

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

QUARTERLY MEETING

Alexandria, Virginia

Thursday, May 7, 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 Union Representatives:

13 KATHLEEN DUDA

14 CATHERINE FAINT

15 USPTO:

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

17 SCOTT BOALICK, Chief Judge, Patent and Trial
18 and Appeal Board

19 JACKIE BONILLA, Deputy Chief Judge, Patent Trial
20 and Appeal Board

21 ANDREW FAILE, Deputy Commissioner for Patent
Operations

22 JANET GONGOLA, Vice Chief Judge, Patent Trial
and Appeal Board

1 PARTICIPANTS (CONT'D):

2 JAY HOFFMAN, Chief Financial Officer

3 JAMIE HOLCOMBE, Chief Information Officer

4 NICK MATICH, Senior Legal Advisor

5 SHIRA PERLMUTTER, Chief Policy Officer and
6 Director for International Affairs7 MICHELLE PICARD, Senior Advisor for Financial
8 Management, Office of the Chief Information
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10 RAMAN SARNA, Portfolio Manager, PE2E

11 DEBBIE STEPHENS, Deputy Chief Information
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14 Chief of Staff, Office of the Under Secretary
15 and Director16 WILLIAM STRYJEWSKI, Patent Senior Information
17 Technology Expert

18 MATTHEW SUCH, Director, Technology Center 2800

19 VALENCIA MARTIN WALLACE, Deputy Commissioner
20 for Patent Quality

21 Other Participants:

22 DREW HIRSHFELD

MARTIN RATER

DON WATSON

KAREN YOUNG

* * * * *

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

2 (9:07 a.m.)

3 MS. MAR-SPINOLA: So let me start this
4 again, sorry. Good morning. This is Julie
5 Mar-Spinola, Chair of PPAC. Welcome to PPAC 2020,
6 our second quarterly meeting for the year. As
7 always, I'm excited to be here, albeit it in Brady
8 Bunch format. And I look forward to having a
9 robust and informative meeting today.

10 This will be our very first meeting held
11 remotely. We will endeavor to run it as smoothly
12 as possible with the support of the USPTO's
13 conference services' team, Richard Montgomery and
14 Christian Incognito, cool last name. And as with
15 all our past meetings, a text feature on WebEx is
16 enabled and available for our external
17 stakeholders to submit questions, which PPAC Vice
18 Chair Jennifer Camacho will monitor and convey
19 questions as appropriate.

20 In addition, feel free to send us
21 questions through our PPAC mailbox. The address
22 of which is PPAC@uspto.gov. Again,

1 PPAC@uspto.gov. And Jennifer Lo will also forward
2 questions to us throughout the meeting.

3 For the sake of efficiency and to ensure
4 that each of the presentations will be complete,
5 we will hold the questions to the end of the
6 presentation. I will start today's meeting with a
7 roll call of our PPAC panelists who will introduce
8 themselves and their affiliation. So, Barney
9 Cassidy? Barney, you're on mute.

10 MR. CASSIDY: Hi. This is Barney
11 Cassidy. I'm calling in from my home office in
12 Seattle. I'm delighted to be here, and I will go
13 on mute.

14 MS. MAR-SPINOLA: Thanks, Barney. Dan
15 Lang?

16 MR. LANG: This is Dan Lang, also
17 calling in from California. Dan Lang, PPAC.

18 MS. MAR-SPINOLA: Jeff Sears.

19 MR. SEARS: Hi. This is Jeff Sears
20 calling in from New York City, PPAC.

21 MS. MAR-SPINOLA: Jennifer Camacho.

22 MS. CAMACHO: Hi. Jennifer Camacho,

1 PPAC, joining you from Boston.

2 MS. MAR-SPINOLA: Mark Goodson. MR.

3 GOODSON: Mark Goodson, Dallas, Texas,
4 PPAC.

5 MS. MAR-SPINOLA: Steven Caltrider.

6 MR. CALTRIDER: Helps if I take myself
7 off mute. Steve Caltrider, joining you from
8 Indianapolis, Indiana, PPAC.

9 MS. MAR-SPINOLA: Thanks, Steve. Tracey
10 Gene- Durkin.

11 MS. DURKIN: Good morning. Tracey
12 Durkin, member of the PPAC. Joining you from
13 Alexandria, Virginia.

14 MS. MAR-SPINOLA: Catherine Faint.

15 MS. FAINT: This is Catherine Faint,
16 PPAC, joining you from the Maryland suburbs.

17 MS. MAR-SPINOLA: And Kathleen Duda.

18 MS. DUDA: Kathleen Duda, joining you
19 from Virginia, a POPA member of the PPAC.

20 MS. MAR-SPINOLA: Good morning,
21 everybody. And now may I turn the meeting to the
22 Director, Andrei Iancu.

1 MR. IANCU: Great. Thank you, Julie and
2 good to see everyone, see being in quotes, but I
3 see little images of you on my screen. And a
4 question is being asked all across America, can
5 you hear me? Yes, very good. Thumbs up. Very
6 good.

7 As Julie mentioned, this is our first
8 all-virtual PPAC public meeting, and despite this
9 new way of doing business it really is great to
10 see everyone online. I am coming from my home
11 office as well. As you know, the USPTO is working
12 entirely remotely as we speak. I hope that you
13 and your loved ones are in good health at this
14 time.

15 Let me start by expressing my deep
16 sorrow for the passing of former USPTO Director Q.
17 Todd Dickinson earlier this week. Todd was a
18 giant in the world of IP and a mainstay in the IP
19 community for several decades. He was also a dear
20 friend of mine. I, the USPTO, and the entire IP
21 community will miss him terribly.

22 And last month we lost another former

1 great head of the USPTO, an intellectual property
2 thought leader, Gerry Mossinghoff. These two
3 prominent Americans dedicated the better parts of
4 their lives to intellectual property and public
5 service. The USPTO and the United States are
6 stronger and better today because of their
7 service.

8 So let me turn to today's meeting now
9 and I want to thank you PPAC members, USPTO
10 employees, and the rest of you who are with us
11 here today. During this unprecedented and
12 challenging time we continue to press forward
13 doing our part to support each other, to serve the
14 public, and to promote U.S. Commerce. Indeed,
15 the partnership between the USPTO and PPAC is more
16 important now, than maybe ever before in our joint
17 history.

18 I also like to acknowledge our
19 incredible patent employees who continue to
20 perform their jobs with the highest level of
21 professionalism and energy. Indeed, since this is
22 actually public service recognition week, I want

1 to commend all of the USPTO's employees for the
2 incredible work that they are doing in support of
3 our motion to foster innovation and economic
4 competitiveness.

5 Others also recognize the hard work and
6 dedication of our employees as well. For example,
7 in a recent letter to the USPTO members of
8 Congress from both chambers and from both sides of
9 the aisle commended our work during the pandemic.
10 They wrote, for example, "We applaud the measures
11 the USPTO already has implemented to adapt to
12 these unprecedented circumstances that provide
13 relief to and ensure the safety of its employees
14 and those who appear before the USPTO."

15 The efforts of our employees offer
16 reassurance to our stakeholders and the public and
17 enabling inventors and entrepreneurs to make
18 progress with their work even during this time of
19 difficulty. As you know, we have been on
20 mandatory telework since March 23. Effectively
21 closing our campus to all but personnel whose
22 physical presence on campus was deemed essential.

1 Since then, virtually everyone has been
2 teleworking and will continue to do so until
3 further notice. Because the USPTO has already had
4 a substantial number of employees that telework
5 full time and many others who do so part time,
6 this mandate to go on mandatory telework does not
7 put an enormous strain on our agency. In fact, we
8 were able to ramp up our new full time telework
9 workforce quickly and efficiently.

10 For those employees who are not fully
11 telework ready, we were able to deliver equipment
12 to them within a short period of time so that
13 every employee was able to continue to work
14 effectively from home. Additionally, these has
15 been an expansion of regular working hours for
16 employees enrolled in the increased flextime
17 policy program to allow them to work any time from
18 4:30 a.m. Until midnight. This gives our
19 employees more flexibility in balancing their
20 family and work responsibilities as they see fit.

21 We have found that the production of our
22 patent examiners has remained steady, and in some

1 areas, production has actually increased during
2 the weeks we have been teleworking. This is a
3 tribute to the professionalism of our employees
4 throughout the agency. Thanks to all of these
5 efforts the USPTO remains open for business,
6 supporting our stakeholders and the public more
7 broadly, an especially important achievement
8 during this challenging time.

9 In addition to continuing our
10 examination and adjudication of patent and
11 trademark applications seamlessly, let me share
12 with you a few examples of the many other ways we
13 have been maintain business as usual at the USPTO
14 during these most unusual times. On April 23, for
15 example, we published a significant report
16 highlighting how actions the USPTO took in the
17 wake of the 2014 Supreme Court Decision Alice v.
18 VCLS Bank have brought greater predictability and
19 certainty to the determination of patent
20 eligibility in the technology areas most affected
21 by the decision.

22 And the results of these actions taken

1 by the USPTO have been, actually, remarkable. We
2 have heard anecdotally from both examiners and
3 applicants across the spectrum of technologies
4 that our guidance issued last year greatly
5 approved the Section 101 analysis. The chief
6 economist's report now confirms this general
7 perception, especially with its critical finding
8 that uncertainty with respect to Section 101
9 examination decreased by a remarkable 44 percent.

10 These findings make it crystal clear
11 that our Section 101 guidance works and largely
12 addresses the confusion of the recent years in
13 this important area of patent law. But we are
14 only once branch of government, I ask all involved
15 in our treasured patent system to come together
16 and solve, once and for all, this fundamental
17 issue. We have shown that the issue is, indeed,
18 solvable.

19 We also recently made patent center beta
20 available to all users. Patent center beta is a
21 new tool for the electronic filing and management
22 of patent applications in a single unified

1 interface. It provides increased functionality,
2 better overall ease of use, and an enhanced
3 experience for applicants, including approved
4 processes for patent application submissions,
5 review, and management. And in further IP use,
6 several weeks ago we launched an artificial
7 intelligence portal on our website. Likewise, we
8 launched a hub on our websites for our various
9 efforts to expand the innovation ecosphere. I
10 urge you to check both of them out. Last week we
11 officially launched the PTAB's Legal Experience
12 and Advancement Program known as LEAP. LEAP is
13 designed to foster a development of the next
14 generation of patent practitioners by creating
15 opportunities to gain the property skills and
16 experience in oral arguments before the board.

17 The USPTO understands that stand up
18 speaking opportunities before tribunals are
19 limited, especially early on in ones' career, and
20 that gaining courtroom experience is advantageous
21 for practitioners in their career development.
22 Plus we will have several training sessions for

1 LEAP practitioners for all details, including
2 training sessions. Please check the LEAP page on
3 our website.

4 Over the last few weeks with the support
5 of several collegiate law school program, we also
6 hosted five regional rounds in the national finals
7 of the National Patent Drafting Competition, a
8 contest that introduces law students to issues
9 arising in U.S. patent law and helps develop their
10 patent application drafting, amending, and
11 prosecution skills. And we did this virtually.

12 And speaking of law school students, we
13 know that some of their summer programs may have
14 been disrupted this year. As a result, we have
15 just announced an intern program for those who are
16 able and would like to gain some invaluable IP
17 experience this summer. Please take a look at our
18 posting in that regard.

19 We are also supporting our stakeholders
20 in other unprecedented ways. In accordance with a
21 temporary authority provided by the CARES Act,
22 signed by President Trump on March 27, last week

1 the USPTO further expanded to June 1 the time to
2 file certain patent and trademark documents, and
3 to pay certain required fees which otherwise would
4 have been due between March 27 and May 31. This
5 is in addition to the prior extension to USPTO had
6 announced on March 31. The extensions apply to
7 most, but not all, patent filings and some PTAB
8 filings. We have posted guidance, including FAQs,
9 on our website. I encourage you to look at the
10 guidance and the FAQs to see the details,
11 including what is and what is not covered, and how
12 you might benefit from this relief as stakeholders
13 and filers.

14 Yesterday, in other news, we announced
15 that we are now allowing the electronic filing of
16 plants patent applications. And on Monday, we
17 unveiled a new web-based, voluntary intellectual
18 property marketplace platform which we call
19 Patents for Partnerships to provide the public
20 with a user-friendly, searchable repository of
21 patents and printed patent applications related to
22 the COVID-19 pandemic that are indicated as

1 available for licensing.

2 And in March we waived the remaining
3 original handwritten ink signature requirements of
4 the USPTO. These are just some of the ways we are
5 supporting the public in these difficult times.
6 The coming weeks and months are likely to continue
7 to be trying for all of us, so we will continue to
8 monitor the situation carefully and assess the
9 needs for any further actions. In the process, we
10 want to hear from you, our stakeholders, and ideas
11 that you have for mitigating the fallout from this
12 global health and economic crisis.

13 We know that we can always rely on PPAC
14 for thoughtful advice and counsel, and for your
15 attention to stewardship, especially of our
16 patents' budget which in turn, helps us to ensure
17 that the USPTO's patent's organization has stable
18 funding to meet our stakeholders' needs. The last
19 time PPAC met for a public session there was
20 discussion of a number of important initiatives we
21 had hoped to complete this year, including
22 stabilization of our IT systems. We remain

1 committed to achieving these goals, but certain
2 expenses may be deferred in favor of maintaining
3 fundamental functions.

4 Such fundamental functions include the
5 continued provision of timely and high-quality
6 service and the stabilization of the legacy IT
7 systems that we rely on every day to do our jobs,
8 and that our stakeholders rely on to do business
9 with the office. Plus, we will continue with some
10 of our most important projects. For example, we
11 continue our work on artificial intelligence. We
12 have recently received valuable feedback, 97
13 comments in fact, in response to our request for
14 comments on the impact of AI on IP policy. You
15 can find them on our new AI web portal that I
16 mentioned a few minutes ago.

17 We're currently working on reports on AI
18 and IP policy which will bring together these
19 comments, as well as feedback we received at the
20 AI policy conference, we had last year. And there
21 is so much other work we are doing, some of which
22 you will hear about throughout today's

1 presentations. In short, at the USPTO, we
2 continue to focus on our core mission of fostering
3 innovation, competitiveness, and economic growth,
4 both domestically and abroad. This is critically
5 important, especially at this time because
6 inventors and intellectual property promotes the
7 well-being of all Americans.

8 Even in the midst of a global pandemic,
9 indeed, perhaps, especially in the midst of a
10 global pandemic, investors, as they always do,
11 will create new technologies that will help us
12 overcome new and unprecedented challenges. As
13 President Trump states in his World IP Day
14 proclamation just a couple of weeks ago, "The
15 importance of intellectual property has never been
16 more apparent than it is now, as we continue the
17 ongoing battle against the Coronavirus." And the
18 President continues, "Relying on strong
19 intellectual property protections, industries are
20 able to act boldly to invent new tests, begin
21 developing experimental treatments and vaccines,
22 and rapidly produce and reengineer medical

1 equipment to help win this war."

2 With World IP Day just behind us, we
3 should take a moment to recognize all inventors
4 and entrepreneurs, and to appreciate the
5 innovations all around us that make our lives
6 happier, healthier, and better in so many ways.
7 Let me end by thanking the PPAC members once more
8 for your hard work and dedication. The
9 longstanding partnership between the USPTO and
10 PPAC is extremely important. And your insights
11 and guidance on a number of issues continues to be
12 invaluable. We're looking forward to and relying
13 on your sustained support in collaboration in the
14 months ahead. Thank you for your service on the
15 committee.

16 Now, Julie, let me turn things over to
17 Commissioner for Patents Drew Hirshfeld who will
18 update you on the patent systems unit. I'm also
19 very happy to take questions, but I understand
20 from your remarks just a few minutes ago, Julie,
21 that questions will have to wait until the end,
22 but it's up to you.

1 MS. MAR-SPINOLA: Yes. What I meant,
2 sorry for that, is at the end of each
3 presentation. So we have about five minutes to
4 take questions for you now. Before we do that
5 though, I need to apologize because I neglected to
6 also introduce Jeremiah Chan from PPAC. Jeremiah?

7 MR. CHAN: Thank you, Julie. Jeremiah,
8 PPAC. Calling in from California. Happy to be
9 here today.

10 MS. MAR-SPINOLA: Thank you and sorry
11 about that. So let me open this to any questions
12 for the Director. Let me see. Let me start out
13 with, first, thanking the Director and saying how
14 impressive the USPTO has been. I think my PPAC
15 colleagues will agree that it is amazing, given
16 the pandemic, how reactive and proactive the
17 patent office has been in doing so much more than
18 even what you have listed in your introduction,
19 Director. There are so many things that come to
20 light because of the pandemic, and simple things
21 from wet hand signatures for documents or
22 extensions of time. These are things that I think

1 externally we think, okay, this is very simple to
2 do and you make it look simple, but we know from
3 PPAC that it does take -- there's a certain
4 process in place to do that.

5 And the extensions of time clearly
6 impact the Office's operations in terms of the
7 revenue, but you're acting on that as well. PPAC
8 supports that and we believe that everything that
9 you're doing is at the speed of business, at the
10 speed of operations. We invite the public to make
11 proposals, as you suggested, and for that we thank
12 you. Appreciate it.

13 I have Jeff Sears. Jeff, do you have a
14 question, please?

15 MR. SEARS: Yes. Thanks very much,
16 Julie. Thank you very much, Director. Really
17 wanted to commend you and the Office for the
18 continuity of operations during these uncertain
19 times and for the relief you've given to
20 applicants in light of these uncertain times. My
21 question for you is this, has the Office had any
22 communications with foreign patent offices or

1 foreign patent authorities like WIPO or EPO to
2 discuss the types of relief that might be
3 available to give to applicants?

4 MR. IANCU: Yes, indeed. Thank you,
5 Jeff, and thank you, Julie, for the kind comments
6 and remarks. Before I get to Jeff's question,
7 again, I continue to be incredibly impressed and
8 amazed and I congratulate all PTO employees for
9 the amazing work they do. I often comment, but
10 this is really applicable to our PTO employees
11 across the board that they are like ducks swimming
12 in water, you know, doing a lot of work peddling
13 under the water, but it appears seamless on top
14 and to those watching. And that's, indeed, the
15 way our operations have turned out due to their
16 incredible work.

17 Yes, Jeff, we are working very closely
18 with our colleagues across the world. I have had
19 communications, direct communications with the
20 heads. One-on-one calls and meetings of major
21 offices including the EPO, JPO Japan, KIPO in
22 Korea, and the like, and we're exchanging

1 thoughts, ideas, practices. In addition, WIPO has
2 been having biweekly calls with the various major
3 offices around the world, so we're staying in
4 touch.

5 WIPO just posted a couple of days ago a
6 tool on their website which lists the measures
7 taken by the various offices around the world. So
8 if somebody wants to see, for example, what the UK
9 IPO has done, for example, in terms of extensions
10 or other relief measures you can go directly to
11 their website if you want, but you can also go to
12 the WIPO website and the information is collected
13 there. The USPTO info, of course, is listed as
14 well.

15 MS. MAR-SPINOLA: Thank you. Thank you,
16 Jeff, for the question. And I see a question from
17 Jennifer Camacho.

18 MS. CAMACHO: Thank you. I have a
19 comment to offer and an (audio drop). And I think
20 we've also just gotten a question in from the
21 public that I'd like to pose to you. So the
22 comment I wanted to give you was that being in the

1 life sciences area in the (audio drop) area we
2 have very active venture capital-based startup in
3 the life sciences industry.

4 I and some colleagues as well have
5 noticed a tremendous amount of collaboration and
6 very innovative partnering spirit that have come
7 out of the COVID pandemic among the life sciences,
8 not only with the startups, but with the larger
9 public pharmas and between the two. So, it's
10 actually quite impressive, it's something that I
11 haven't seen before and a sense of urgency and
12 very much a partnering type attitude.

13 And I observed that but for the IP, the
14 patent availability in the U.S., many of these
15 startups wouldn't have been funded. They wouldn't
16 have gotten investment. And that investment is
17 what allowed them to get to the point where
18 they're (audio drop) actually to develop such that
19 they can partner it out. So, they've been able to
20 bring very cutting- edge technology to a point
21 where they are now able to actually partner with
22 the large pharma or among themselves and join the

1 race to both vaccines and treatments for COVID.
2 So, I offer that observation for whatever it's
3 worth.

