13 it's a really great opportunity right now for that
14 issue.

15 Let's see. Some of the things we're
16 working on, some priorities of the USPTO. A lot
17 of these deal with continuity of service. We want
18 to make sure that we have the tools available to
19 make sure that we do not have to shut down
20 operations whether it be for outages, whether it
21 be for funding lapses, and the like.

22 We are also working to extend the TEAPP

1 program, that's the telework program that allows
2 employees, examiners to work virtually anywhere in
3 the country. I believe the updated stats are we
4 have examiners in every -- in 48 states and Puerto
5 Rico, maybe 49. And so, a very popular program,
6 people stay longer, it saves the agency fees.
7 It's great for the employees. We've been working
8 with Cathy and her team on this as well just to
9 lock in these benefits. And so, we've had some
10 talks with various committees on the Hill that
11 have oversight over that and we'll continue that.
12 And it's set to expire on December 31, 2020. The
13 goal is to authorize it permanently.

14 And then, of course, the -- we have an
15 interest in fixing the Arthrex decision as well.
16 So, we're actively monitoring and providing
17 feedback to the Hill as they consider that issue.

18 And, thank you. With that we'll throw
19 it open to questions.

20 MS. CAMACHO: I have a question or a
21 request. Kim, maybe you could go over the
22 legislative recommendations that were made in the

1 SUCCESS Act report and whether you've gotten any
2 feedback or a sense from the Hill where they might
3 move.

4 MS. ALTON: Right. So, one of the major
5 legislative recommendations related to data and
6 the USPTO's authority and ability to collect the
7 --

8 MS. CAMACHO: Kim, could you turn your
9 mic up?

10 MS. ALTON: Sorry, I'll repeat. Sorry
11 about that. One of the major recommendations,
12 legislative recommendations in the SUCCESS Act
13 dealt with the USPTO's ability to collect
14 demographic data on our applicants, on our patent
15 applicants. And there's legislation that's been
16 introduced, the IDEA Act. It's been introduced in
17 the House and Senate. It stalled in the Senate,
18 but it's something that we are continuing to have
19 conversations with Capitol Hill offices on how to
20 go about collecting the data and what's the best
21 way to sort of get that response. If it's through
22 the application process or through a survey tool.

1 So, we're doing a lot of sort of
2 thinking within the agency, talking to
3 stakeholders and others just trying to figure out
4 the best way to do this. Because as Branden
5 mentioned, the hearing last month in the House
6 Small Business Committee really touched on data
7 and the importance of data. There was a witness
8 there and that's all that he focused on in his
9 testimony of how if you're going to address a
10 problem, you've got to have the data to back that
11 up.

12 And so, that's something that I know
13 Valencia and the council that they're working on,
14 something that we included in the SUCCESS Act of
15 how do we go about obtaining that? How do we not
16 -- how do we do that and not have a chilling
17 affect on our applicants and on the process, but
18 really get a really good accurate as possible
19 count, voluntary count of those who are applying
20 for patents here at our agency.

21 MS. CAMACHO: Thank you.

22 MS. MAR-SPINOLA: What did I miss? Can

1 we start all over? Sorry. (Laughter)

2 MR. CASSIDY: I have a question. On the
3 telework sun setting, you know, it would be awful
4 if that happened. So, how much concern do you
5 have about it and in the ordinary course of the
6 coming year, how many members of Congress will you
7 ping about that and when do you think you'll get a
8 sense of whether that's truly worrisome or just
9 something else that'll be included in an omnibus
10 bill and taken care of?

11 MR. RITCHIE: So, we're trying to touch
12 on all the congressional stakeholders that would,
13 you know, make this decision that would be
14 responsible for making these decisions and also as
15 many as we can. We're trying to be strategic and
16 use our resources wisely. And the meetings we've
17 had so far have been very positive. You know,
18 nothing promised or anything like that, but a lot
19 of interest in it. A lot of education about the
20 benefits of the program seem to be well received.

21 It's always hard to get things passed.
22 But I'm optimistic that there is support -- that

1 there will be support once we have educated
2 everyone about it. And if we run into concerns,
3 we'll address them as we go. But the fact that
4 the PTO is unified in asking for a permanent
5 extension has been really key to -- from both the
6 employees and management has been really key in
7 showing how much of a no-brainer this is, and that
8 it should be. Nothing's a no-brainer when it
9 comes to legislation, but the benefits are just
10 they're obvious. So, I'm optimistic. And, but,
11 you know, expect the unexpected in D.C., so, we'll
12 see. We're going to work really hard on it.