4 And a question then for the public which
5 is a little bit of the flip side of that which it
6 indicates, "Several members of Congress have
7 proposed to eliminate patents on drugs and
8 therapies for COVID-19. Can you comment on the
9 implications of that policy proposal?"

10 MR. IANCU: Well, I haven't seen any
11 concrete bills that expressly say those things and
12 I couldn't comment on pending legislation anyway
13 without significantly more detail. But just
14 addressing the concept in general, let me refer
15 once again to what the President said in his World
16 IP Day proclamation. That the importance of IP
17 has never been more apparent as it is now as we
18 continue the ongoing battle against the
19 coronavirus.

20 So as a general principle, innovation is
21 critically important to addressing all sorts of
22 problems and issues and improving the human

1 condition. And intellectual property protection
2 is critically important to incentivizing and
3 protecting and enabling that innovation.

4 MS. CAMACHO: Thank you.

5 MS. MAR-SPINOLA: Thank you. Thank you
6 for that. So, let's move on to the next topic
7 which is COVID-19 patent process impact and let me
8 introduce or actually he's been introduced by the
9 Director, but Commissioner Drew Hirshfeld.

10 MR. HIRSHFELD: Thank you, Julie.
11 Hello, everybody. I'm going to talk on a much
12 broader topic than anything related to COVID. I
13 will address some of our mandatory telework but
14 would like to go much broader than that as well.
15 I'll get into many of the initiatives and
16 priorities that I have moving forward.

17 Let me start off by thanking PPAC for
18 having this meeting. As we all know, this is
19 entirely virtual. It's the first time we've done
20 that. I think it's wonderful to continue the
21 meeting and the discussions, as Andre said a few
22 minutes ago. Thank you, PPAC for all of your

1 service and you also should be commended in public
2 service week as well as what you're doing in this
3 role. So, thank you to everyone for that.

4 I will tell you first-hand that the PTO
5 is continuing to function extremely well. And you
6 heard from Andre, many of the initiatives and
7 progress that we've made, and I will address some
8 others as well. Before I do dive into those, I
9 want to just share in the words that Andre
10 mentioned earlier about Todd Dickinson and Gerry
11 Mossinghoff, you know, his words that we're all
12 better off because of their work is certainly very
13 true and I wanted to share those sentiments as
14 well. So, thank you to Andre for saying that.

15 I know that if you're in the
16 intellectual property field, you are aware of
17 those two gentlemen and what they have done for
18 all of us. And we all have great respect for them
19 as well.

20 Let me start off my remarks with just
21 some personnel updates. We've had a number of
22 changes since our last meeting. These changes

1 that I will address were all effective on March 1,
2 so just some short time ago. And let me start
3 with Valencia Martin-Wallace who has been deputy
4 commissioner for patent quality. Has now been
5 reassigned to the role of deputy commissioner for
6 international patent cooperation. She is taking
7 the role that Mark Powell has filled for so many
8 years. Mark actually stood up that position, and
9 so now Valencia is moving into that.

10 Mark, by the way, is continuing to
11 remain as a senior advisor in OIPC. And thank you
12 to Valencia (audio drop) the role. And thank you
13 to Mark for all your wonderful work in setting up
14 that office and helping to create something we're
15 all very proud of and making now Valencia's job
16 even easier as she transitions into that role.

17 Of course, when there are changes,
18 there's always changes behind people as well. So
19 temporarily filling Valencia's role as acting
20 deputy commissioner for patent quality is Dan
21 Ryman who is on this call as well. And I think
22 many of you have had the pleasure of meeting and

1 working with Dan. So, thank you, Dan, for
2 agreeing to temporarily take on that role.

3 And then, of course, filling Dan's role.
4 Dan was the associate commissioner for patent
5 quality. Filling his role is Robin Evans who has
6 had a variety of roles, is a group director, and
7 she is taking on a detail to the acting associate
8 commissioner for patent quality. And I know she's
9 doing a wonderful job. So thank you to Robin for
10 taking on that role as well.

11 Let me transition now to a quick
12 discussion of the mandatory telework. As Andre
13 mentioned, we are, of course, USPTO under
14 mandatory telework. Since everyone started their
15 discussion and introductions with saying where
16 they are calling from, I'm in Reston, Virginia.
17 I'd like to say I'm in my home office, but if I'm
18 being really transparent, I'm in my wife's home
19 office. So unfortunately for her, we now have to
20 share this space, but we're making that work out
21 no problem, as well.

22 So anyway, mandatory telework, as I

1 mentioned and as Andre mentioned, I think we've
2 done a fantastic job, quite frankly, at PTO
3 transitioning to the telework. The vast majority
4 of our employees do have some form of telework or
5 hoteling ability so most of them were set up. It
6 was only a relatively small number of people who
7 needed to get trained and needed to get the
8 equipment when you look at the vast majority of
9 people at PTO. So for numbers-wise we probably
10 had a thousand or slightly over a thousand who
11 needed to get some additional equipment, and then
12 the vast majority of folks, again, we have over
13 8,000 examiners do already telework in some way,
14 shape, or form either full time or part time. So,
15 the transition for them is very easy.

16 I will say that the examiner job which
17 is, of course, at the heart of what we do in
18 patents is completely doable at home. You can do
19 everything at home with the equipment that you can
20 do in the office. That's one of the reasons it
21 certainly lends itself to work at home.
22 Additionally, since we are on a production system

1 which I know we've discussed about many times over
2 the years with PPAC, we can, obviously, measure
3 and monitor employees' work. So, whether they're
4 working on campus or whether they're working at
5 home, we do have biweekly production reports that
6 every examiner gets, and every supervisor gets for
7 their examiners. And this is a good way to be
8 able to track and maintain work.

9 As you heard from Andre, our work during
10 this time has been extremely steady during the
11 mandatory telework. Quite frankly, to be honest,
12 steadier than I thought it would be even. As we
13 are going here, our overall productivity when you
14 compare to last year is actually slightly higher,
15 as Andre mentioned earlier. Now, if we look into
16 the reasons for that, of course, one it is because
17 of the ease with which in the big scheme that
18 we've transitioned to the mandatory telework. But
19 it is also we are seeing this phenomena that many
20 businesses and probably most businesses throughout
21 the country and even world are experiencing now
22 with people more at home and not being able to

1 take vacation time, etcetera, we are seeing more
2 work hours be put in, of course, because people
3 can't take vacations and aren't doing so. So, I
4 think part of the uptick in time that we are
5 seeing is, of course, due to that reason. But,
6 again, examiners should be commended because they
7 are continuing to do their work and functioning.

8 For many people, it wasn't a huge
9 transition and for those that it was, I commend
10 them for taking on that challenge and continuing
11 to work and find a way to get their jobs done. I
12 think we all recognize that there's hardships
13 throughout and they impact everyone differently.
14 And I'm very honored to be a commissioner for
15 patents and see the great work that people have
16 done.

17 And I've spoken mostly about examiners,
18 but I will also share in Andre's words about the
19 rest of the USPTO. Many people who are involved
20 in this call, but also on a wider view have done a
21 great job to get information out that we need
22 whether it's information for employees,

1 information for the public, things that we can do
2 to make peoples' lives easier. It has been across
3 the board a really good job and, knock on wood,
4 for all of that. I'd also like to particularly
5 mention IT because people like me are literally on
6 IT WebEx meetings almost the entire day and it has
7 been almost a seamless transition. Kudos to our
8 IT staff for making sure and enabling that that is
9 workable for all of us because it has been
10 extremely good.

11 So, let me move forward and talk about
12 some areas that I am focused on moving forward. I
13 certainly do not want to make all of the
14 discussion about the mandatory telework and let
15 you know that there is much that is still
16 continuing to go on at USPTO, as you heard Andre
17 mention earlier. I'll mention four areas and,
18 quite frankly, these should come as no surprise
19 from me or any other commissioner, for that
20 matter. But I will mention some words on quality,
21 pendency, of course, employee development, and
22 I'll, again, mention some IT developments that we

1 have.

2 So, let me start with patent quality and
3 mention that patent quality and the work of our
4 examiners and what they do is always at the top of
5 my list of things to focus on, and it would be
6 much too much to talk about all the initiative we
7 have going on. Suffice it to say, I've been very
8 focused over the years on training, but I wanted
9 to look forward and discuss some topics moving
10 forward. Before I do, however, I just wanted to
11 mention that this afternoon or shortly, you will
12 hear a presentation about a public perception
13 survey that we give, I believe, twice annually.

14 And I guess I'll spill a little bit of
15 the beans. Sorry to the folks who are going after
16 me. I'm taking a little bit of their thunder
17 away, but we're seeing really good results from
18 the perceptions of the public of our quality at
19 USPTO. There will be more to follow on that, but
20 I'm very honored that perception survey continues
21 to show improved results over the years.

22 And, again, you'll get more of that

1 shortly.

2 I also wanted to mention the changes
3 that we have been engaged in over the last couple
4 of years that are in a phased implementation of
5 changes to the examiner time that they have to do
6 their jobs. I mentioned the production system,
7 changes to the examiner performance appraisal plan
8 which is, of course, the performance appraisal
9 plan that every examiner is judged by and
10 controls, basically, how they do their work, and,
11 also, changes to the way we route applications to
12 them.

13 I know we have given PPAC a detailed
14 discussion of each of those. I'll touch them
15 again high-level, more from the standpoint of
16 letting you know that these changes are in-
17 process and will continue, and the full
18 implementation, as we stated earlier, will be
19 October 1 for all of these changes to be fully
20 implemented. And we still are on track to do so
21 and I have every expectation that we will make
22 these goals, notwithstanding any of the changes

1 that we've gone on with telework, so that will all
2 continue.

3 Let me just summarize each of those
4 changes as a reminder for all of you. The
5 examiner time changes basically make a variety of
6 changes to the time the examiners have to complete
7 the work that they're assigned. I've mentioned
8 the production system a number of times. Quite
9 frankly, the production system has been in place
10 for a long time and there were many areas that
11 were out of date and needed to be changed. Some
12 of the changes are technology-based, based on the
13 classification of the application, most of these
14 changes in time will be effective on the October 1
15 date coming up that I just mentioned.

16 We've additionally made some changes by
17 making the time of each application more directly
18 relate to the attributes of that particular
19 application. So, if there's a certain number of
20 claims the examiner may get more time or less
21 time, dependent on how many claims there are,
22 depending on the size of the IDS that was filed,

1 etcetera. So, again, I won't get in to too many
2 of the details, but we have this last October put
3 into place a system that enables the time for each
4 case to be more appropriate for the particular
5 application, and the specific attributes of that
6 application.

7 I think that these two changes are very
8 important to time to make sure that we can do the
9 highest quality job for any particular case. So,
10 I'm discussing the time changes under patent
11 quality because I think that that is a very
12 important change as well.

13 The performance appraisal plan that I
14 mentioned, these changes will be in effect come
15 this October. We are in the process of starting
16 to prepare and roll out the changes to examiners
17 in terms of training so that they all know what is
18 expected of them. Suffice it to say that two
19 areas, and again, I can't do it justice in short
20 remarks, but two areas that are really going to be
21 of focus in the new performance appraisal plan,
22 one is the examiner search and making sure that

1 the search is done thoroughly and completely.

2 And so, the plan does emphasize the
3 examiner search a great deal to make sure the best
4 art is in the case. I think we can all recognize
5 that that is a foundational piece and if the right
6 art is not in the piece or if it's obtained later
7 on there are, certainly, problems that arise that
8 would not arise if we had those initially. So, we
9 will continue to focus on research and that will
10 be emphasized greatly in the new performance
11 appraisal plan. Another area, and this should be
12 nothing new that I'm talking about, is elements
13 about making sure that there's a complete and
14 clear prosecution record. The new performance
15 appraisal plan does a much more thorough job than
16 the older plan about setting forth a roadmap for
17 examiners to have the best office action. It
18 tells them what we look for in an office action,
19 what needs to be clarified in the record so that
20 we can create a clear prosecution record. Those
21 changes, I think, are at the heart of the new
22 changes. They're not, of course, the full changes

1 that we have. There is more that is in there, but
2 they are certainly big changes of the performance
3 appraisal plan.

4 And then I just wanted to mention the
5 application routing. As a reminder, this is a
6 system that will permit us to electronically
7 route, automatically route applications to the
8 examiner. And what's great about this, I know it
9 doesn't sound exciting so far, but it actually is
10 to those of us at USPTO. What we'll actually be
11 able to do is have a profile for every examiner
12 based on the actual work that they've completed.

13 That profile will be based on the
14 classifications and the cases they worked on. And
15 then every case will have its unique profile,
16 every application has a unique profile, and we'll
17 be able to match the profile so that we can
18 automatically see the right examiner for any
19 particular case. And we can docket that case to
20 the examiner who's best suited to do so. So, this
21 system will certainly help us ensure that the
22 right applications get to the right examiners and

1 help us move forward.

2 So that's what I wanted to mention on
3 the quality front. Switching to pendency, you
4 will also have a discussion later on today about
5 pendency. So, I will leave most of the discussion
6 to that which will occur shortly. I did want to
7 mention that we have discussed with PPAC that we
8 have been looking to change the main way that we
9 look at pendency. And what I mean by that is
10 historically, we've been looking at traditional
11 first action pendency and total pendency averages,
12 so what's the average time to a first action,
13 what's the average time to complete prosecution?
14 That has been our historical measures for as long
15 as I can remember at PTO.

16 What we are transitioning to, we're
17 certainly not going to completely get away from
18 average pendency, but what we'd like to actually
19 have a greater focus on is the patent term
20 adjustment timeframes that are in our statutes.
21 And these, of course, set limits on when we are
22 supposed to be getting office actions and work out

1 by PTO, and if we don't meet those time limits, we
2 give patents an adjustment time, or potentially
3 give that time.

4 And so, we think a greater measure of
5 certainty for everybody is to reduce the amount of
6 patent term adjustment and make sure we're within
7 those timeframes. So, you will see a continued
8 focus on that. We have set goals, I believe since
9 the last PPAC, to be what we are saying 90/90 by
10 2025. And what I mean by that is we want to be 90
11 percent compliant with all patent term adjustment
12 timeframes by 2025. And the reason why I said two
13 90s when I first said it is, we want to talk about
14 90 percent of the cases that are mailed and 90
15 percent of what's in our inventory that has yet to
16 be worked on. And that way, these 90/90 numbers,
17 both of what we are working on in mailing and both
18 of what is in our inventory we believe (audio
19 drop) and reliability to patents because we're
20 really minimizing the patent term adjustment that
21 we're giving out.

22 So, I mentioned employee development as

1 a third topic I wanted to talk about. And I would
2 just like to point out that there have really been
3 two areas which I've been focusing on and really
4 would like to continue, and expand focus on, and
5 have plans to do so. Those two areas really are
6 people transitioning into management. So, for the
7 patent's organization it's mostly, not entirely,
8 but mostly our senior examiners, our primary
9 examiners who are considering management.

10 And the second area I've been focused on
11 are the senior executives and these would be
12 people who are SESers, if you know that
13 terminology, but senior executive service people
14 to make sure they're getting well-rounded
15 development and opportunities for all of them. So
16 those are two areas that I've been very focused
17 on, and I'm continuing to increase the focus on
18 this.

19 With the new people considering
20 management we've developed a program as USPTO
21 called the aspiring managers' program which I'm
22 very proud of. It's a program where we take

1 people who are considering entering into
2 management and we give them some accommodation of
3 training, we give them some shadowing
4 opportunities, we give them a mentor who is a
5 supervisor to work with. And we expose them as
6 much as we can to management.

7 And we've run a number of sessions. It
8 is, of course, a labor-intensive because it's not
9 all classroom, so we've run a number of sessions,
10 and we usually have about 30 slots for each
11 session, and we've had sessions that have had well
12 over 300 people apply for them. So, you can see
13 how limited they are. But the feedback I've
14 gotten at every level from everyone has gone
15 through has just been remarkable.

16 I think it's a really good program to
17 help transition people into management. I will
18 tell you that I remember when I first got into
19 management, and it's quite the shock of changing
20 from a non-management position to a management
21 position, and this is geared to make sure that
22 people are ready for that change and are able to

1 take it, and it's been a rousing success.

2 As far as the senior executives go, I am
3 very actively trying to look for opportunities to
4 widen the scope and development of the senior
5 executives. I mentioned in my opening remarks
6 about some of the changes we've had, the Dan
7 Ryman, Robin Evans of the world who are taking on
8 new roles. We've been very active in making sure
9 that those opportunities are available.

10 We actually have somebody now, Gladys
11 Corcoran, who's the chief communication officer.
12 We've recently had someone who worked in
13 procurement, and we are continuing to have those
14 roles. And I think that getting people exposure
15 to a variety of positions, again, helps widen
16 their horizons and I think will help their
17 development as they continue on.

18 I will end my remarks. Before I open up
19 for any questions or comments, we have a quick
20 couple notes on IT development. Andre mentioned
21 artificial intelligence, we are very excited about
22 that. I don't need to add to his remarks, other

1 than the fact that we are very excited, and I
2 remain very impressed with the progress I see the
3 teams making on that.

4 I also wanted to mention, I know a topic
5 that we've discussed in PPAC very often is a new
6 search tool for examiners and an updated tool.
7 And we are, right now, on the cusp of rolling out
8 the tool or starting to roll out the tool to
9 examiners. It will be a phased approach. So it
10 will take us some time, but suffice it to say, we
11 do have a new tool that's been developed. The
12 feedback I get from the examiners who have used it
13 is absolutely wonderful, and I know that in past
14 PPAC meetings there have been discussions of this
15 tool and the progress. And it's my pleasure to
16 say that we are, right now, on the cusp of
17 starting to expand the number of examiners using
18 it.

19 We had them testing it and trying it,
20 and everything seems to be successful so far. And
21 that tool will roll out relatively shortly, at
22 least in a phased approach. There are a whole

1 varieties of advantages to the tool, one of which
2 is it will greatly increase an examiners' access
3 to foreign art that they are not access today, or
4 if they are able to access it they have to go
5 through some circuitous routes that they will not
6 have to do with this new tool. So, I'm very
7 excited about this tool and my excitement is
8 stemming from the feedback I'm getting from
9 examiners who are excited about it.

10 So that is what I wanted to discuss
11 today. I wanted to discuss some of the priorities
12 moving forward, and I think we have some time for
13 some questions or comments. And I'm more than
14 happy to take any of people have some.

15 MS. MAR-SPINOLA: Thank you, Drew. That
16 was very comprehensive and helpful. So, I'm just
17 looking at the roster here. We have a question
18 from Jeff Sears.

19 MR. SEARS: Thanks very much, Julie.
20 Thank you very much, Drew, for that great
21 presentation. I have a comment for you or
22 question about the pendency goals. I really

1 appreciate the Office's transition to the PTA
2 goals. The certainty that it brings to applicants
3 is really fantastic.

4 Here's my question for you. Has the
5 Department of Commerce set any agency priority
6 goals for the Office with respect to pendency and
7 the PTA timelines?

8 MR. HIRSHFELD: So thanks, Jeff, for the
9 question. Let me give a little bit of background
10 for folks who might not know what an agency
11 priority goal is. But the Department of Commerce
12 usually has a number of priority goals for its
13 departments, its agencies. And over the years,
14 patent pendency has been sometimes a goal at the
15 Department of Commerce level that they've had for
16 us.

17 Most recently, as of last year, we did
18 have an agency priority goal related to average
19 first action pendency of being less than 15 months
20 for first action, less than 24 months for total
21 pendency. And we did make that goal. So I feel
22 great about making that goal. As of now, the

1 Department of Commerce has not set a goal of
2 agency priority for pendency. The 90/90 that I
3 mentioned by '25 is our goal internally, but it's
4 not technically an agency priority goal, as that
5 goal has meaning with the Department of Commerce.

6 I will share my own thoughts on that is
7 I think that because we've done such a great job
8 in moving down pendency, and I'm not complimenting
9 myself here, I'm complimenting my staff. And over
10 the years, even before I've been commissioner, as
11 we've continued to move that down I think we've
12 been able to set our goal as to what we think is
13 right for the five years and transition to the
14 patent term adjustment. Right now, I won't say it
15 won't be in the future, but right now it is not
16 officially an agency priority goal.

17 MS. MAR-SPINOLA: Thank you for that.

18 Dan Lang, you have a question?

19 MR. LANG: Thanks, Julie. The
20 inadequacy of examiner time, insufficient examiner
21 time to process complex patent applications have
22 been a concern for a long time of many of us in

1 the community. So, it's encouraging to hear about
2 the reallocation of time for certain area. Our
3 examiners are only now getting more time to
4 examine patent applications. Is there anything
5 that's being done to assess the impact of that in
6 terms of increased examination quality, in
7 particular, how search results may be improved by
8 the greater amount of time?

9 MR. HIRSHFELD: Sure. So, where we
10 stand right now with the time changes is there has
11 been some of the changes that have been
12 implemented past October. That's the attributes
13 related to a specific case. The bulk of the time
14 changes will actually occur this coming October,
15 and they will coincide with the performance
16 appraisal changes and the routing changes that I
17 mentioned.

18 We absolutely will be looking to see how
19 we can measure and ensure that the time has helped
20 and made a difference. And, again, it will be
21 coinciding with a new performance appraisal plan.
22 So, I'm anticipating there would likely be some

1 challenges here, but we certainly will do our best
2 to measure. And I do anticipate us measuring and
3 seeing how we've implemented the time.

4 One of the additional time changes that
5 I haven't mentioned in addition to the attributers
6 is we actually raised the floor for some of the
7 technologies that had lower times to do their job.
8 For example, some of the purely mechanical areas
9 in the past which are no longer purely mechanical
10 as technologies have evolved also needed time
11 changes, and I neglected to mention that
12 previously, so I'll say that now.

13 But anyway, to answer your question,
14 Dan, we absolutely will be focused on ensuring
15 that all the changes that we make, whether they're
16 time or changes to the performance appraisal plan,
17 whether those changes were effective and
18 absolutely will be monitoring that.

19 MR. LANG: Thanks.

20 MS. MAR-SPINOLA: Thank you. So we're
21 just a minute over time, but I'd like to give
22 Jeremiah Chan the opportunity to ask his question.

1 MR. CHAN: Thank you, Julie. Thanks,
2 Drew, that was a great update. I just have one
3 quick question. You talked a little bit about the
4 automatic routing of applications to examiners
5 based on this kind of created examiner profile
6 that's established based on the work that they
7 handle. Just wondering whether or not that's
8 related to something we'll be talking more about
9 later today around CPC auto classification? Is
10 there similar technology that's being applied to
11 both of those use cases?

12 MR. HIRSHFELD: So, I believe the auto
13 classification is -- I mean they are certainly
14 related, but that is not necessary the routing of
15 applications. I think that is the IT tools which
16 are going to help us classify, so the automation
17 of that project. Now, they're certainly related
18 because the classification of that case creates
19 the profile that will be matched to the examiners'
20 profile.

21 But that being said, what the auto
22 classification, I believe, will have this

1 afternoon will be on the front-end, so to speak,
2 as an initial step. And then once it's
3 classified, we have the match.

4 MS. MAR-SPINOLA: Thank you.

5 MR. HIRSHFELD: We, of course, would be
6 more than happy to have further discussions.
7 Sorry, Julie. We would be more than happy to
8 follow up on any of this and have further
9 discussions with PPAC if that would be helpful.

10 MS. MAR-SPINOLA: Thank you. Thanks,
11 Drew. I appreciate your update and it's very
12 helpful. So, let's transition to the next topic
13 which is the finance and budget. I'm going to
14 turn this over to Dan Lang and Jay Hoffman who's
15 the chief financial officer of the USPTO.

16 MR. LANG: Sure. Thanks, Julie. So of
17 course, the USPTO functions depend on adequate
18 funding and time and attention to finances, you
19 know, just like in any business or any other
20 agency. The USPTO is different than most other
21 agencies in that it doesn't rely on taxpayer
22 funds. It is entirely funded by patent

1 applicants. During these special circumstances
2 and their associated economic impact, (audio
3 drop). I'd like to commend Jay and associates for
4 organization.

5 For example, like in last years'
6 interruption of appropriation, you know, this year
7 has brought many challenges for the USPTO's
8 finances which they are managing very (inaudible)
9 with attention to the current situation, attention
10 to the USPTO's finances, and deferring the due
11 dates for certain fees which has implications for
12 expenditures going forward in what continues to be
13 an uncertain situation.

14 So with that, I'm going to hand it over
15 to Jay to give us a budget update.

16 MR. HOFFMAN: Great. Well, thank you
17 very much, Dan. And I just want to do a sound
18 check. Can everyone hear me? I see some heads
19 nodding. I'm always holding my breath.

20 Okay. Let's go ahead and just dive
21 right into it. Thank you for that opening, Dan.
22 That was perfect. Next slide, please. Thank you.

1 So, what I'm going to do today is I'm going to
2 spend the most of my time talking to you about the
3 current year, the FY 2020 budget, our finances,
4 what we're seeing, and, frankly, what we're not
5 seeing in some of the economic numbers that we're
6 looking at. I'll then transition and give you a
7 very brief update on both the FY 2021 and FY 2022
8 budget processes that are underway. And then end
9 with a quick update on our fee rulemaking that
10 PPAC has been assisting us with for the last
11 couple of years. Next slide, please.

12 So as Dan mentioned, we are a fee-funded
13 agency. We're dependent upon revenues from our
14 fee payers and customers, just like a private
15 business. So, when there are changes to the
16 economy, they're definitely consequential to the
17 entire USPTO business. For those of you who are
18 not aware, our fee collections are generally
19 correlated with gross domestic product. On the
20 patent side, that correlation tends to lag.

21 And what I mean by that is changes in
22 GDP tend to take anywhere from 6 to 12 months to

1 manifest themselves in actual significant revenue
2 changes on the patent side. What has our
3 attention in this particular sudden economic
4 downturn is the magnitude of the GDP changes that
5 are being forecasted by some of the larger banks.
6 Starting back in March we started seeing Q2
7 estimates of GDP contraction that range anywhere
8 from negative 14 percent to negative 30 percent
9 with diminished expectations for the remainder of
10 FY 2020.

11 What makes this current situation
12 particularly difficult to forecast is nobody
13 really knows at this point what the contours of
14 the recovery look like. You know, some people are
15 speculating that it will be very rapid, others
16 have speculated that it will be more gradual, and
17 some economists have gone and said it will be a
18 double dip because the Coronavirus could reemerge
19 to some extent in the fall. The bottom line is
20 nobody knows what the recovery is going to look
21 like yet. We're just too early into it, but the
22 magnitude of these GDP changes are significant,

1 and they want USPTO paying particular attention to
2 our revenues. And we're doing that at nearly an
3 hourly basis. We're really watching this closely.

4 Right now, our patent revenue forecasts
5 are ranging between \$3 billion and \$3.1 billion.
6 For a point of comparison, that's still very much
7 in line with our expectation for FY 2020. We
8 expect it be just a little bit over \$3.1 billion
9 at the start of the year, and the current revenue
10 rates that I'm looking at our roughly consistent
11 with that number.

12 Now, our expenses are higher. Our
13 expenses for this year in FY 20 are expected to be
14 \$3.2 billion and then \$3.45 billion next year.
15 And the reason for that is the way we do our
16 pricing. We only do rate increases every two or
17 three years. And so, what happens as a result of
18 that is our costs go up every year, but our rates
19 do not go up every year. And we sort of end up
20 with this sideways pattern, if you will. So this
21 is not unexpected. We're, obviously, looking at
22 our expenses very closely though right now. In

1 fact, we're reviewing our requirements to assess
2 whether patent expenses should be reduced in
3 response to our revenue risk. I'll speak more
4 about that in a moment.

5 Lastly, we do maintain a reserve, or for
6 those of you in the private sector, sort of
7 maintained earnings, if you will. Currently, our
8 reserve is setting at about \$361 million. The
9 reserve enables us to buffer between asymmetries
10 between revenues and expenses. And that's just
11 sort a normal part of the business. Things do not
12 come in evenly every day. It also enables us to
13 maintain operations in the event that there should
14 be some sort of a lapse in funding or
15 authorization from Congress as we experienced last
16 year. So, we try to target having about \$300
17 million as a minimum reserve. There's a number of
18 reasons for that. Right now, we're sitting above
19 that minimum at about \$361 million.

20 I mentioned our revenues are tracking
21 roughly in line with expectations. So what we
22 have here is this is as of the end of the second

1 quarter, as of the end of March. Planned fee
2 collections for the agency were just over \$1.7
3 billion. As I mentioned, patents was \$1.5
4 billion, tracking roughly in line with our
5 expectation for the year, planned versus actual
6 you can see there almost within a half million of
7 on another.

8 Actual spending is a little bit ahead of
9 that at just under \$2 billion, \$1.7 billion for
10 patents. Again, that's also not unusual for
11 spending to be a little bit ahead of the revenue
12 for the reasons I discussed previously, and also
13 for the way we do some of our contracting.

14 To just catch you up on where we're at,
15 so not on the fly here, but if I look at our April
16 data, obviously, we're got another month into
17 this. Patents is about 1.6 percent below plan for
18 the month of April. However, we're still tracking
19 with half a percent of planned for our year to
20 date numbers. So, again, we haven't seen a lot of
21 degradation.

22 So, I've been talking a lot about our

1 revenue rate. Let me acclimate you to this chart
2 first and then I'll explain the analysis. So on
3 the left hand, the Y-axis of this chart is in
4 millions of dollars. The X-axis is in months of
5 the fiscal year. The federal government runs a
6 fiscal year October through September. The gray
7 line reflects the actual revenue rate each month
8 year-to-date. And then the dash lines are
9 different scenarios that we have been assessing in
10 terms of our revenue track.

11 So as I mentioned, we went into the year
12 expecting to have revenues just over \$3.1 billion,
13 and the revenue tracks thus far, if you look at
14 the gray line have been largely consistent with
15 that, right about \$3.1 billion. We are,
16 obviously, concerned about an economic downturn so
17 we run those scenarios. And what these three dash
18 lines show you, let me start from the bottom and
19 work my way up.

20 So, the sort of fuchsia colored line
21 that has a downward slope this is our downside
22 risk scenario. We are concerned that we could see

1 a 5 to 10 percent reduction in patent revenues
2 over the next 12 months. And that's what this
3 downside risk scenario represents, taking our
4 revenues below the \$3 billion to somewhere in the
5 \$2.9, to just under \$3 billion range. You know,
6 we haven't seen that revenue track yet, but it's a
7 scenario that we're actively playing out.

8 The middle dash line, the yellow dash
9 line is probably more consistent with what we're
10 seeing today and tracks with the plan, and that's
11 for a revenue expectation of \$3.1 billion. And
12 that track would take us through the end of this
13 fiscal year. And then the step function dash
14 line, the red dash line that you see would be the
15 implementation of the fee increase that the agency
16 has been working on.

17 The fee increase adds about \$250 million
18 to \$300 million to our revenue track. And there
19 is a fairly large step function increase, but it's
20 dependent upon the timing of the implementation.
21 And we get to July, the price of that timing is
22 about \$5.6 million a week. Meaning, for every

1 week that we delay the implementation, it costs
2 the agency about \$5.6 million, and we would expect
3 to see a feed into that reserve. So, we're
4 looking at all of these scenarios right now.
5 We're tracking on the middle scenario, the yellow
6 line scenario, and thus far, it's been manageable.
7 So, I want to talk just for a moment about fee
8 relief. I know a lot of you are very familiar
9 with this. It seems like a lifetime ago, but just
10 about five or six weeks ago the President signed
11 the Coronavirus Aid Relief and Economic Security
12 Act or the CARES Act on March 27. And the CARES
13 Act did a number of things, but one of those, it
14 provided the USPTO Director with the authority to
15 defer deadlines and fee payments.

16 And, as you know, the USPTO implemented
17 targeted relief for both patents and trademarks at
18 the end of March. And just last week that relief
19 was, in fact, extended until June 1. The CARES
20 Act relief on the patent side provides broad
21 relief, principally for small or micro entities,
22 and some limited relief for larger entities. We

1 ran a number of analyses to determine the impact
2 of the CARES Act fee deferrals and the top end of
3 that analysis was that if we had 100 percent
4 participation in all the different types of relief
5 that the agency was offering the relief would be
6 about \$19.5 million a week, or \$163 million
7 through May 31. Next slide, please. And these
8 are the categories of fee relief that we offered
9 under the CARES Act. And, again, these numbers
10 are premised on if 100 percent of everyone who was
11 eligible took advantage of the relief these are
12 the revenue impacts, we would see. And, again,
13 they're deferrals. They're not lost revenue.
14 They're revenues deferred until such time as the
15 relief ends. So, if everyone took advantage, we'd
16 see a \$3 million per week deferral filings, \$4.3
17 million for our RCE fees, our issue fees would be
18 impacted \$6.5 million a week, and so on. I won't
19 read them all.

20 But what I will say is we've done some
21 analysis on what, in fact, our subscription rates
22 to those fee deferrals have been. And they've

1 been pretty limited. We're only a month into it,
2 and so with this extension that we just offered
3 through June 1, you know, maybe it will pick up a
4 little bit. But through the first month, it seems
5 that the impact has been less than 3 percent
6 overall on our overall revenue.

7 So, at this point, we haven't seen
8 numbers anywhere close to this \$19.5 million upper
9 end estimate. Again, that could change as more
10 people become aware of the relief and take
11 advantage of it in May versus the number who took
12 advantage of it in April. But the punchline is,
13 thus far, anyway, it's been something that the
14 Agency has been able to afford to do without
15 damaging us financially and hurting our ability to
16 operate. Next slide, please.

17 Dan mentioned at the outset, obviously
18 we're very worried about these potential scenarios
19 that sink our revenues down. So the USPTO has
20 been conducting thorough spending reviews of its
21 FY 2020 requirement with the objective to evaluate
22 our agency priorities and ensure that we maintain

1 our operating reserve balances in a manner that's
2 sufficient to mitigate further revenue reduction
3 that we might see later this year or early next
4 year. So, to that end, the agency is assessing
5 where we can take these reductions, where we can
6 take some delays, and at the same time, we're
7 closely monitoring daily fee collections and
8 spending.

9 What I can tell you on the patent side
10 is because revenues have held relatively constant,
11 and because there is a lag, we haven't taken too
12 many actions. At this point, the actions that
13 we've taken on the patent side are largely related
14 to deferring examiner hiring. We had a class of
15 examiners I believe we've deferred until July.
16 There's some other hiring that we're putting off
17 until later this summer.

18 It's not to say that the hiring wouldn't
19 happen. It's simply to say that we are pushing
20 that hiring out into the summer. Drew can
21 probably speak more eloquently than I can, but
22 with respect to how we bring people on board and

1 how we train them and get them through a class, it
2 actually kind of makes sense to wait until we're
3 out of this permanent telework environment to
4 bring on large groups of people anyway. So, we
5 are getting some savings from that. And we'll
6 take a look towards the end of summer whether
7 additional reductions are going to be necessary.
8 Next slide, please.

9 So, with respect to FY 2021 which starts
10 on October 21, this is probably a little bit more
11 germane for trademarks. I realize this is the
12 PPAC. But any spending reductions or deferrals
13 that we do take in FY 2020, as well as revisions
14 to anticipated fee collections may very well
15 require us to update our assumptions for the FY
16 '21 budget and spending plan. As you know, we
17 reviewed our FY 2021 budget back in probably
18 December, January timeframe right before we
19 submitted it to Congress. So, a lot of that is
20 being evaluated right now.

21 And as part of our process of building
22 the FY 2022 budget which is underway, we'll

1 reexamine the FY 2021 spending profiles and make
2 adjustments as needed. And those will be shared
3 with you later this summer when those documents
4 come forward.

5 When we had spoken back in, I think,
6 February I had mentioned to you that the House and
7 Senate subcommittees were going to be doing
8 appropriation hearings with the commerce
9 secretary. I can tell you that those did occur on
10 March 4 and 5, but neither hearing resulted in any
11 real substantive questions for the secretary with
12 respect to USPTO. So, generally, that's a good
13 thing. Next slide, please. I've already hinted a
14 little bit about this on the prior slide. The
15 USPTO is in the planning stages for the FY 2022
16 OMB budget submission. That submission tends to
17 go up to OMB right after Labor Day which means
18 that we'll be engaging you in the August timeframe
19 to preview what that budget looks like and what
20 the assumptions are.

21 As I mentioned, we're going to have to
22 figure out what the impacts of these different

1 revenue conditions are and how we may need to
2 adjust the spending profiles in FY 2021 and '22,
3 and requirements that we had planned to do as a
4 five year window some of those may end up getting
5 pushed out into subsequent out years. But that's
6 something we're working through right now. We
7 just issued our budget guidance internally in the
8 last couple of weeks, and I know offices are
9 working on that assignment now. Next slide,
10 please.

11 So, lastly, as I mentioned, we do have a
12 fee rule making package that has been in process
13 for more than two years now. That rulemaking, the
14 status of that is that it has made its way through
15 a key part of the clearance process. And the next
16 step would be for the rule to be published in the
17 Federal Register. Once it's published, it could
18 take effect within 60 days after that, or a time
19 that would be determined by the director and the
20 Department of Commerce.

21 So right now, we're looking at that and
22 the Director will be making a decision on the

1 effective date of any fee changes at a later time.
2 So, I believe that concludes all my prepared
3 remarks. If there's any questions, I've got about
4 ten minutes before I'm supposed to be on the next
5 WebEx, but I'd be happy to try to field any
6 questions you might have.

7 MS. MAR-SPINOLA: Dan?

8 MR. LANG: Thanks, Julie. Thanks, Jay.
9 Great presentation. Can you comment a bit on the
10 adequacy on the operating reserves, you know,
11 given the current situation? And particularly
12 about the trajectory of the operating reserve and
13 how it depends on implementing the planned fee
14 increase?

15 MR. HOFFMAN: Yes, that's a good
16 question. That's a sophisticated question. So,
17 I'm going to look at some other data here as I'm
18 answering. So, I'm looking at some projections
19 and we stress test the operating reserve. So,
20 what we do is we put the reserve under different
21 revenue conditions and different spending
22 conditions, and we essentially see, you know, one,

1 when will we cross critical thresholds? And two,
2 when will we, in fact, run out of money?

3 And what I'm looking at right now is on
4 the current track that we're on with the downside
5 revenue risks, we won't cross what I call, sort
6 of, the minimum critical threshold (inaudible)
7 until probably the first quarter of FY 2021. So
8 that would be the \$300 million threshold. I don't
9 think we'll be crossing that in this fiscal year.
10 It's likely to happen early next fiscal year.

11 So, the punchline is for FY 2020 while
12 we're understandably a little nervous, I think the
13 reserve is sufficient and we're not seeing big
14 degradation in the reserve, at least any more than
15 we planned to see at this time. Now, moving into
16 FY 2021 it's important to remember that the budget
17 and the spending is premised on different revenue
18 assumptions that include, one, a better economy,
19 and two, a fee increase. And so, we would expect
20 that without a fee increase that that would
21 continue to decline.

22 Although, if I look out for, say, 12

1 months at least at the revenue scenarios that I
2 presented on the slide in my presentation, I don't
3 think that there's a huge risk that we would run
4 out of money in the reserve. But, again, that's
5 why I look at this every day. These numbers are
6 very volatile. And as Andre reminded me
7 yesterday, predictions about the future are hard
8 to make.

9 MR. LANG: Thanks, Jay.

10 MS. MAR-SPINOLA: Any questions from the
11 attendees or from the rest of the panel? Okay.
12 Jay, thank you so much. That was very helpful to
13 learn about these things. And, you know, I
14 appreciate, I think we all appreciate the
15 necessity of monitoring everything on a daily, if
16 not hourly, basis right now. But, you know, the
17 great thing, as I mentioned earlier with the
18 Director is that there is a bit of comfort that
19 comes with seeing the cadence of the proactivity
20 that the patent office has put forward.

21 And so, we hope that the pandemic will
22 resolve itself and that operations will go back to

1 normal, whatever that means nowadays. But we
2 thank you for keeping the watch on the money which
3 is, as you said about Dan, and I agree is that
4 it's a very sophisticated type of thinking that
5 you have to put forward, so thank you very much
6 for that.

7 MR. HOFFMAN: Well, thank you, Julie.
8 And thank you, everyone, for giving me a few
9 minutes to visit with you today. Good luck with
10 the rest of your meeting.

11 MS. MAR-SPINOLA: Thank you. So, this is
12 great. It's time for a break and we're going to
13 take a break and resume at 9:45. Sorry, that's
14 Pacific time.