13 MR. CHAN: I think yesterday you
14 distinguished between the TEAPP program and
15 Telework.

16 MR. RITCHIE: Right.

17 MR. CHAN: And they're not the same
18 thing, so maybe --

19 MR. RITCHIE: Right.

20 MR. CHAN: -- for the benefit of the
21 folks listening on, you could kind of distinguish
22 the two.

1 MR. RITCHIE: Right, that's a good --
2 thank you, thank you.

3 So, TEAPP is -- stands for the Telework
4 Enhancement Act Pilot Program. And we have
5 Telework at the PTO and then we have this program,
6 which was there was a statute in 2010 that was
7 called the Telework Enhancement Act. It created
8 the opportunity for a bunch of test programs on
9 Telework and then it required the PTO to do one.
10 And so, there were 10 slots for discretionary
11 programs and PTO was required to do it. And
12 basically, it allows employees to change their
13 duty stations to their home office or remote
14 office and work from anywhere in the country and
15 it allows the PTO to ask that in exchange that for
16 a reasonable number of trips back to headquarters,
17 the employees cover the travel costs.

18 It's a voluntary program, nobody has to
19 join it. But it's been very popular and the
20 demand is high to join it. And it has been one of
21 these -- a test program that has been tremendously
22 successful. So, it's -- we think it's an easy

1 sell to go to the Hill and talk about all the
2 benefits. There's virtually no drawbacks that
3 we've encountered yet. But that's the difference
4 between the regular telework and the TEAPP
5 program, yeah. Did I miss anything? Okay.

6 MS. MAR-SPINOLA: Well, thank you. I
7 appreciate it and I didn't miss anything by the
8 way because we had a comprehensive discussion
9 yesterday. I thank you for that.

10 You know, legislation as a topic is
11 trending now just like everything else whether
12 it's IT, or finance, or quality or pendency, and
13 post-grant challenges; everything matters to the
14 users here. And, you know, legislation sometimes
15 is the last stop to get clarity. So, your role in
16 what you report to us is just as important as
17 everything else. So, we appreciate it, thank you.

18 MR. RITCHIE: Thank you, and if you ever
19 have thoughts that you'd like to share, you know,
20 of course, in addition to the other folks you work
21 with on a routine basis if it involves legislation
22 or things going on in the Hill, please, please

1 reach out to us directly. We're happy to field
2 those and relay those.

3 MS. MAR-SPINOLA: Thank you.

4 MR. RITCHIE: Thank you.

5 MS. MAR-SPINOLA: Okay. So, we're a
6 little early, which is -- I appreciate. And so,
7 let me thank you, thank everybody.

8 For closing remarks I just want to say
9 that, you know, for this year's theme of PPAC 2020
10 Vision, we are looking at not only the
11 consistency, predictability, and reliance on the
12 examination process, but we are also -- doing that
13 with the specific goal of helping to ensure the
14 durability of the Patent Office product, the
15 patent. Folks put great investment into that
16 product. And while some inventors, may be
17 satisfied with hanging a plaque on their wall,
18 others depend on that issued patent for the value
19 of their companies, their livelihood, and all
20 else.

21 So, I thank the PPAC and I thank the
22 Patent Office for working with us and being

1 patient with our questions and helping us
2 understand more about the needs and the
3 limitations and maybe where we can help best to
4 advance or to facilitate the Patent Office goals.
5 But we are here to listen to the outside
6 stakeholders, and try to convey as much as we can
7 to the Office, as appropriate. Importantly, we
8 look for the stakeholders' comments to be
9 constructive. So, that's what we're targeting for
10 this year, and would like the stakeholders' help
11 in defining those issues and proposing solutions
12 for the Office to implement.

13 So, we'll follow-up next time and maybe
14 we'll be shifting more time I think for other
15 committees so that everybody is -- we can speak
16 more deeply about their topics.

17 I want to mention that we have Rick and
18 we have Mark and we have Bob here who have been
19 sitting here through the whole day. And we need
20 to acknowledge that and thank you for -- and Andy
21 and for being -- I didn't forget him. Andy spoke
22 so. (Laughter) So, but anyway, I want to thank

1 all of you for your dedication, for your service,
2 and we will see you in May.

3 MR. POWELL: I want to just add that I
4 actually don't mind sitting here because, you
5 know, I learn a lot myself about other parts of
6 the Office such as the board and the activities in
7 the legislative area and what not. So, it's a lot
8 of fun.

9 MS. MAR-SPINOLA: Thank you, Mark.
10 Okay, so vote for adjournment?

11 MS. CAMACHO: (Indicating)

12 MS. MAR-SPINOLA: Second?

13 MR. CALTRIDER: (Indicating)

14 MS. MAR-SPINOLA: Thank you.

15 (Whereupon, at 2:51 p.m., the
16 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 COMMONWEALTH OF VIRGINIA

3 I, Nathanael Riveness, notary public in
4 and for the Commonwealth of Virginia, do hereby
5 certify that the forgoing PROCEEDING was duly
6 recorded and thereafter reduced to print under my
7 direction; that the witnesses were sworn to tell
8 the truth under penalty of perjury; that said
9 transcript is a true record of the testimony given
10 by witnesses; that I am neither counsel for,
11 related to, nor employed by any of the parties to
12 the action in which this proceeding was called;
13 and, furthermore, that I am not a relative or
14 employee of any attorney or counsel employed by the
15 parties hereto, nor financially or otherwise
16 interested in the outcome of this action.

17

18 (Signature and Seal on File)

19 Notary Public, in and for the Commonwealth of
20 Virginia

21

22