15 (Recess)

16 MS. MAR-SPINOLA: Okay. Welcome back,
17 everyone. I hope the break, although it was short,
18 was useful. I think we'll try to stay on time
19 here and resume with IT. We have Mark Goodson our
20 subcommittee chair, Jamie Holcombe, Debbie
21 Stephens, Raman Sarna, William Stryjewski.

22 MR. GOODSON: Good afternoon. This is

1 Mark Goodson and I want to thank the committee
2 members, as well as the general public and
3 employees of the patent office. Our patent office
4 has done an extremely good job during this
5 pandemic. Then again, that's to be expected.
6 Teleworking is not new to this agency. It's been
7 going very well, and we continue to do that.

8 I'm going to take us off script for just
9 a minute. Jaime, are you on?

10 MR. HOLCOMBE: Yes, I am.

11 MR. GOODMAN: Something not covered, I
12 think this is quite good news. Could you give us
13 the status, both the security system that you've
14 been working with, the improvements there, as well
15 as the status of off-site or remote computing?

16 MR. HOLCOMBE: Certainly. I don't know
17 if most people are aware, but the USPTO enforces
18 strict security protocols to ensure that only
19 authorized personnel are able to access the data
20 and the applications that they, alone, are
21 authorized to view and to use. Also, we survey
22 our network and systems year-round in our C-3.

1 It's our command, control, and communications
2 center.

3 We operate that around the clock 24
4 hours a day all year round. So, in doing so, we
5 have a very good understanding of the threat
6 that's hitting us all the time, and we take our
7 defense in death security monitoring very
8 seriously. Also, we are USPTO on a path towards
9 resilience. And that means that we'd like to
10 failover in an automatic fashion to places other
11 than our current data center.

12 Although we could always bring up our
13 current databases to another place in time, we are
14 working to automate that process so that we have
15 something like automatic failover. Where if
16 something happens to one site, users wouldn't even
17 notice because the other site would be up and
18 running and working fully without any interruption
19 in service. In order to do that, I'm happy to
20 announce that this July we will be having an
21 exercise of the July Fourth weekends where we
22 actually failover many of our important patent

1 applications to our Boyers facility. This is up
2 in Pennsylvania.

3 In doing so, we will test in a manual
4 fashion the automatic failover to ensure that we
5 learn from these resiliency exercise. Because
6 it's not just enough to design it, you really have
7 to test it and make sure it works as you designed
8 it. So every quarter thereafter, we will be doing
9 more resilient exercises to the point where we
10 will have automatic failover. We don't have it
11 yet, but that's what we're going for. So, with
12 that, I'll turn it back to you, Mark.

13 MR. GOODMAN: Well, good work, young
14 man. What I'd like for you to tell us now is,
15 essentially, about stabilization, modernization,
16 as well as the status of both public and private
17 PAIR?

18 MR. HOLCOMB: And for that, I'll turn it
19 over to my team.

20 MS. STEPHENS: Thank you, Jaime. This
21 is Debbie Stephens. If our slides could be
22 advanced to the stabilization and modernization

1 slide, that would be great. There we go. Okay.

2 So, as Mark and many of you know that
3 we've engaged in our stabilization modernization
4 efforts over this past time period. We wanted to
5 give you a quick update on some of the things that
6 we're doing with regard to the stabilization
7 effort. So you might recall that we did engage a
8 separate vendor to address some of our more
9 critical systems, and I'm happy to report that we
10 have had an active engaged on 10 out of the 13 of
11 those systems and we are on our way to completing
12 the majority of them this calendar year.

13 In-house we have identified 14 systems
14 to stabilize and there are six already complete
15 from our in-house team, so that's really great
16 news. As well as we're on track for the remainder
17 of those eight systems to be completed by the end
18 of this calendar year. So that's on the
19 stabilization front.

20 On the modernization front our key
21 accomplishments include establishing the agile
22 deliver office, and that team is engaged across

1 the enterprise, the agency to help their product
2 owners engage in the creation of their agile teams
3 and some of their key performance metrics and
4 agile deliver metrics that we want to track along
5 their way as they develop and deliver IT for the
6 agency. So that's one key modernization point.

7 Another along the new ways of working,
8 the team also is looking to, in the agile sense,
9 look at the quarterly review boards, as well as
10 the annual IT planning board process. And that
11 kind of speaks to the IT planning and acquisition
12 process. So, essentially, this last quarter we've
13 been engaged in multiple quarterly review boards
14 where business units across the agencies are
15 reviewing work from the different product lines
16 and asking questions and engaging in discussions
17 related to IT delivery.

18 And then, finally, of late we've held at
19 least three sessions with our annual IT planning
20 process to better align with the modernization in
21 our new ways or working in terms of adding
22 discussions and engaging in discussion to ensure

1 our IT for FY '21 and '22 are aligned with agency
2 priority.

3 So lastly, on the cloud infrastructure,
4 we've had an opportunity to look at assess our
5 cloud foundation and our cloud maturity, and we've
6 completed that initial assessment and we've
7 identified about 20 or so improvement
8 opportunities that will allow us to further our
9 cloud maturity in a very thorough and consistent
10 way forward for our cloud development.

11 So certainly next steps, we're going to
12 continue to engage in our agile practices and
13 align with the industry best practices on how to
14 best substantiate agile, as well as complete,
15 obviously, the stabilization effort and look
16 forward to formulating our final budget plan for
17 submission to the FY 21-22 OPD and DOC. So with
18 that, that's the updates for stabilization and
19 modernization. I can take questions now or later.

20 MS. MAR-SPINOLA: Thanks. I think we'll
21 take questions at the end of the IT presentation
22 as whole. Thanks, Debbie. Mark?

1 MR. GOODMAN: Yes. I was going to ask
2 who is going to speak to the status of public and
3 private PAIR?

4 MS. STEPHENS: I'll turn that over to
5 Raman Sarna. Thank you.

6 MR. SARNA: Thank you, Debbie. Good
7 afternoon, everyone. So, in the October/November
8 timeframe of 2019, there was an increase in the
9 number of users reporting that they were getting a
10 high system volume message. I'm in the process of
11 using private PAIR. The sessions were (audio
12 drop). So subsequent to that, the OTIO team did a
13 comprehensive code analysis and determined that
14 the root cause was due to the fact that these
15 connections were chewing up (inaudible) and could
16 not be handled efficiently, thus resulting in the
17 time out that users were seeing.

18 There were two remediation actions on
19 the 16th and the 28th of February, respectively,
20 to resolve these issues. Subsequent to that,
21 there was a verbal touch point with multiple
22 customers to verify the effectiveness of the

1 solution. The feedback there was positive. And
2 then in addition to the verbal verification, the
3 team continues to monitor the system logs, and the
4 determination is that subsequent to the fixes,
5 there is an approximately 75 percent reduction in
6 the number of errors that were being reported.
7 Any questions?

8 MS. MAR-SPINOLA: So, we'll take
9 questions at the end of the IT presentation.
10 Mark?

11 MR. GOODMAN: I think that is about it.
12 The question I had for the team. In terms of
13 public PAIR, we're off of IFW right now. What is
14 the next improvement coming on in terms of public
15 PAIR?

16 MR. STRYJEWSKI: I can take that. Hi,
17 this is Bill Stryjewski. Right now, we've moved
18 off of IFW to a platform we call content
19 management service, CMS, in which we have all our
20 documents contained in a modern storage capability
21 that actually fails over to a site in
22 Pennsylvania. So that's pretty excited because

1 that actually supports our examination course and
2 our ability to be resilient. Our next step is to
3 offer a cloud-based solution for the public
4 documents to allow for the public to receive those
5 documents. So therefore, bifurcating our private
6 and public data that we use in-house for examiners
7 with the public data that we want to offer the
8 public. Hopefully then data mine those solutions.
9 Right now we're exploring moving that CMS
10 capability to the cloud, and then, therefore,
11 having a future in which a much more unencumbered
12 requests for document data will be then provide to
13 the public. So, therefore, allowing for more
14 innovation and more data to be available.

15 MR. GOODMAN: Got it. One other
16 question or comment. There has been some rumbling
17 over the change from PDF to DocX. Is there any
18 concern that there would be a degradation of
19 quality in terms of the actual data that's input
20 from the DocX as opposed to PDF?

21 MR. STRYJEWSKI: No. I've been doing
22 this for a while. I was around when we went from

1 paper to image, and then we went from paper to
2 PDF. You know, all these transitions have changes
3 and you have to do adjustments. I think our
4 intention is to make sure that we're able to be
5 protective to anyone's rights.

6 We have no evidence right now of any
7 issues of receiving DocX and processing DocX. We
8 still have a lot to learn, but that doesn't mean
9 that that step forward isn't needed. We spend a
10 tremendous amount of resources on data capture,
11 and we feel that this is a great way for us to
12 move forward in getting the actual text which was
13 the inventor's intention and the lawyer's
14 attention directly from the source. As opposed to
15 converting it to PDF, scanning it and converting
16 it to PDF. So, we feel that we're getting better
17 truth of the actual content available to the
18 applicant.

19 So both policy and technically we feel
20 like we're on firm footing to go forward. We need
21 to continue to work out on the volume. You know,
22 we've received lots and lots of PDFs today. We

1 want to make sure that we can validate and process
2 lots and lots of DocXs in the future.

3 MR. GOODMAN: Something I'm not sure all
4 the members appreciate is it's my understanding is
5 that the PDF digitization efforts that's done by
6 an outside contractor? Not within the office?

7 MR. STRYJEWSKI: So right now, we
8 receive PDF from applicants, and then if you're
9 talking about the publication efforts, we do have
10 a publication contractor.

11 MR. GOODMAN: And I guess what I was
12 getting at is we're looking at substantive cost
13 savings by going to DocX?

14 MR. STRYJEWSKI: Yes. What we do do is
15 for the PDFs and for even the small amount of
16 paper we get in the door that comes in an image,
17 we OCR those files to provide to the examiners to
18 increase the quality of the examination. There,
19 therefore, working in text instead of image
20 documents. We think that we have a high accuracy
21 rate, but there's nothing more accurate than the
22 source document itself.

1 So, if we allow the examiners to either
2 search through or reference documents that they've
3 received in text we're going to have a much more
4 refined, accurate information in the office
5 action. And, therefore, better communication
6 between applicant and attorney/inventor.

7 MR. GOODMAN: Okay. Well, that's all
8 the questions I have. Anyone else from the PPAC
9 or the public?

10 MS. MAR-SPINOLA: Let me see. On the
11 board I see we have three questions. Let me start
12 with Tracy, Tracy Durkin.

13 MS. DURKIN: Sure, Julie. Thank you.
14 This morning the Director mentioned the patent
15 center beta, and I just wondered if you might give
16 us just an update from the office perspective how
17 that's going.

18 MR. STRYJEWSKI: You know, I'm sorry.
19 There was metrics in front of me a few minutes
20 ago, and I'm not going to be able to go to my
21 inbox. But we've had an uptick in information,
22 we've been out the door for a couple of weeks now.

1 We want to continue to have our outreach programs
2 for training, but we have seen an increase in some
3 positive feedback for the implementation. I wish
4 I had the numbers of filings of DocX and usages.
5 I'm sorry I'm not prepared.

6 MS. DURKIN: That's fine.

7 MS. MAR-SPINOLA: Maybe we can have that
8 posted later.

9 MR. STRYJEWSKI: Okay.

10 MS. MAR-SPINOLA: And, Jennifer Camacho,
11 I see you have a question too.

12 MS. CAMACHO: I had a question that came
13 in from the public and it's on both the online
14 tools and a little bit about policy, so I think it
15 goes to you or to Jaime. The comment is, while
16 the USPTO campus is closed the patent searchers
17 have no (audio drop) access to the (audio drop)
18 public search facility databases. I request if it
19 would be possible to make a remote online access
20 to East West to registered users?

21 MR. STRYJEWSKI: So, I can give that a
22 try. So we're in the midst of replacing the

1 search tool and we've got our first phase of
2 internal users for the search tool. So, the
3 search tool is, obviously, an extremely important
4 tool for examiners and the quality of our
5 examination. It's probably the most personalized
6 tool, right. It's the heart of which the examiner
7 feels he or she is determined that this is
8 patentable or not patentable. They're finding
9 references. They're learning the art. They're
10 using it as a mechanism.

11 And part of our statute is to offer the
12 tools in similarity to what the examiner has in
13 both in the PDDRs, I think that's the right
14 acronym, the libraries or repositories, and in the
15 public search facility on campus in Madison we
16 have terminals in which they can use the same
17 tools, with some modification, because certain
18 licensing agreements and technologies can't be
19 ported to those tools would be in place.

20 So those tools really were developed in,
21 I'm going to hate to say this out loud, the late
22 90s, early 2000s. So they don't really port well

1 to the web. What another process that we're
2 trying to do, actually prototype this year and
3 implement next year, is to take the existing tool
4 that we built for the examiners that is web based
5 and put that in the public domain replacing
6 applications on the web and patents on the web
7 that's off of our homepage.

8 But, also, replacing the solution that's
9 in the search room today. So, we have a plan in
10 place. I don't think it's feasible to port either
11 East or West to the web right now. And it would
12 be at all -- I don't think it's viable. I don't
13 even think we could. The fear would be is if we
14 did that, we would actually impact the examiners
15 that are using East and West today. We're not
16 happy that we're not serving the people in the
17 search room. We don't think that porting East and
18 West to the web would probably make them happy.
19 It probably wouldn't work very well. So I hope
20 that answers the question.

21 MS. CAMACHO: Thank you, Bill. I think
22 that the requestor would be interested if there

1 are any other, sort of, accommodations that can be
2 made for folks who typically do use the facility?
3 (Audio drop) information?

4 MS. STEPHENS: So this is Debbie. Just
5 on that other topic of patent center. Just
6 initially, we do track the users in terms of the
7 practitioner versus independent vendor and
8 practitioner support roles. And so since April 20
9 I was able to pull up a quick stat going from
10 literally maybe a handful at any given time for
11 authentications to literally, as of last week, in
12 the 400s range for unique authentication.

13 So I think we have seen a spike, and
14 we've also seen a spike in the number of actual
15 DocX submissions, although I don't have the
16 totality of those numbers in front of me. But
17 we'll certainly give you those kind of -- is that
18 the type of data that you're looking for? Kind of
19 the number of authentications, as well as,
20 perhaps, number of submissions?

21 MS. CAMACHO: Yes, I was curious how
22 widely it's being used. I know on the user side

1 there's a lot of bugs that we're running into, as
2 we're one of those 400. And so I was just curious
3 if there's any way to see any of that on your end
4 either other than the feedback that people are
5 giving you?

6 MS. STEPHENS: Yes, we could definitely
7 share as, again, we track it by those three types
8 of users, roles, if you will. And certainly have
9 seen spikes in both the submissions and the
10 authentications. So if we can share that slide or
11 information with you.

12 MR. SEIDEL: Hi. So this is Rick
13 Seidel. So just one of the first weeks that we
14 had once we opened up the patent center beta. We
15 saw the number of new applications increase. On
16 average, prior to that, it was about 10
17 applications were being submitted through DocX to
18 EFS web, but once opened the patent center I think
19 we saw a first week of about 240 or so new
20 applications filed.

21 So that's the latest data that we have.
22 We'll continue to watch that with great

1 excitement. I think this will certainly simplify
2 how new applications can be filed. Of course, you
3 don't have to parse it into three separate
4 documents. Patent center beta provides you the
5 opportunity to submit in a single document and I
6 think that will be huge for the applicant
7 community.

8 MS. MAR-SPINOLA: Okay. Thank you, Rick
9 and Debbie. Jeff, I see that you have a question.

10 MR. SEARS: Yes. Thanks very much,
11 Julie. I wanted to commend the continuity of
12 operations. I know that's, in part, due to the IT
13 aspect of the office. Thank you very much. I
14 also wanted to give you some praise on public
15 PAIR.

16 Lately I've noticed in the last few
17 weeks that public PAIR whenever I seek to get in,
18 it's up, it's running, it's comped, it's fast.
19 It's really wonderful to see. It really makes
20 life a lot easier. But I do have to note that
21 Global Dossier seems to be a little haphazard.
22 Some days I will log in and just you can't access

1 anything, and other days it's up and running like
2 lightning fast. I'm just curious if the office is
3 aware of this and if there are any attempts
4 underway to make Global Dossier run more smoothly?

5 MS. STEPHENS: Bill, I think you're
6 muted.

7 MR. STRYJEWSKI: I'm glad. That first
8 sentence wasn't that good, so I'm going to get to
9 do it again. So we are aware that Global Dossier
10 is not functioning as reliable as we'd like it to
11 be and we've heard the feedback. I think in our
12 transition to the new ways of working we've been
13 trying to realign our priorities to meet
14 operations and maintenance as the number one
15 priority. So as we transition, we're hoping to
16 establish teams for stabilization later this year
17 and early next year to address those particular
18 systems. So it is in our roadmap of things to
19 achieve and to build customer satisfaction for all
20 our products. We will have a product owner just
21 for tools like Global Dossier. So we're trying to
22 create that focus to make sure that we're getting

1 business value for our IT changes, and not just
2 doing IT for IT sake. I'm hoping that we'll have
3 a better conversation. It will be possibly adding
4 features and functions to Global Dossier in FY
5 '21.

6 MS. MAR-SPINOLA: So let me ask this
7 question. Jaime was very pleased with your
8 answer, Bill, let me just note.

9 MR. STRYJEWSKI: I don't read buttons,
10 by the way, so.

11 MS. MAR-SPINOLA: Well, he was very
12 happy.

13 MR. STRYJEWSKI: Good.

14 MS. MAR-SPINOLA: Let me go back to the
15 failover, auto failover and the testing that's
16 contemplated over the Fourth of July weekend. And
17 for lack of a better -- probably my lack of
18 understanding, but let me ask this question, are
19 you planning, or do you need to do what I'm going
20 to call a reverse failover? In other words,
21 testing the second site to make sure that it is
22 intact? Because if you have a failover in the

1 main site and you go over there and if there's an
2 issue? So is there this complete 360 testing?

3 MR. HOLCOMBE: Yes, of course there is.
4 And it's funny you asked because just this past
5 weekend we found a couple of glitches in Boyers,
6 Pennsylvania. So we're doing that right now. We
7 are testing to ensure that everything works so
8 that when we do this automatic failover, whatever
9 happens, we will learn from it and ensure it's
10 included in our future rehearsals. Because we
11 will do things on a scaling or incremental basis.
12 You never do everything all at once. That's a
13 recipe for failure. So in this experiment, we
14 will have certain things that we will do at
15 certain times, and then we will build upon that
16 and move forward. So eventually, we will have a
17 hot, hot combination. We'll have two sites that
18 are load balanced, and we may even have a third
19 site just in case, but that's to be determined not
20 right now.

21 MS. MAR-SPINOLA: Thank you for
22 mentioning the third site because having both

1 systems on the East Coast is great. It may be
2 convenient, but it may be worthwhile looking at
3 having the third site either on the opposite coast
4 or something so natural disasters or anything like
5 that you don't get a double hit, right. So just a
6 comment there.

7 MR. HOLCOMBE: Yes. One of the things I
8 want to make sure you're aware of is we don't just
9 talk about things. We actually do them. So there
10 was an RFI that was issued for the West Coast, I'm
11 sorry, the Mid-West to gain access to information
12 about different data centers and their offering in
13 and around the Denver area. So we have that
14 market research now and we're including that in
15 our plans moving forward.

16 MS. MAR-SPINOLA: Great. That's great
17 to hear.

18 MR. GOODMAN: Jaime, this is Mark.
19 Department of Defense has spent billions of
20 dollars on Rocky Mountain Data Center. Is that
21 one of the options?

22 MR. HOLCOMBE: It is a candidate for

1 sure.

2 MR. GOODMAN: Okay. Thank you.

3 MS. MAR-SPINOLA: All right. So do we
4 have any other questions? Otherwise, we're right
5 on time. That is emblematic of IT being
6 efficient, appreciate it. If there are no other
7 questions, then let's move on to artificial
8 intelligence which is somewhat related and
9 overlaps with IT.

10 So let me turn it over to Jeremiah Chan and Barnie
11 Cassidy our co-chairs in AI, Matt Such, director, and
12 Coke Stewart, our policy advisor and acting Chief of
13 Staff.

14 MR. CHAN: Thank you, Julie. So both
15 Director Iancu and Commissioner Hirshfeld have
16 already mentioned the progress that has been made
17 on the AI front. And since our last public
18 meeting back in February, I'm pleased to report
19 that the USPTO has made significant progress on
20 bringing the latest AI technology to the office.
21 And I do want to commend Matt, Coke, Bill and the
22 team for all the great work that they've been able

1 to accomplish.

2 There are two major initiatives that
3 we'll be diving in today: AI for enhanced search
4 and CPC auto classification. Both efforts have
5 great potential to deliver significant ROI to the
6 office in terms of cost savings, person hours
7 saved, and improved quality. And one of the
8 things that I believe Commissioner Hirshfeld
9 mentioned is just the vast amount of access to
10 international prior art that doesn't exist today.
11 So, I think there's a tremendous opportunity to
12 realize lots of benefits for the entire office
13 here.

14 Director Iancu also talked about the
15 deployment of a major revamp to the website.
16 Sharing lots of information related to the AI
17 efforts from the Office and, again, if you haven't
18 visited, I would highly encourage you to do so.
19 It's really nice. It's got lots of information.
20 Easy to navigate and, again, you can see a pretty
21 noticeable difference in improvement in the work
22 that's been put in there. With that, I'll turn it

1 over to Matt and let you walk us through a number
2 of these initiatives and showcase the progress
3 that the team has made.

4 MR. SUCH: Sure. Thank you, Jeremiah.
5 My name is Matthew Such. I'm the group director
6 in patent operations, and as Jeremiah mentioned,
7 I'll be covering some of the efforts around using
8 AI for enhancing search, as well as auto
9 classifications that we're exploring and
10 investigating here in the agency. I'd like to
11 thank the committee for the time to be able to
12 present this information, and certainly hope that
13 this provides a good perspective upon which we can
14 build going forward.

15 During last quarter's meeting we talked
16 about these two different use cases and mentioned
17 that the office had developed a strategy for
18 proceeding forward with these.

19 And I'll start with the AI for enhanced
20 search. Currently we are investigating
21 capabilities by way of a prototype that's under
22 development for providing some AI-based

1 functionality to assist examiners with their
2 patent searches.

3 These prototyping capabilities are being
4 targeted as being loosely coupled with our newer
5 search tool that's under development now, the
6 patent's end-to-end search tool. We are
7 leveraging a plug-in technology that can work with
8 the Chrome browser in which the PE2E search tool
9 resides. And the integration is very much towards
10 looking at ways that we can supplement the
11 examiners' access to information to help them make
12 more informed decisions about their patent search
13 more efficiently, as well as more thoroughly.

14 As of right now, we do have a prototype
15 that is available for us to evaluate, and we're
16 taking a very data-driven approach to help us
17 understand how the functionality that has been
18 currently designed provides value to the examiner
19 in their search process. And, of course, the
20 feedback that we obtain through that process will
21 be instrumental in us moving forward and
22 identifying the best features for further

1 maturity, as well as providing us ways to modify
2 features based on the best way to provide
3 information to the examiner relative to their
4 search.

5 We have exposed the prototype to
6 examiners in our user-centered design council for
7 that feedback process. And we are asking them to
8 provide their input based on how this
9 functionality has been designed into their search
10 workflow, as well as the performance of the system
11 itself in providing valuable insights for them to
12 be able to make more informed decisions about
13 their search.

14 As we go through this process we are
15 investigating and refining some of the key
16 performance indicators and metrics around which we
17 seek to quantify business value, as well as
18 quantify efficiencies that we can identify with
19 the examiners' search.

20 So before I continue, are there any
21 questions about this particular topic? I can take
22 them now, or we can wait until after we conclude.

1 MS. MAR-SPINOLA: I think what I'd like
2 to do is to continue to take the questions
3 afterwards. I want to make sure that Coke Stewart
4 also has time to do her presentation. Thank you,
5 Matt. Certainly. Continuing on to the auto
6 classification effort. If we can advance the
7 slide, please. Thank you.

8 We have developed a prototype tool for
9 auto classification. This is with the Cooperative
10 Patent Classification System and it provides two
11 basic outputs that are fundamental to usage of CPC
12 data in the office for both providing information
13 onto documents as well as providing information
14 into our other systems around the agency that
15 leverages CPC data. And that is the full
16 classification picture of symbols applied to
17 patent applications as well as designations, which
18 are called C-stars (phonetic) that are
19 identifications of the subset of symbols within
20 that full classification picture that capture the
21 claim scopes specifically.

22 Once again, we are taking a very

1 (inaudible) approach for evaluating that output
2 and we have run thousands of applications as test
3 cases through the tool, looked at the output, and
4 comparing the with the classification pictures
5 that have been assigned to the case or to the
6 document as a result of our normal processes. We
7 have examples where the tool appears to produce
8 convergent output or output that's either on or
9 very close to the classification picture that is
10 currently assigned to a document and we also have
11 a range of examples where the tool produces output
12 that's divergent from those classification
13 pictures. Right now our focus is on the
14 intellectual validation process to understand the
15 reasons why these things are happening and
16 understand how the tool is working for each of
17 these two different outputs where we get very
18 close data compared to other current
19 classification pictures as well as these
20 divergences and trying to understand ways that we
21 can take that information and feed it back into
22 making improvements to the models to continue to

1 drive forward with providing classification
2 quality out of the tool.

3 Additionally, as we are learning through
4 this intellectual validation process, we are
5 continuing to refine some of the key performance
6 indicators in metrics and this is also to support
7 identification and quantification of potential
8 business value for the agency as a whole.

9 So, that concludes the update I have for
10 both the AI for enhanced search as well as the CPC
11 auto classification and I'd like to turn it over
12 to Coke Stewart to continue with the topic on AI.

13 MS. STEWART: Yes. Can everyone hear
14 me? Oh, I see Julie saying yes. Great. So, as
15 everyone knows, the USPTO has been very active in
16 the AI area and we roughly divide our efforts into
17 two programs. One of those programs we can
18 formally call AI tools and those are the tools
19 that we use as an agency to improve our operations
20 and examination of patent applications and
21 trademark applications and that was what Matt was
22 talking about. But we have another program that

1 we refer to as our AI policy program and we have a
2 working group that meets weekly to ensure that we
3 are advising the agency on Best Practices to
4 ensure that we're incentivizing innovation in the
5 AI area. So, that's the working group that I'm
6 involved in and that Deputy Director Peter is
7 sharing.

8 So, USPTO is one of the many federal
9 agencies working to ensure that the United States
10 is a world leader in the development of Artificial
11 Intelligence technology. Of course, we have long
12 been examining patent applications for AI
13 innovation, but as I noted in the last meeting we
14 had with PPAC, the rate of filings and examination
15 in that area has been really increasing
16 dramatically and so, we want to make sure that
17 were proactively working on IP policy so we're
18 well prepared to continue effectively examining
19 this Artificial Intelligence innovations.

20 So, as a result of that, we've been
21 doing our best to actively engage with our filers
22 and stakeholders and also experts in Artificial

1 Intelligence. Also, our international
2 counterparts to make sure we're promoting
3 innovation and predictable and reliable IP rates
4 in the area of AI technology.

5 So, I just want to hit some of the
6 highlights of that activity. You know, we had a
7 program last January in AI IP policy conference
8 last August; and in October, we published two sets
9 of requests for comments to ask experts and our
10 stakeholders to, you know, share their ideas on
11 best practices with AI policy. More recently, just
12 in March of this year, we launched a new kind of
13 hub or portal for AI information on policy issues
14 and, Patrick, maybe you can turn to that slide now
15 so we can give everyone just a quick look at what
16 the page looks like. So, you can access it from
17 our homepage. There's a blue ribbon that we added
18 across the top and these are featuring some of our
19 major priorities in that area so you can see
20 there's Artificial Intelligence listed so you can
21 click through there. Patrick, can you move
22 forward? And then, if you click through you will

1 come to this kind of landing page and there's the
2 link on the right if you want to go directly to it
3 and you will see it's organized in three
4 categories. Next slide.

5 So, the first category is engagement
6 that we have been doing on Artificial Intelligence
7 so that's going to have our events, blogs,
8 speeches, and other programs. Next slide. And
9 then our third category is AI resources and
10 there's so much going on across the U.S.
11 Government on Artificial Intelligence. We thought
12 it would be a good idea to kind of gather
13 everything that we could get our hands on and put
14 them on this page to help our stakeholders and we
15 are constantly updating it really on a weekly
16 basis so we encourage people to go here and take a
17 look. And then, next slide.

18 And then, in this category we have a lot
19 of different kinds of notices on Artificial
20 Intelligence. We have the request for comment
21 notices that we issued. We have the comments we
22 received from the public and they are almost 200

1 individual responses that we've received so it's a
2 great resource for those looking to learn more in
3 this area and we will be issuing a report that
4 summarizes those comments and discussing some in
5 some detail and we hope to have that out quite
6 soon.

7 And then, another good development is
8 that we've been able to post relevant legal
9 notices on the site. So, most recently, we issued
10 a decision on a venture ship (phonetic) with
11 respect to Artificial Intelligence and we've
12 included that also on the AI landing page under
13 the "Notices" category. Now, that happens to be
14 in an application that's unpublished so while the
15 public can't review the details of that particular
16 application, we do have authority under our rules
17 to publish certain decisions even if the
18 underlying application has been unpublished if
19 it's a particular interest to the public so that
20 is what has occurred here with respect to the
21 established applications and there seems to be a
22 lot of interest in that particular decision and I

1 encourage those who are following the issue to
2 read it. They can access it here from our
3 website.

4 So, as I said, our next step is really
5 to put out the report and to continue to update
6 this resource for our users and with that, if
7 there are any questions, I would be happy to
8 answer them. Jeremiah.

9 MR. CHAN: Thank you, Matt. Thank you,
10 Coke. So, I want to go back, Matt, to you for a
11 second and I know we've chatted a lot about this,
12 but I think for the benefit of the public it would
13 be great for you to talk a little bit more about
14 how you measure the quality and accuracy of the
15 two tools regarding the initiatives around AI for
16 enhance search and CPC auto classification. Part
17 of what I mean is, for example, the CPC auto
18 classification, you know, one question is how are
19 you measuring the accuracy of the auto classifier?
20 Is it relative to a current manual classification
21 that contractors do or is it compared to some
22 other source of truth?

1 I think that would be helpful if you
2 could talk a little bit about that.

3 MR. SUCH: Certainly. So, for the auto
4 classification, we use two different data sources
5 to help us understand how well the auto
6 classification is producing output. One of them
7 is, as you mentioned, comparing against the manual
8 output that has been already assigned to
9 documents. And so, the way that we can measure
10 how close two different documents really are
11 actually goes right through the schema and so, we
12 can see in any particular document relative to the
13 classifications that are on that document and the
14 classifications that are suggested by the tool how
15 far away each of those classification sets are
16 from each other when they're viewed through the
17 schema itself. The schema is hierarchical in
18 nature and so, you can imagine that every step
19 that one takes through that hierarchy can be
20 counted quantitatively and that's a measure that
21 we use to understand how close we're getting when
22 we don't have, for instance, an exact match or if

1 we have some overlapping where we have some exact
2 matches and some that aren't.

3 Additionally, we also use as a second
4 source this kind of gold data set, which is data
5 that we kind of triple evaluate.

6 So, we have a classification quality
7 assurance processes that we use here in the agency
8 for monitoring and ensuring our classification
9 quality and consistency and that data is very
10 valuable to us because it provides us deeper
11 insights into the output of the tool itself and we
12 additionally use all of that information to help
13 us train. Once again, that's something that is
14 something that we can look at through the schema
15 itself just like we do with the current document
16 classifications that are on each document. But we
17 collect, as well, some actual feedback about
18 individual symbols such as placement of where the
19 content of that symbol might be within the
20 disclosure itself in terms of making those matches
21 or in the case of a mismatch, understanding
22 perhaps from the intellectual expertise of an

1 examiner or a classifier the reasons why that
2 symbol may not be appropriate.

3 MS. MAR-SPINOLA: So, I have to
4 apologize for everybody because it's my bad to
5 have only allotted ten minutes for the AI
6 subcommittee discussion. Clearly, there is a lot
7 more to talk about and that there have been
8 significant advancements since the last meeting
9 and so, I will make it up to everyone. I
10 apologize not only to AI subcommittee, but also to
11 International because we've cut into their time
12 and one last thing though is that I want to ask
13 that Bob Barr, next time we get a chance to talk
14 about this the recent decision on the petition for
15 AI in inventorship, if we can continue our
16 discussion for the next meeting that would be
17 great. So, again, it's my bad, apologies to
18 everybody. If you don't mind, I'd like to move on
19 to International and thanks, Barney. Sorry about
20 that. And so, for International, I'm going to
21 turn it over to Subcommittee Chair, Tracy Durkin,
22 and Co- Chair, Jeff Sears, along with Shira

1 Perlmutter, Chief Policy Officer and Director for
2 International Affairs and our new kid in town for
3 International is Valencia Martin Wallace, Deputy
4 Commissioner for International Patent Cooperation.

5 MS. DURKIN: Sure. Thanks, Julie.

6 Since were short on time, I just wanted to make
7 one opening comment that the Director alluded to
8 the fact that there has been a lot of coordination
9 between the U.S. Patent Office and many other IP
10 offices and I just want to say that at no other
11 time had it probably been more important for these
12 offices to be talking together and coordinating
13 and I think out strong good working relationship
14 with so many offices around the world is really
15 serving us well during this time. And so, with
16 that, I'll turn it over to Shira and let her tell
17 us what's going on in terms of the Parallel Patent
18 Grant. If Shira is still here.

19 MS. PERLMUTTER: Can everyone hear me
20 now? Yes?

21 MS. DURKIN: Yes.

22 MS. PERLMUTTER: Good. Okay. All

1 right. So, if we can go to the next slide please.
2 We wanted to tell all of you about a new work
3 sharing program that we've developed with the
4 Mexican IP office, IMPI, that we're calling the
5 Parallel Patent Grant or PPG for a punchy acronym.
6 So, this builds on some of the existing work
7 sharing models we have (inaudible) Patent
8 Prosecution Highway, but it also offers a number
9 of different advantages and so, we wanted to tell
10 you what those were. We started this PPG program
11 with Mexico where we already have a very long and
12 productive relationship with IMPI, but we do hope
13 and plan to replicate it with other appropriate
14 countries in the future.

15 So, just to give you a sense of why we
16 developed this, we have a situation where a large
17 percentage of Mexican patent applications are of
18 U.S. origin probably about close to 50 percent and
19 this provides a way to alleviate the increased
20 workload that this causes for IMPI. And the PPG
21 will benefit U.S. innovators by facilitating more
22 timely patent protection in Mexico so pendency

1 there now can be five to six years from the start
2 of the examination process and with this program
3 the PPG, an applicant should be able to obtain a
4 patent within just a few months of a of a request
5 to participate so we think that will be a major
6 benefit.

7 The arrangement also furthers the United
8 States- Mexico-Canada agreement or USMCA, which we
9 recently entered into, which contains the
10 provisions on increased cooperation between our
11 respective patent offices so this is a good step
12 forward on that as well.

13 And the first phase of the
14 implementation should begin this Summer. We were
15 hoping it might even have been a bit earlier, but
16 because of the current pandemic situation things
17 have been a bit delayed. So, if we can go to
18 Slide 2 please, the next slide. Maybe it's 3,
19 sorry.

20 So, this slide just shows you a visually
21 the flow of the system. So, when you have patent
22 applications in both the United States and Mexico,

1 once the U.S. patent is granted, the applicant can
2 petition IMPI to participate in the PPG programs
3 and there are two avenues for doing this. One is
4 the applicant making a direct request to IMPI and
5 the other is IMPI inviting the applicant to
6 participate once it's aware that there's a pending
7 U.S. application as well. And if we can go to the
8 next slide.

9 So, we really wanted to focus on how
10 this works and what some of the advantages are of
11 this program. So, you can see (inaudible) is a
12 one-way program where there's reliance on IMPI on
13 our work product in the United States, but not in
14 the other direction and the applicant has to
15 submit a request that's applicable to all
16 technologies and the offices are coordinating very
17 closely to ensure that this will work smoothly and
18 well and to make any needed improvements as we go
19 along. So, the advantages are obviously for
20 applicants as I said be able to reach the patent
21 protection in Mexico much more quickly. It may
22 require less work on the part of an applicant than

1 a typical PPH program does and then, of course,
2 IMPI also will benefit from the efficiencies in
3 being able to leverage our search and examination
4 results. And if we can go to the next slide
5 please.

6 I just wanted to show you some of the
7 particular characteristics of this program, the
8 PPG program, and how it differs from either a
9 patent prosecution highway arrangement or a patent
10 validation agreement.

11 So, first of all, the workflow again is
12 one directional. So, only the USPTO product is
13 evasive for the parallel grant, not the work
14 product from the partner office. Second, in terms
15 of the triggering requirement, the PTO has to have
16 actually granted a patent so it's not enough as
17 far a PPH that we really have found allowable
18 subject matter. And then, this is an interesting
19 difference in terms of what the subsequent review
20 is by the partner office. So, under the PPG, the
21 partner office takes our work product from the
22 counterpart issued patent here, but the patent

1 application still has to conform to national law
2 in terms of subject matter eligibility. So, there
3 will still be a review by the partner office for
4 that purpose. They are just using our examination
5 results, but they are still applying their law in
6 terms of eligibility. And then a counterpart
7 application will be necessary so unlike a
8 validation agreement, there has to be an
9 application filed in each office and in the
10 participating office and IMPI in this situation, I
11 would likely be amended to conform to the issued
12 U.S. patent.

13 So, that's the system works in a
14 nutshell. We are interested in rolling it out
15 elsewhere where it's appropriate. We think it's
16 an exciting development and an improvement from
17 many perspectives from the work sharing agreements
18 we have now and it really will depend on the
19 particular office and its circumstances as to
20 which model is (inaudible) for them. And, in
21 particular, this one is (inaudible) for an office
22 like Mexico that is generally beginning

1 examination after the USPTO either because of
2 backlog or because the applications are first
3 filed here.

4 So, I know we're short of time so let me
5 to stop there. Happy to answer questions and I
6 have Jesus Hernandez with me is the OPIA attorney
7 who was primarily responsible for negotiating this
8 agreement.

9 MS. MAR-SPINOLA: Thank you, Shira. So,
10 let's see, Jeff Sears. I'm sorry, Tracy.

11 MS. DURKIN: Did you want to take
12 questions now, Julie, or do you want to wait until
13 after Valencia Martin Wallace speaks?

14 MS. MAR-SPINOLA: Let's wait until after
15 Valencia speaks.

16 MS. DURKIN: Okay.

17 MS. WALLACE: Well, thank you very much.
18 I promise I will make it very short because I know
19 I will have opportunities at future PPAC's to
20 share with you this direction that we're going
21 with OIPC. So, just very quickly at a very high
22 level. One of the things that I've done in the

1 patent quality area was really looking at quality
2 from a very holistic point of view and that's the
3 same view that I'm looking International in
4 holistically looking International and the quality
5 to provide the same level of consistency,
6 predictability, and reliability for our customers
7 across other offices as they receive at the USPTO
8 and part of what we're doing in order to get there
9 is taking a look at work share initiatives and let
10 me stop there and just say thank you, a very huge
11 thank you, to Shira and to her staff at OPIA as
12 well as the staff at OIPC who have had a wonderful
13 relationship before I got there and is still
14 building upon a great strong partnership in order
15 to move in this direction and the work sharing is
16 one that we have been working with Shira's staff
17 to look at the future of work sharing. So, we
18 have several very successful programs with PPH and
19 with our search pilots as well as the search and
20 examination through PCT and now also with this
21 program of the parallel grant. And as Shira was
22 mentioning, we want to expand those programs into

1 other offices and partnerships with other offices
2 and identifying which ones through our assessment,
3 our past assessment as well as future assessment,
4 which of the programs are best suited with which
5 of the partnerships and we're in the middle of
6 that process so we will be reaching out to PPAC as
7 we're going through that process to get your input
8 in the direction that we're looking to go.

9 So, one of the other areas that we're
10 looking at is our IT modernization. We've had
11 some successes there as well with the WIPO DAS.
12 We are in an exchange with JPO within IPA as well
13 as KIPO now through WIPO DAS and we are in
14 discussions with EPO to also have that same
15 transition to WIPO DAS and to also encourage other
16 offices to join in the use of WIPO DAS in order to
17 have the benefits of priority document exchange
18 and that level of consistency.

19 So, one of the other areas that we are
20 really excited to look at and this is once again,
21 OPIA and OIPC in partnership in working with WIPO
22 on developing a common database for bibliographic

1 and other data. This is something that we've
2 received a lot of comments about for quite some
3 time from applicants and our customers of how to
4 make easier and more consistent regardless of
5 which office that you are filing in the same
6 common data that is needed in making sure that
7 it's done consistently and that it can be relied
8 upon regardless of what office you're going and
9 you're not going to see it in a different form.
10 So, we're working very diligently to develop
11 something with WIPO on that and Director Iancu as
12 well as the Director General Gurry have already
13 had several conversations about that and that we
14 are moving forward on that and hopefully will have
15 more information for you soon.

16 And another thing and I'll make this the
17 last so we can save some time for any questions.
18 With the present circumstances that we're all in,
19 it's become very, very clear that we need to work
20 on virtual conferencing with offices. It's, you
21 know, we've had the opportunities to enjoy being
22 able to be in person in the past, but we've had to

1 really work harder at virtual conferencing and
2 virtual meetings in that last few months and make
3 it more successful so that's an area that we along
4 with OPIA have been working with other offices on
5 the direction that we will be able to go in
6 enhancing virtual conferencing. So, I'm going to
7 leave at that because I know we're running a
8 little late and as I said, I'll have plenty of
9 opportunities to talk to you in the future, but
10 wanted to say a huge thank you once again to Shira
11 and her team and to my team in OIPC as well and to
12 Drew and Director Iancu in their support of me in
13 this new position.

14 MS. DURKIN: Great. Thanks, Valencia.
15 We look forward to working with you. Lots of
16 exciting things going on. Julie, do you want to
17 take questions or should we move on?

18 MS. MAR-SPINOLA: Well, in fairness, I
19 think we should take a question. I see that Steve
20 has a question.

21 MR. CALTRIDER: Yes, if I can indulge, I
22 actually have two questions, one for Shira, one

1 for Valencia. The first on the Parallel Patent
2 Grant and thank you. I think this is an
3 outstanding program and you indicated a desire to
4 replicate that program. I wondered if you could
5 give any insight on what are the priority
6 countries that you're looking to replicate in and
7 whether or not you're open to feedback on what
8 countries should perhaps be at the top of that
9 list?

10 MS. PERLMUTTER: Yes, thank you. Go
11 ahead, sorry.

12 MR. CALTRIDER: Well, I'll go ahead and
13 ask my question for Valencia as well so I can go
14 back on mute. The Director had commented that he
15 had sent a joint statement or the Director sent a
16 joint statement of support for the IP systems that
17 strike me as very important in the current
18 environment where it seems like the IP system is
19 under considerable attack and criticism really
20 without any data to support it and I'm wondering
21 if additional joint statements to support for
22 strong IP systems around the world is perhaps in

1 the works. Thank you.

2 MS. PERLMUTTER: Yes. I might just
3 start with the second one, which is we are
4 considering other statements as well as we peak
5 because we do think that this is an important time
6 to make those points clear so thank you for
7 raising that.

8 On the PPG approach, the Parallel Patent
9 Grant, at this point, we want to make sure that we
10 have a working system so it's still early days and
11 we are thinking of this as part of an overall
12 strategy in terms of with what countries does it
13 make sense to have a PPH versus a PPG versus a
14 tour validation agreement and that process is
15 still underway. Those discussions are underway
16 between OIPC and OPIA so I think it's premature at
17 this point to specify countries, but we would be
18 very happy to consult and get input from Opti-Pak
19 as we move forward with this. Thank you.
20 Valencia, I don't know if you want to add to that.

21 MS. WALLACE: All I would add to is I
22 completely agree with everything that Shira said.

1 MS. PERLMUTTER: We like agreeing.

2 MS. MAR-SPINOLA: I look forward to the
3 two of you working together. I think it was great
4 before and it will be different and great
5 continuing on and I love the holistic approach.
6 Valencia, that approach that you took in Quality
7 established the value of doing that way and so, we
8 look forward to more good things coming from
9 International and thank you, Shira, much
10 appreciated. So, okay. Anyone else? All right.
11 So, let's move on to Pendency and Quality. Our
12 Chair is Steve Caltrider and with him will be Andy
13 Faile, Deputy Commissioner for Patent Operations,
14 Dan Ryman, Acting Deputy Commissioner for Patent
15 Quality, Karen Young, Director for Tech Center
16 2900, and Brandon Rosati, Tech Center 2900. All
17 yours, Steve.

18 MR. CALTRIDER: Okay, great. I'll keep
19 my introduction short because we have a very
20 ambitious agenda to cover in our allotted time.
21 Commissioner (inaudible) first we will come to
22 this morning the qualities at the top of his list

1 and I think it's fair to say for members of PPAC
2 it's the qualities at the top of our list as well.
3 The importance of reliable and predictable patent
4 rights is really foundational to the system and I
5 really want to start today, although it's not one
6 of our presentations, with a shout out to the
7 examiners and the office staff. They are both the
8 frontlines for both Quality and Pendency and their
9 hard work is clear and given its Public Service
10 Recognition Week, it's certainly appropriate to
11 recognize their efforts in this space because the
12 trendlines are certainly moving in the right
13 direction.

14 Today we are going to cover three
15 topics. The first is pendency. The Q1 metrics
16 and where we are in that journey. The
17 productivity noted this morning will also be clear
18 from this presentation and it's certainly more on
19 track to deliver our pendency goals for year.

20 The second is designing this quality
21 where we've made some improvements and a notable
22 point on this is this is really responsive to

1 feedback and concerns that were raised by members
2 of the public. So, the issue was brought to our
3 attention and the office has been really quite
4 responsive into looking into the situation and
5 making some improvements to improve the design and
6 its quality.

7 And the third is the external quality
8 survey, which is of course the indicator on how
9 the user community perceives how the office is
10 doing on quality and again, the trendlines are all
11 favorable, which is taking the punchline away a
12 bit to the presenters and I apologize for that,
13 but certainly, as a member of PPAC, I want to
14 express my appreciation and gratitude for us
15 moving in the right direction on these and
16 continuing to improve our quality and pendency of
17 our patents. With that, I'll turn it over to
18 Andy.

19 MR. FAILE: Okay. Good afternoon.
20 Everybody hear me? Just making sure. Thank you,
21 Julie. Next slide please. So, Julie, we'll try
22 to make up a little bit of time as we go through

1 three presentations that have a lot of
2 information. So, starting out and just taking a
3 look at where we are on some of our pendency
4 measures, I'll pick up from where Drew starting
5 this morning where he introduced a different way
6 of looking at pendency and this is something we
7 have been tracking for some time, patent term
8 adjustment. We are putting even more emphasis on
9 that now. You heard Drew talk about a 90/90 by
10 2025 is our goal. That's 90 percent compliance in
11 patent term adjustment by the year 2025. The
12 first few bullets give you kind of the sense of
13 where we are there. Drew also mentioned two kind
14 of facets of what we're looking at for patent term
15 adjustment. One is in the actual mailed actions
16 that we have. How compliant within patent term
17 adjustment are we with those mail backs and you
18 can see currently we are tracking at 83 percent
19 towards that 90 percent.

20 And the second is inventory. At the end
21 of this in FY 2025, how much of our inventory or
22 what percentage of our inventory lives within each

1 of the patent term adjustment, our frame markers.
2 As you guys probably remember when we're talking
3 about patent term adjustment, we're basically
4 talking about five different categories. There is
5 a tracking of compliance for how quickly we do our
6 first action, how quickly we complete the
7 prosecution of complete life cycle of an
8 application, and then there's a few measures in
9 the middle, one looking at how quickly we respond
10 to applicant responses, one how quickly we
11 actually mail out patent grants, and one how
12 quickly we respond to a decision from the PTAB.
13 Those all have four- month timeframes. So, you
14 have a 14-month component, several four month
15 components, and one 36 overall month component.
16 When you look across that entire spectrum of
17 patent term adjustment, we're using those
18 particular components and weighting them with the
19 actions that occur within those particular bins,
20 that's how you get to the 83 percent marker that
21 we're at now. And again, for inventory, we're
22 looking across those bins in FY '25 and we're

1 marching towards having a 90 percent compliance of
2 our inventory live within those timeframes, 14, 4,
3 4, 4, 36. So, so far, on track.

4 The next bullet is while we're doing
5 that, we don't want to lose any of the forward
6 momentum that we've building up for some years in
7 what we consider our traditional pendency's in
8 first action and total pendency, which is an
9 average pendency measure. As you guys probably
10 remember, we had marching down a path of 15 and 24
11 as goals having our pendency for first action be
12 less than 15 months, for total pendency be less
13 than 24 months for some time now. We hit those
14 markers. Last year we had average pendency less
15 than those two goal markers and we want to
16 continue that path this year. So, right now we
17 are 15.9 months and 23.5 months towards keeping
18 our first action pendency average measures within
19 15/24. 15.9 is greater than 15 last time I
20 checked my math. We are not that concerned about
21 that because the way the first action pendency
22 works is we are doing a first in and first out

1 throughout the fiscal year so we're burning off a
2 lot of that older inventory so you're going to see
3 that spiking pendency at the beginning of the
4 year. That will come back down towards the end of
5 the year once we burn the older inventory off and
6 we have due inventory leftover. We have a little
7 bit of a less of the spike, 15.9 at this point in
8 time, than we had last year at 16.5 at the same
9 point in time.

10 So, on total pendency, we're actually
11 making up a little ground compared to where we
12 were last year. We're at 23.5 months versus we
13 were a little higher close to the 24 months at
14 Quarter 2 of FY '19.

15 Another thing we're going to talk a
16 little bit about today and dive into is our filing
17 rates. We've have been watching our filing rates
18 pretty specifically as we normally do.
19 Particularly, in this time, we want to kind of
20 keep up with filing rates that obviously sets our
21 workload and we are very sensitive to filing rate
22 changes. Currently, our serialized growth is 3.1

1 percent. Keep in mind all of these numbers are
2 reported at the second quarter, largely the end of
3 March, but 3.1 percent over where we were in March
4 of last year.

5 We are doing pretty well in our
6 attrition rate. We are at 4.4 percent for patent
7 examiners and this counts attritions for any
8 reason, retirements, people that are separated
9 from the office, people that have been trained and
10 promoted up into a manager position. If you
11 subtract out what we call our transfers, our
12 attrition rate is somewhere in the 3-1/2 percent.
13 We are tracking really good be able to retain the
14 patent examiners who are so vital to making sure
15 we're hitting all of these measures. Next slide
16 please. Thank you.

17 So, let's take a look at some filing
18 data and this is pretty interesting stuff. So,
19 here we're looking at filings by priority type.
20 So, if you look at the kind of graph on the
21 bottom, you'll see all the different types of
22 priorities to which an application can claim and

1 we've kind of done a graph and kind of graphed
2 that out so you can kind of get a sense of where
3 we are there and where the growth is. Looking at
4 the bar graph on the right, the blue is our last
5 year filing rates. These were, again, mid-year to
6 mid-year and the red is where we're tracking this
7 year. We've broken this up into continuations,
8 going from left to right, continuations, national
9 stage applications, applications which have a
10 foreign priority claim, applications which have a
11 domestic priority claim, applications with
12 priority claim, or brand new applications with no
13 lineage attached, and then our divisional CIP's
14 and reissues. The interesting part here to us is
15 we're seeing our growth in priority types from the
16 continuations and national stage and the
17 applications claiming foreign priority in a little
18 bit of a muted growth compared to last year on the
19 other categories.

20 If you look at the chart at right, our
21 CON's are the biggest growers at 8.7 percent and
22 then we do have growth in both our national stage

1 and applications claiming foreign priority.

2 I wouldn't get too excited about the
3 reissue growth of 11.4 percent. That number is a
4 very small denominator. We went up from 306 to
5 341 thus the increase commensurate with that.
6 Next slide please.

7 So, what we really are looking at based
8 on that last slide is our CON's and there's a
9 really interesting story in our continuation
10 filings. As you can see, they are graphed in the
11 blue graph compared to continuations in part in
12 divisionals in the red and continuation in part is
13 kind of in the pink, the bottom line. As you can
14 see, continuations have taken off like a rocket
15 over the last ten years or so. They basically
16 tripled in a decade. They are current about a
17 quarter of all of our incoming serialized filings.
18 Keeping in mind, we take in about 430,000
19 serialized applications a year, CON's being about
20 a quarter of that work. So, they are an
21 increasing part of our workload from year-to-year
22 and still seem to be climbing up. So, that is a

1 trend we are watching very closely that goes right
2 into the loading of our dockets for examiners. We
3 don't want to build up a huge backlog in CON's
4 since they are increasing more-and-more from
5 year-to- year. We are particularly sensitive to
6 ensuring that they are loaded up and are worked
7 out in filing date order as well. Next slide
8 please.

9 We also looked at filings coming in by
10 country origin so if you take a look at the chart
11 on the right, at the very bottom that the U.S.
12 filings or domestic filings and these are roughly
13 -- 50 percent of our filings our domestic, 50
14 percent are from foreign origin. These numbers
15 again, FY '19 to FY '20, compare the second
16 quarter mark and as you can see, the large bulk of
17 the filings from U.S. at the bottom there about
18 100k and then if you look at the other countries
19 going to the graph on the left, you see by country
20 kind of the filing rate increases comparing FY '20
21 to date to the same commensurate period in FY'19.
22 Japan a little bit lower. Our really growth from

1 foreign filings come from China and Korea. As you
2 can see, switching over to the chart, the right
3 they're up about 22 percent for each of those
4 countries. The rest of the countries are a little
5 bit of the gain are relatively flat as you go down
6 from left to right. So, a very interesting story
7 here that are grown in foreign filings from mainly
8 from China and Korea. Next slide please.

9 We also took at our filings by entity
10 status, you know, large, small, and micro entity
11 and as you can see from the graph, obviously, we
12 get a lot of our filings from large entity and
13 that is also the biggest growing category of the
14 three entity statuses that we have all the way on
15 the far right. So, most of our growth in entity
16 status is coming from our large entity filers.
17 Again, comparing FY '20 Quarter 2 to progress in
18 FY '19 Quarter 2. Next slide please. And that's
19 it so I will turn it over -- that's a quick look
20 at our stats here. Bottom line is we see things
21 are pretty steady. Picking on what Drew said this
22 morning, operations continue. We're are seeing

1 pretty steady increases. Things look, compared to
2 last year at this point, relatively normal in
3 terms of filing growth rates. We are continuing
4 to look at that continued CON's uptake, which is
5 continuing to go up and that is going to be
6 something increasingly feather into our calculus
7 of how were looking at dockets. With that, I'll
8 turn it over to Karen Young and Brandon Rosati who
9 are going to talk a little bit about design image
10 quality.

11 MS. YOUNG: Thank you, Andy. If you can
12 give me a thumbs up that you can hear me. All
13 right. Thank you. Good afternoon everyone.

14 Thank you for the opportunity to speak
15 to you about design patent image quality. It is a
16 topic that is extremely important to me as the
17 Director of the Design Technology Center 2900.
18 Along with us, as Andy mentioned, is Brandon
19 Rosati. He is the Technology Center 2900
20 Operations Manager and he helped spearhead the
21 improvement initiative that I'll be mentioning.

22 As noted on the slide, I'm going to

1 touch base on four areas today. I will begin by
2 providing you with some background information.
3 Then I'll discuss past changes and resulting
4 improvements that were implemented in 2016. After
5 that, I'll go over some of the challenges we are
6 still facing and I'll end with the actions we are
7 taking and we'll continue working on. The next
8 slide please.

9 Moving to the background information,
10 I'd like to briefly mention a little about image
11 format. There are vector image file formats and
12 raster image file formats. A vector image, such
13 as shown on the left side, is instructed from
14 mathematical paths and curves and point and that
15 is versus a raster image, which is shown on the
16 right side, which is constructed of a series of
17 pixels. So, vector images, they are very flexible
18 and they can be enlarged or reduced while
19 maintaining image quality. When raster images are
20 enlarged, they can be distorted resulting in
21 blurry or unclear images as shown in the light
22 where you can see the pixels in the enlarged area.

1 Next slide.

2 Here I have shown some examples of
3 common file extensions and their formats. For
4 example, many of you may be familiar with a JPEG
5 file common to photographs. This type is listed
6 on the right side as it is constructed of pixels.
7 The same goes for.psd, which are files created in
8 Adobe photoshop. Also, on the other side are
9 other raster file types. I'll be (inaudible) back
10 to the.tiff file type specifically in a future
11 slide.

12 Contrast all the file types listed on
13 the right with those listed on the left. For
14 example, AI is a vector image that can be created
15 using Adobe illustrator. Of note, is the fact
16 that sometimes you can't always tell by the
17 extension if an image is vector or raster. This
18 is true, for example, with pdf, which is listed
19 under each. Next slide.

20 So, back in 2016, the USPTO received
21 feedback that the images published as part of
22 design patent grants were degraded compared to the

1 images provided to the office by the applicants at
2 the time of filing. So, Brandon and others looked
3 into this issue and it was noted that during the
4 overall electronic processing of an application
5 and by that, I mean the overall process that
6 includes the initial receipt of the files, the
7 movement of the files into the examination tools,
8 and then the last stages, which are publications
9 and disseminations of patent. During that overall
10 process, there was a specific conversion process
11 where all incoming file types were converted to
12 another file type, a raster type. So, this
13 conversion was found to be mainly responsible for
14 the degraded quality of the images in the patent
15 grants. Next slide.

16 So, to address the issue, the USPTO
17 changed part of its process and moved to
18 preserving vector-based drawings submitted by
19 applicants in pdf. So, these drawings are stored
20 and displayed in a system called the Supplemental
21 Complex Repository for Examiners. That's a
22 mouthful. We shorten it and call it SCORE. So,

1 the SCORE drawings are looked at by examiners when
2 they examine applications. The SCORE drawings are
3 also pulled and used in the printed official paper
4 patents that get mailed to applicants and these
5 SCORE drawings are also loaded into the
6 supplemental content of the electronic files of
7 our patent applications. Those files are the ones
8 viewable by our external stakeholders. Next
9 slide.

10 I want to take a moment to show you
11 examples of the improved quality that resulted
12 from the process change. On the right side, you
13 see the vector based image drawings that the
14 applicant submitted, which is preserved, and
15 again, this SCORE image is used by examiners, it's
16 in the printed patent grant sent to applicants,
17 and it's available to stakeholders in the
18 supplemental content area of the electronic file
19 that they can view. On the left side, you see the
20 image as it ends up after the conversion process
21 that was identified as responsible for the
22 degradation of the image. In the enlarged area

1 specifically, you can see the cleaner, sharper
2 lines of the preserved vector-based image. Next
3 slide please.

4 So, here is another example where the
5 drawing image of the tire tread is so much better
6 on the right side, which is the image in SCORE.
7 And again, I've noted that the images preserved in
8 SCORE are used by examiners. They are received by
9 applicants in patent paper grants and they are
10 acceptable to our stakeholders in that
11 supplemental content tab.

12 So, what I have not mentioned, I've
13 repeated myself on where SCORE drawings are, where
14 they are not is they are not in the various search
15 systems and they are not disseminated for other
16 purposes. So, let's go to the next slide so I can
17 mention these challenges.

18 So, the USPTO adheres to a global
19 IP-wide recommended standard format for data
20 exchange. It's noted on the slide ST.33, it's in
21 a (inaudible) documentation handbook, and this
22 standard requires a raster-based image in a tiff

1 format produced at 300 dots per inch. So, in
2 order to adhere to this standard for publication
3 and data sharing, the vector drawing submitted by
4 applicants, they do go through a conversion
5 process to a tiff format. So, these are the
6 images that are disseminated and seen in various
7 search link systems.

8 So, one thing I urge all of you who are
9 looking at design patents to do is if you are
10 searching design patents and see a specific design
11 patent that's relevant to you, please take the
12 time to look up the application in the electronic
13 file that you have access to and view the SCORE
14 drawings in the supplemental content area as they
15 will usually provide you with a much higher
16 quality image.

17 I should note that the examiners, they
18 will do their general searching using the search
19 tools and the images they're in, but once they
20 identify the pertinent patents, they will look to
21 SCORE to view the higher image quality. Let's go
22 to the next slide so I can mention another

1 challenge.

2 So, we have been noticing a degradation
3 of a small number of pdf documents during
4 conversion, which appears to be related to various
5 characteristics of the image such as layering
6 features. So, layering features, they allow some
7 content to be made visible or invisible in pdf.
8 The next slide.

9 So, what we're going to do is we will
10 continue to discuss with our publication
11 contractor to identify some attributes such as
12 this layering that causing degradation during the
13 conversion and once we can pinpoint some specific
14 things that people should avoid, we will establish
15 a communication plan to reduce the receipt of
16 those type of pdf drawings with those attributes.
17 Next slide.

18 Another future action is we're going to
19 continue our discussions with the global IP
20 community. We will work with Valencia and Shira's
21 teams with our International colleagues and we
22 were going to work to modify that standard 33. We

1 will try. We would like it to be easier for
2 applicants to submit higher quality images, which
3 can be maintained through the prosecution and the
4 publication and dissemination process. So, it's a
5 long haul for some countries. We are ahead of
6 many countries with our IP efforts so we are going
7 so we are certainly going to continue our global
8 discussions. That concludes my presentation and
9 if I'm correct, I should introduce Marty Rater.
10 He would provide a quality survey presentation.
11 Thank you all very much for the opportunity to
12 speak to you.

13 MR. RATER: Thanks, Karen. Everybody
14 good? Hear me? All right. So, I'm going to go
15 ahead. I mean, we've kind of explored this survey
16 in the past. The general nature of how we
17 administer this survey hasn't changed and I'll
18 kind of speak to that, but I know there's going to
19 be a lot of questions about design and a lot about
20 Andy's stuff and we've made you wait until roughly
21 2:00 o'clock before you started seeing charts so
22 if we can kind of move all the way down to Slide 5

1 here that would be great where we start seeing
2 some data that Steve's kind of indicated. There
3 we go. Stop right there. As Steve mentioned and,
4 you know, kind of along with a lot of the other
5 things that are going on with the office, we're
6 starting to see some positive trends and some
7 continued and sustained improvement. Quick
8 reminder, this is the survey that we send to a --
9 semi-annual, twice a year, we send out a survey to
10 about 3,000 of what we call our frequent filers.
11 Folks that have about 10 to 15 patent applications
12 in the pipeline at any given time or office
13 actions. So, these are the folks that see day in
14 day out of what's going on with the office.

15 One of the key questions we have on the
16 survey is overall how would you rate examination
17 quality? Is it good, fair, poor, excellent, or
18 very poor and what we've got here in the dark blue
19 line that you see trending up is we are about 58
20 percent right now of our customer base says that
21 our quality is good or excellent and then in the
22 dotted blue line at the bottom, the lighter blue

1 line, we see 5 percent very poor and poor. So,
2 obviously, we are always for 100 percent
3 satisfaction, but it is a perception survey. It's
4 based on a lot of maybe your historic use with the
5 office. It could be a point in time, right? It
6 could have been the day. I heard some comments
7 earlier in this discussion, you know, slowness in
8 global docile, public PAIR being down. Well, if
9 that's the day we delivered the survey to you,
10 there's things like that that bleed into maybe a
11 perception of quality of how the office is doing.

12 But how we interpret this data and what
13 we really strive for is if you look back here to
14 basically 2009, back in 2009, and we've done this
15 survey since 2006 and it served as a very
16 indicator for us of how things are kind of going,
17 if you go back to 2009 and you can see basically
18 for every customer that was going to rate quality
19 as good or excellent, we had virtually one
20 customer -- an equal number of customers were
21 going to say it was poor or very poor and that
22 kind of gets in a rough environment, right,

1 especially if we are here. We've got 190
2 attendees on this particular session and if we
3 walked out there and said, "Okay, 85 are this and,
4 you know, 85 are that poor," whereas today we're
5 kind of looking at one of the metrics we looked at
6 and we kind of call it that net promoter, if you
7 will, we roughly have 12 customers are satisfied
8 or will report quality as good or excellent for
9 every one that would rate poor or very poor. Now,
10 we've done some analysis. That 5 percent, it
11 looks like, you know, there's some significant
12 things there where we've disappointed them in the
13 past or they've got a particular issue that we
14 have to prove demonstrated improvements, we also
15 asked these customers as well, "Do you see quality
16 improving or declining?" The good news is aside
17 from the ratings that they gave us here in terms
18 of what is the current level of quality
19 perception, they also indicate that they are more
20 likely to say quality is improving rather than
21 declining. So, that's another positive sign and
22 hopefully, we will continue to see this divergent

1 path between the poor and very poor and the good
2 and excellent. Now, of course, the difference in
3 between are those that rated fair.

4 The other thing to point out from this
5 survey, like I said, we kind of ask about multiple
6 things. We ask about consistency of rejections,
7 we ask about the clarity of rejections, and then
8 just the overall correctness in how well whether
9 or not it was appropriate for us to make those
10 rejections. And we ask them by statute, right?
11 We ask about 101's, we ask about 102's, 103's, and
12 112's. You can see in FY '19 we saw a bump up.
13 We kind of got a little bit a sharper climb there.
14 We did get an increase. A little bit of
15 satisfaction based on the eligibility guidance
16 that went on in January of 2019. The good news is
17 we've been able to sustain that. But really what
18 seems to be driving the perceptions right now if
19 we had to boil it down to one or two things, 103
20 rejections. 103 satisfaction with the 103
21 rejections we make, how often we're consistent,
22 how clear we are explaining the rationale and

1 presenting our position is really the key driver
2 right now and just to put that in a little bit of
3 context. If a customer says they are, lack of
4 better terms, satisfied with the 103 rejections
5 the office is doing and that kind of takes into
6 account the clarity, the consistency, and the
7 correctness, they are five to eight times more
8 likely to say they are satisfied overall.

9 It's not surprising 103 rejections are
10 in probably two-thirds of our final and non-final
11 rejections we make, but that kind of gets us to
12 where we want to look at our internal quality
13 review program, are we picking up those things
14 that are driving maybe the less desirable
15 characteristics or the preferred characteristics
16 in these 103's that are customers are saying. So,
17 with that said, we'll bounce to the next slide.

18 These are just to give you a couple of
19 ideas of other points that we're looking at.
20 Citing appropriate prior art, we also ask our
21 customers how well we're doing there. Citing
22 appropriate prior art and (inaudible) claims, you

1 can see 60 percent of the customers say that we do
2 it to a large extent of the time versus 5 percent
3 we rarely or a small extent of the time, but,
4 again, healthy ratio wise, 12 to 1. Treating all
5 claims 59 percent of our customers say we do it to
6 a large extent or most of the time. Those are
7 significant gains over the couple years. That has
8 actually been some areas of focus. We go back to
9 citing appropriate prior art. You go back to all
10 these root cause things of finding the better
11 search tool so it's a cumulative effect of
12 everything that was kind of talked about up to
13 this point today.

14 Providing enough information to advance
15 prosecution and subsequently addressing responses
16 to office action. We want to point these out, not
17 maybe our best numbers that we want to share, but
18 this kind of ties in, which would really be my
19 next slide, which we can skip entirely, but we use
20 this data to kind of use what we do on our
21 internal quality review program so we've talked
22 about it a little bit publicly how over the past

1 couple years we've changed our review forms. What
2 kind of data are we capturing of office actions.
3 We're starting to look at things like that and
4 point out when examiners do very well in providing
5 enough information to advance prosecution or
6 addressing responses to office actions and as we
7 start building that data set and finding good
8 examples and encouraging that and acknowledging
9 examiners when they make that. We hope to see
10 some of the gains there that we've seen with
11 appropriate prior art and trading all claims.

12 The next slide is just the fact I've
13 already said, which is basically this is
14 perceptions and then we will kick it to questions
15 of entity and care and about their presentations.

16 MS. MAR-SPINOLA: Thank you, Marty.
17 Steve, are you on mute?

18 MR. CALTRIDER: No, I'm not on mute.

19 MS. MAR-SPINOLA:

20 MR. CALTRIDER: Can you not hear me?

21 MS. MAR-SPINOLA: Now I can hear you.

22 Thank you.

1 MR. CALTRIDER: Do you want to
2 facilitate the question period?

3 MS. MAR-SPINOLA: No, you go ahead.

4 MR. CALTRIDER: Okay. Let's start with
5 Tracy.

6 MS. DURKIN: Sure, Steve. Thank you and
7 thank you, Karen, for that really excellent
8 explanation of not just the technology, but also
9 of what the office is doing given the challenges.
10 I wondered whether the office is doing any
11 consideration of e-publications. You probably
12 know that, you know, the European system, for
13 example, has been electronically publishing for a
14 long time and China even just started within the
15 last few months. It seems like it's time for the
16 PTO to consider that and maybe Design would be a
17 great test set for it.

18 MS. YOUNG: Can you hear me? Thumbs up
19 somebody. Okay. Tracy, I appreciate that comment
20 very much and I do support electronic publication.
21 I am open to Rick or Bill or anyone from the
22 automation folks who'd like to chime in. I know

1 that we would like to get there. It's a balance
2 between our other information technology
3 priorities and trying to do it, but I appreciate
4 your interest in it and your support so that when
5 we can move in that direction, I know that you
6 will be positive of our efforts.

7 MR. DURKIN: Absolutely. Thank you.

8 MR. SEIDEL: So, this is Rick. I would
9 just concur with Karen. You know, we do have a
10 lot of challenges. We are very interested in
11 e-publication. I think being able to leverage
12 text as filed, you know, and not have to do so
13 many conversions downstream I think will go a long
14 way in getting us to that ultimate goal of
15 e-publication.

16 MR. DURKIN: Yes and certainly the
17 (inaudible) of Design I was just going to add it's
18 the drawings that are so important and so, you
19 know, it's probably more important than in utility
20 cases so if we're going to start somewhere, I
21 suggest the Office start with design.

22 MS. YOUNG: Thank you, Tracy.

1 MR. CALTRIDER: Dan, you also have a
2 question?

3 MR. LANG: Yes, so, (inaudible) they are
4 very informative presentations. I wanted to focus
5 on the continuations data that Andy presented.
6 I'm very troubled actually by this rapid run-up in
7 continuations over the last decade and had a
8 couple of points. One, with the (inaudible)
9 continuations, you know, the concern is that the
10 claims, you know, can begin to drift away from the
11 original invention and that it's going to take a
12 lot of effort and attention to make sure that when
13 a patent is issued, it actually reflects an
14 invention that was reflected in the application as
15 originally filed. You know, what we and many
16 others see is that particularly in litigation, you
17 know, many are confronted with patents that the
18 products of continuations and that don't
19 necessarily reflect the invention as already filed
20 but did not (inaudible). So, I think with the
21 run-up of continuations, you know, we're going to
22 want to see a lot of attention to enforce Section

1 112 and making sure that we have a patent that is
2 adequately enabled and described.

3 Two, I kind of wonder if the
4 continuation increase is a reflection of, you
5 know, people looking for other avenues other than
6 RCE's to have continued prosecution. You know, in
7 a way this represents a setback to progress that
8 we thought we were making towards compact
9 prosecution in, you know, having cases you know,
10 this complete with a couple of actions and/or an
11 appeal, but instead, you know, applicants in the
12 office continuing to battle over claims and
13 continuations rather than the RCE's.

14 MR. FAILE: Yes, so, great points all
15 around, Dan. On the RCE's, on the comparison
16 between continuations and RCE, that's an
17 interesting thing that we should probably be
18 studying because we are seeing the trend line in
19 RCE's coming down. Coming down 5-6 percent from
20 one of the earlier slides. If you look at our
21 backlog of RCE's, we probably only have about
22 23,000 in the backlog where at one point we had

1 100,000 or more and we started to move that down
2 with some prior PPAC efforts in reducing that.
3 So, we are at a pretty low state on RCE, you know,
4 comparatively speaking. One of the questions is
5 some of that traffic making its way into CON's. I
6 think that's an interesting thing to study. One
7 of the reasons I thought it would be good to
8 highlight this slide is it does not only give us a
9 new look at our workload analysis and how we're
10 loading dockets and ensuring we are keeping a
11 balance between getting new cases and CON's out.
12 It also raises some interesting examining issues
13 that you've mentioned. So, I think that would be
14 a good thing maybe for us to start to focus on and
15 maybe look at this a little differently than we
16 have in the past given that this trendline is
17 continuing to be a dramatic rise. So, I
18 appreciate those comments.

19 MR. HIRSHFELD: This is Drew. Andy,
20 great comments and I totally agree with what you
21 just said. I can only share that anecdotally as
22 I've been talking to people to practitioners to

1 find out their views on this is I do hear a great
2 deal of talk about a strategy to take the
3 allowable subject matter that they can get and
4 continue to file continuations to keep cases going
5 and to try to seek even, you know, broader claims
6 than they've gotten. So, I think that that
7 strategy certainly has developed. I don't think
8 that that necessarily is the entirety of the
9 increase and I agree with you we need to look at
10 the interplay between RCE's and continuations, but
11 certainly I do believe that the strategy of taking
12 what they can allowable, getting a patent on it,
13 and trying to continue prosecution.

14 MR. CALTRIDER: Thank you, Drew. Thank
15 you, Andy. And I'll add my two cents on this
16 because I think, Dan, your question is also
17 excellent that the Quality and Pendency
18 subcommittee is going to take this up because I
19 think it's an important issue given the volume
20 growth and the important issue frankly on the
21 perception of quality on some of those
22 continuation applications or how that space has

1 grown. So, the Quality and Pendency subcommittee
2 will take this up and probably report out
3 hopefully in next quarter or the quarter after
4 depending on how long it takes us to get through
5 that data. Thank you. Julie, I'll turn things
6 back over to you.

7 MS. MAR-SPINOLA: Thank you very much.
8 Very interesting and I was just thinking one thing
9 I learned here is that we cannot shortcut or take
10 time away from these meetings and we will have to
11 revert back to the full schedule going forward for
12 sure. There's so much to share and to inform the
13 public. So, thank you for that. Let me first ask
14 or maybe just share my thinking, which is that
15 maybe we can go over a few minutes. The current
16 schedule is that we'll conclude at about 2:45
17 Eastern time. If we can go to a little past 12
18 noon, maybe 15-20 minutes beyond that I think we
19 can have a full session discussion with PTAB and
20 then my closing remarks. So, let me turn it over
21 to Jeff Sears who is our PTAB subcommittee Chair
22 and joining him will be Scott Boalick, Chief Judge

1 of PTAB, and Jackie Bonilla, Deputy Chief Judge of
2 PTAB. Thank you.

3 MR. SEARS: Thank you very much, Julie.
4 Before I take it out to PTAB, can I ask question,
5 Andy, on the continuation slide.

6 MS. MAR-SPINOLA: Okay.

7 MR. SEARS: Okay, great. Andy, I think
8 something we discussed in subcommittee, but I'll
9 just leave it out there. If you are going to do a
10 study of what the source is or the basis is of the
11 continuation rise, I would suggest that you look
12 at the prosecution history and find out are there
13 any 101 issues that are in the file wrapper. The
14 great uncertainty in 101 sometimes causes
15 applicants to want to keep the family alive
16 because if the law changes and my family is
17 closed, I have a patent that could be
18 presumptively invalid. That's all my comment for
19 that.

20 MR. FAILE: That's a great point, Jeff.
21 I think part of the rise you see here is, you
22 know, CON's being a safe place to continue and the

1 uncertainty we see in the 101 space. I think one
2 thing that would be interesting for the
3 subcommittee to study is what are the other
4 factors that may contribute to a graph like we
5 saw. I do think that is a, for at least a portion
6 of that time slice, that's going to be a
7 significant contributor. So, thanks for that.

8 MR. SEARS: Great. Thanks, Andy.
9 Turning to PTAB. I'm very happy to report that
10 the PPAC and the PTAB have had a variety of
11 excellent conversations virtually over the past
12 few months regarding AIA trials and ex-parte
13 appeals and today the PTAB is going to give us a
14 short presentation on some recent developments of
15 the AIA studies and also, going to tell us about a
16 new program the LEAP program that the director
17 referred to and his opening remarks. I turn it
18 over to the PTAB.

19 MR. BOALICK: All right. Thank you,
20 just before I proceed, a quick sound check. Is
21 the audio coming through? All right. Thank you,
22 Julie and Jeff. So, as is true with, you know,

1 the rest of the office, PTAB has been functioning
2 without interruption in these (inaudible) work
3 times. We have been busy with many different
4 projects and we're going to tell you about a
5 couple here in our presentation.

6 Also, I just would like to mention that
7 last Friday we had a board side chat webinar on
8 the current state of PTAB operations. We talked
9 about some case management aspects as well as
10 CARES Act extensions and, you know, completely
11 virtual hearings practice. The slides are
12 available on the PTAB website if you didn't to
13 attend the webinar, but would like to check out
14 the latest on any of those topics.

15 Also, I just wanted to mention because
16 it had come up is that on the ARTHREX front, we've
17 recently issued a general order in all cases
18 remanded from the federal circuit requiring a new
19 panel under ARTHREX as well as any of the timely
20 filed rehearing requests of decisions that were
21 made prior to ARTHREX and what we're doing in
22 those cases is we are essentially putting them in

1 administrative ebance (phonetic) until we see
2 whether any of the parties are entitled to seek
3 cert at the Supreme Court do in fact seek cert and
4 if they do, whether cert is granted. It didn't
5 make sense to us to extend the resources to go
6 through changing panels on somewhere over 100
7 different cases if it turns out that's not
8 necessary. So, I just wanted to mention that
9 that's a relatively recent development as well.

10 But the three things we're planning to
11 talk about today are some new AIA trial statistics
12 that PTAB has been working on in response to
13 feedback from PPAC and from others in the public,
14 some new precedential decisions, and, as you
15 mentioned, the LEAP program. So, Deputy Chief
16 Judge, Jackie Bonilla and Vice Chief Judge, Janet
17 Gongola, are going to be presenting on these
18 topics so I'll turn it over to Deputy Chief Judge
19 Bonilla to talk about the trial statistics.

20 MS. BONILLA: Thanks, Scott and thanks,
21 Jeff. Can you guys hear me? Thumbs up. That's
22 helpful to say. Okay, great. Thank you so much.

1 So, as Scott mentioned, we're going to talk about,
2 and obviously, there's plenty to talk about, but
3 for today in our time we thought we would talk
4 about three different things and I'll start with
5 the first one if you go to the next slide the AIA
6 trial statistics and basically, last time, if you
7 remember, we presented a new slide that was
8 showing a different way of presenting our stats in
9 our AIA pieces and that was a pie chart, which is
10 similar to what you see here today and that
11 particular pie chart that we showed, it's
12 currently on our stats that we have published
13 every month on the PTAB website so you can check
14 that out. That one actually covers al-combs of
15 petitions from when we very first started in
16 September of 2012 through the end of March is what
17 we have up there right now.

18 Last time we met with PPAC there were
19 some requests for whether we could see more recent
20 data, just a snapshot of what's happening more
21 recently and then also, there was a request if we
22 could separate the data out rather than by

1 petitions to have it be by patents and also by
2 claims if we could do that.

3 So, it turns out that we had actually
4 been working for some time to try and put together
5 that kind of similar data by patents and by
6 claims. It turns out to be a great deal of work
7 for us. A lot of that is actually done by hand
8 and I wanted to introduce, he's actually here with
9 us today too, is Bill Sain and Pete put together a
10 group that actually did a lot of that work and, as
11 I mentioned, it was a list and it was a lot of
12 time to put that together and we finally have some
13 information that we can share with you so we're
14 excited to do that.

15 So, the data that we'll show today, it's
16 data for fiscal year '19 so what you see here --
17 this is the first one we're going to show you.
18 This is the information for fiscal year '19 by
19 petition. So, this is call cases that fell into
20 one of the categories. There was an outcome in
21 the petition in fiscal year '19 so the pending
22 cases are actually removed, but you can see if

1 there was an outcome an actual final outcome of
2 some kind of a case, you see that here. And what
3 you can see is somewhat consistent with what we
4 saw for all time. About a third of our cases you
5 see an institution is denied, about a third of our
6 cases settle, and about a third of our cases make
7 it to a final written decision with a small
8 percentage, about 2 percent, being a requester
9 adverse judgement usually by the patent owner.
10 And then you can see what happened. If you take
11 that third out and then you see the percentages of
12 what happens in those outcomes in the third of the
13 petitions that actually make it to final written
14 decision and we broke that down in terms of what
15 happens in final written decisions.

16 People talk about the stats that you see
17 and under percentages for final written decisions.
18 We thought it was important to show this pie chart
19 because it actually shows what happens to all the
20 claims and make sure that everyone remembers what
21 actually happens to a petition as we go along down
22 the path. If you go to the next slide.

1 So, this is very similar, but here it's
2 done by patent and here we look at each patent
3 that had a petition that reached an outcome of
4 some kind in fiscal year '19 so it looks at the
5 outcomes of all petitions that were challenging up
6 to go patent. So, if a patent received an outcome
7 of some kind of in fiscal year '19, we looked at
8 every time it was challenged in a petition to see
9 what happened to it. And what we also did to, if
10 there was more than one outcome, if it turned
11 outcome for a particular patent, if there was a
12 final written decision, that's what we tracked it
13 as. But if it's something left in a final written
14 decision, it's broken out the way that you see it.
15 And what you can see is that by patent, about 25
16 percent of institution was denied. That was the
17 only thing that happened. About 20 percent of
18 them settled. What you see there that 6 percent
19 of mixed outcomes, that means that's a mix of
20 outcomes that wasn't a final written decision.
21 So, for example, if there was more than one
22 petition, one of them settled, one of them went to

1 institution denied for things like that, then you
2 would see that as a mix so it's more than one
3 outcome for the thing.

4 And then what you can see is when you go
5 by patents, about 37 percent of patents that were
6 challenged in fiscal year '19 ended up in a final
7 written decision and again, that small 2 percent
8 was a request for adverse judgement. And there
9 what you can see when you break it down when you
10 look at that, a little over a third pie for
11 patents that went to a final written decision, you
12 can see that when you break that down that about
13 21 percent of those patents, all patents were
14 upheld, about 25 percent was a mixed outcome, and
15 about 55 percent all of the challenged claims were
16 found unpatentable.

17 So, we also wanted to do the similar
18 thing by claims. So, if you go to the next slide,
19 and what you see here, what we're looking at here,
20 these are all the claims that were challenged in
21 any of the patents that I just showed you above so
22 any -- when we talked about claims by patent in

1 the slide above, this is what happened to all the
2 claims there. So, any patent that reached a final
3 outcome in fiscal year '19, this is what happened
4 to the claim. And, again, we had to, you know,
5 sometimes more than one thing would happen to a
6 claim so we had to prioritize how we were doing it
7 if there was more than one petition. So, here if
8 it was ever found unpatentable, it was put in a
9 final written decision, for example, it was put in
10 that bucket. If it was disclaimed but not found
11 unpatentable in a final written, it was in that
12 bucket and then, you know, patentable and if it
13 didn't go into a final written, institution and if
14 none of those things happened, it went to
15 challenge, but no final written decision. So,
16 that's what you can see there and what you can see
17 is that only about 25 percent of the challenged
18 claims actually were found unpatentable in a final
19 written decision. And then as the ones went to a
20 final written decision, 11 percent of them found
21 unpatentable. And about a little under of a third
22 of them, all of the claims or what ended up

1 happening to them is that institution was denied
2 so they never went on past that point. And then
3 there were some that there were challenged, but no
4 final written decision. That mostly includes
5 settlements so there was no determination on the
6 patentability. And then what you can see is in
7 that 35 percent that actually went to a final
8 written in relation to the claims, then you see
9 the stats that you see there. About 30 percent of
10 them were upheld and about 70 percent of the
11 challenged claims were found unpatentable. So,
12 it's important to realize that when people talk
13 about the stats about what happened by petition in
14 the final written decision what really is
15 happening to the claims. We thought it was
16 important to share with everybody hopefully in a
17 readable format that it's really only about 25
18 percent of the challenged when we're looking at
19 fiscal year '19, for example, were actually found
20 unpatentable. So, we go to the next slide.

21 Another thing we wanted to do, if you've
22 been following our stats, you know that back in

1 2017 we did a multiple petition study and that was
2 looking at how many petitions were filed per
3 patent. For example, what you see here for fiscal
4 year '17. So, we wanted to compare what happened
5 in fiscal year 2017, which was pre-General
6 Plastic. General Plastic came out in 2017 and so
7 did a bunch of our cases that spun off of that.
8 So, we wanted to compare what we were seeing in
9 terms of multiple petitions prior to General
10 Plastics. Some of its Prodigy. Some information
11 that we found in the Trial Practice Guide about
12 parallel petitions that you've heard us talk about
13 before and so, what you can see is we looked at
14 fiscal year '17 so that is each of the patents
15 that were challenged in fiscal year '17. We also
16 looked at the first quarter of fiscal year 2020
17 and we looked at that because we wanted to make
18 sure we were capturing everything that had
19 happened in some of our case fell in our Trial
20 Practice Guide. And what you can see there is
21 that back in 2017 it was about 59 percent of the
22 patents were challenged in one petition, 24

1 percent were in two petitions, and you can see the
2 other stats. And what you can see is since then in
3 fiscal year 2020 so far, about 70 percent of the
4 patents have only one petition filed per patent
5 and two petitions is 22 percent. And what you can
6 see in the box next to it you can see that the
7 change is in percentage over time. So, for
8 example, there was almost a 20 percent increase in
9 patents that had only one petition and the number
10 of times that a patent had two petitions or more
11 went down and it went more dramatically as we were
12 talking about more than two. So, if we could go
13 to the next slide.

14 So, I assume we can do questions at the
15 end. At this point, I'm going to switch to some
16 of our more recent case law, but, Julie, you
17 wanted to wait until the end. Okay. We will do
18 that. I'm getting a thumbs up about that. All
19 right. So, I wanted to give you all a little bit
20 of update about some of our precedential and
21 informative cases that have come out. We've had a
22 few come out since we spoke last. I just thought

1 it would cover a few of them to make sure you know
2 the latest and greatest.

3 The first one is that Hulu did come out.
4 That was the one that was addressing what is
5 required for petition of established that a
6 particular reference qualifies as a printed
7 publication at the institution stage. And the
8 holding there was at institution a petition must
9 identify with particular sufficient evidence to
10 establish a reasonable likelihood that the cited
11 reference was publicly accessible before the
12 critical date of the patent for it to qualify.

13 In the meantime, we had Hunting Titans
14 (phonetic). This is our latest POP review that is
15 still on review before the panel. The POP review
16 was granted back in November. Briefings took
17 place by the parties and by a (inaudible) briefing
18 in December and in January and there was an oral
19 hearing in this case on February 18. This is a
20 case that deals with motions to amend and what
21 happens in relations to substitute claims and
22 motions to amend and I think if you go to the next

1 slide, there's actually a slide on it.

2 So, the two questions there were at what
3 time and under what circumstances may the Board
4 raise an issue of unpatentability in relation to a
5 substitute claim that the petitioner didn't
6 advance or didn't sufficiently develop and then
7 the second question is if the Board can raise such
8 a ground of unpatentability in relation to a
9 substitute claim, one of the Board must provide
10 the party notice and an opportunity to respond to
11 that ground before it makes its final written
12 decision. So, stay tuned. That's in the works
13 and with that we will move on to some of our other
14 cases. You can go to the next slide.

15 So, you can see here, not counting the
16 POP decisions or the one pending that I just
17 mentioned, since we had SOP 2 (phonetic), we've
18 had actually it turns out 21 precedential
19 decisions and 20 informative decisions. One of
20 the decisions actually was made precedential on
21 Tuesday so we don't have a slide for it, but I
22 wanted to make sure that we did talk about it a

1 little bit because I think it's an important case.
2 This is a case that expands upon NHK, which is one
3 of our precedential decisions that talks about
4 institution factors and it mentions that one of
5 the factors we consider during institution is
6 whether there is a co-pending district court
7 litigation, whether there's a trial set for the
8 district court, and whether that district court is
9 dealing with, you know, some of the same claims
10 and grounds and arguments and things like that and
11 is going to resolve before our due date for a
12 final written decision. So, to expand on that, we
13 had a decision that was made precedential on
14 Tuesday. This is Apply versus SINTIV (phonetic).
15 This is IPR 2020 00019 Paper 11. This was made
16 precedential on May 5. It talks about six factors
17 that the Board will consider when it's thinking
18 about whether to apply NHK to take advantage of a
19 discretion to deny institution under 314A. And it
20 talks about the six factors that we will consider
21 when determining whether NKK denial institution
22 applies. One of them is whether the district

1 court has granted a stay in the case so there's
2 evidence that they will grant a stay if an IPR is
3 instituted.

4 The second factor is the proximity of
5 the district court trial date. For example, if
6 the trial date is in a few months, that could be
7 really dispositive. If the trial date isn't until
8 well after a final in decision, that could also
9 make a difference. One of the things we look at
10 is the investment that the parties and the court
11 have made in the district court proceeding. So,
12 for example, if the district court is pretty far
13 along, for example, they've done a claim
14 construction order and discovery are pretty far
15 along that will be something that we take into
16 consideration because it looks like a lot of
17 resources have been used in that case.

18 And then also we consider overlapping
19 issues, you know, whether substantially the same
20 claims, ground, arguments, evidence, and
21 particularly, the claims and were asking people to
22 tell us if there is overlap in the claims. That's

1 an important for us.

2 Another factor is whether is whether a
3 petitioner or defendant are the same party. That
4 can have an impact as well. And then other
5 circumstances such as the merits. So, for
6 example, if the merits are really strong, that
7 would be as part of the six factor analysis would
8 weigh in favor of institution, but if it's
9 something that's a really close call for us, but
10 it turns out the factors that I mentioned weigh in
11 favor of denying institution, then that would deny
12 institution. All right. If you go on to the next
13 slide.

14 So, we can kind of stay to these slides.
15 If you go to the next one. These are our
16 different ones that we have. What you can see
17 quickly just looking at them is that in recent
18 times we had some cases that were made (inaudible)
19 informative in several areas. One of them was the
20 314A NHK one that I just mentioned to you. We
21 have a few in the 325(d)-space including Advanced
22 Bionics, which I'm going to talk about in a

1 second.

2 There's a few relating to obviousness
3 and nexus and secondary considerations and then
4 another one, a precedential one, relating to
5 printed publications and four other informative
6 relating to printed publications. I won't go
7 through all of them, but I just again wanted to
8 talk about a few because I think that they are
9 ones that people have been discussing.

10 So, one of them is Advanced Bionics,
11 which does relate to 325(d). 325(d) is when we
12 assess whether the same or substantially the same
13 arguments were already considered before the
14 office and that's something that we can take into
15 account to deny as a matter of discussion of
16 institution.

17 So, in this particular case, it talks
18 about a two-part framework that the Board is going
19 to use in assessing how the play of 325(d). And
20 the first prong of that test is whether the same
21 or substantially art was previously presented to
22 office including, for example, an IDS and/or

1 whether the same or substantially the same
2 arguments were presented before the office. And
3 then if it turns out it meets that particular
4 criteria, then we will look to see whether
5 petitioners demonstrated that the office has erred
6 in some manner of material to the patentability of
7 the claims. So, for example, it could be that the
8 petitioner identifies that there's something in
9 the prior art, either a new prior art or even an
10 existing prior art that the examiner didn't talk
11 about during prosecution and seeing you can tell
12 as part of the analysis they seemed to miss that
13 part of a case of prior art. That's something
14 that the petitioner can show as an error made by
15 the examiner and that could be a consideration
16 about whether we go forward. Okay. If we go
17 forward to the next slide. I just want to mention
18 this slide. Oticon case, that's just another one
19 applying the 325(d) and it talks about 325(d) and
20 314. I won't go into it too much, but I just
21 wanted to flag it. So, if we go to the next
22 slide.

1 Here's another one. There's actually
2 two Lectrosonics precedential decisions. The
3 first from a while ago related to motions to
4 amend. This is the second one so I just wanted to
5 flag to you there's a second one. This actually
6 relates to obviousness and nexus if you go back to
7 the prior slide. Great thanks. And application
8 of Fox Factory, which is a recent settle circuit
9 decision. So, in the particular case, it was
10 interesting because it found that the patent owner
11 in relation to the original challenged claims did
12 not establish a nexus between the claims and the
13 objective evidence that was provided, but it
14 turned out in relation to the amended claims they
15 did. So, the original claims were found
16 unpatentable, but the amended claims were found
17 patentable under that analysis. Okay. Next
18 slide.

19 This is the last one of the
20 precedential. This is a follow-up to Hulu, which
21 relates to printed publications and this is just a
22 clarification that the stand of the GC (phonetic)

1 for determining whether a reference is printed
2 publication in an AIA proceeding is not actually
3 the same as what you see in prosecution. We just
4 wanted to clarify that. In examination, there's
5 actually a burden shifting framework that you
6 don't see in AIA. The office can actually shift
7 the burden of production to an applicant to Code 4
8 with evidence if the examiner has made a
9 (inaudible) case of obviousness. Next slide.

10 All right. I just wanted to identify.
11 We have a few informative decisions. I'm going to
12 skate through the next few slides because I just
13 want to make sure that Janet has enough time to
14 talk about our LEAP program so I'll probably skip
15 most of these if you go forward.

16 The ones that we're looking at now also
17 have to do with public accessibility and whether
18 something is a printed publication. Those are
19 good informative cases about how we're working in
20 light of who -- you can keep going.

21 MS. MAR-SPINOLA: And the presentations
22 will be made available on the website as well so

1 folks can access the details, which are great
2 here.

3 MS. BONILLA: Absolutely. And, of
4 course, all of our precedential and informative
5 cases are on our website. They are organized
6 pretty well and when you go on the website, it
7 will give you an idea about what the case is about
8 so if you're interested in a particular topic, you
9 can look for it that way as well. All right.
10 Keep going. I think at this point I'm going to
11 skip all of these slides because we could talk
12 about all these cases all day and I know we're
13 toward the end of the day and I want to make sure
14 to give Janet a chance to talk about LEAP.

15 MS. GONGOLA: Thank you, Jackie. Are
16 you all able to hear me? Thumbs up. Excellent.
17 Thank you. Well, we are delighted to conclude our
18 presentation to talking about our Legal Experience
19 and Advancement Program. This is the first time
20 we are really sharing the information with the
21 public although we had an announcement about it
22 last week. This particular program is designed to

1 enable those new to the practice of law or new to
2 practice before the PTAB to begin developing their
3 skills as an advocate. Legally, we have
4 responsibility to train the next generation of
5 PTAB practitioners and attorneys. In doing so, it
6 benefits all of those who come before us, their
7 clients, and the whole patent system. So, we've
8 developed this program to further that effort.
9 Next slide please.

10 So, what will happen under this program
11 is an attorney or an agent who is new to the
12 practice of law or new to PTAB can request to have
13 the opportunity to present oral arguments before
14 the Board in either an appeal or in an AIA trial
15 proceeding. Now, we have a definition for really
16 who qualifies as a LEAP practitioner. The
17 practitioner must have three or fewer arguments
18 before any court including the Board and the
19 practitioner has to have seven or fewer
20 (inaudible) as a licensed attorney or agent. If
21 both of those criteria are met, then the
22 practitioner is eligible for participation in our

1 program. Next slide please.

2 Now, for other senior council for a
3 party in exchange for giving a LEAP practitioner
4 the opportunity to argue, that party can secure 15
5 additional minutes for argument for their case in
6 front of the Board. The party can utilize the
7 argument time however they see fit. We just ask
8 that the LEAP practitioner be given the
9 opportunity to play a substantive role in the
10 argument and to the extent that more senior
11 council or the party would like some assurances
12 that the argument will go well and there won't be
13 any confusion or points left off the record that
14 they'd like to put on the record, senior council
15 has the chance to assist the LEAP practitioner
16 during their argument time. They can jump in,
17 answer questions. They also may make clarifying
18 statements after the LEAP practitioner is finished
19 arguing. Next slide please.

20 We tried to make is very, very easy for
21 practitioners to participate in this program. We
22 want to encourage it. So, you'll see on the slide

1 for either a trial or an appeal, a practitioner
2 simply sends an e-mail to the (inaudible) office
3 listed on the slide five business days before the
4 hearing requesting to participate in the program.

5 Now, the one thing we ask them to do is
6 with their request they include a verification
7 form stating that they meet the eligibility
8 requirements. And in most cases, provided the
9 trial schedule is open enough, we will immediately
10 respond and give them the 15 minutes of argument
11 time. Next slide please.

12 Now, the program itself is our first
13 step in helping to develop the next generation.
14 Another aspect of it is for our advocacy training
15 to make sure that LEAP practitioners are
16 comfortable presenting before the Board and
17 additionally, that senior council and parties have
18 a major comfort, we are going to be training LEAP
19 practitioners about how to present in front of the
20 Board. Our first training session will occur next
21 Thursday, May 14, at 12:00 o'clock to 1:00 o'clock
22 Eastern time. Free to attend. On the slide, you

1 see some of the topics that we are going to
2 address. How the hearing proceeds, how to use
3 demonstratives, how to most effectively spend the
4 amount of time you have presenting your case
5 before the Board. We intend to offer this
6 training on a very regular basis so that we can
7 continue to have a pipeline of LEAP practitioners
8 gaining those advocacy skills before the Board.
9 Next slide please.

10 And as a final aspect of our program at
11 this time, we want to make sure that everyone
12 knows that just because we have a provision to
13 give extra argument time during presentation
14 before the Board, LEAP practitioners are welcome
15 and encouraged to be able to participate in other
16 aspects of Board proceedings. Conference calls,
17 depositions, all of this helps to build their
18 experience level and get them ready for that
19 argument when it's time for them to make it.
20 We've created a website [USPTO.gov/LEAP](https://www.uspto.gov/leap). It
21 contains all of the information that I've covered
22 today with our training schedule, copy of the

1 training materials. So, if you would like further
2 information on the program, please consult our
3 website and thank you very much for the chance to
4 talk about our program with you all today. Any
5 questions for Scott, Jackie, Jeff, or myself?

6 MS. MAR-SPINOLA: I'm not seeing any
7 questions, but I have a comment, which is thank
8 you for implementing LEAP. I think it's a
9 wonderful and exciting program. You know where my
10 feelings are about that. I think it's great and
11 so, I look forward to seeing its success and the
12 feedback I've been getting from externals is that
13 they're all very excited. I've already shared
14 with our various law firms to get their young
15 attorneys who are interested in developing that
16 skill in that practice to sign up. So, thank you
17 for that. Jeff, do you want to close on your
18 session there?

19 MR. SEARS: Sure. Thank you very much
20 and the PTAB really appreciate the presentations
21 today. I know the time is a little shorter than
22 normal, but I think the statistics you presented

1 really will give us an opportunity for some
2 insight into what's happening the AIA trial side.
3 Also appreciate, Janet, the overview of the LEAP
4 program. I just want to underscore Julie's
5 comments. Really appreciate the office's
6 commitment to junior lawyers become better
7 lawyers. Julie, over to you.

8 MS. MAR-SPINOLA: Thank you so much.
9 So, I'm going to close with some remarks here,
10 hopefully rather briefly. But thanks again to our
11 IT conference services team and Jennifer Lo for
12 ensuring that today's session came through
13 relatively seamlessly. I've always believed that
14 almost every situation presents a silver lining.
15 Here today, with the restrictions imposed by the
16 pandemic we've all been forced to transition from
17 in-person meetings, which can really never be
18 completely replaced, to digital meetings. We met
19 together for the first time by video conference,
20 proving that we can still deliver a meaningful,
21 informative meeting to our stakeholders. Indeed,
22 I was pleased to see that we had record attendance

1 between a low of 150 attendees with a high of 192
2 attendees where we averaged in the past about 80.
3 So, that's historical in a couple of ways. More
4 significantly, the Director and USPTO have proven
5 that the Agency is agile and remains laser focused
6 not only on its previously stated goals by
7 providing reliable and predictable U.S. patents to
8 become more durable patents, but also a
9 willingness in acting fluidly in response to
10 hurdles raised by the pandemic to protect and
11 bolster our economy during these challenging
12 times.

13 I'll end by saying stay well and out of
14 harm's way. Help those in need and give what you can.
15 Extraordinary times give rise to extraordinary people
16 who do extraordinarily good things for others and
17 themselves.

18 So, be that kind of extraordinary today.
19 And with that, I will ask for a motion to close the
20 meeting. Do I have a second? Great. So, the meeting
21 is adjourned. Thank you, everybody. All right.
22 Bye-bye.

1 (Whereupon, at 3:09 p.m., the
2 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 COMMONWEALTH OF VIRGINIA

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

17

18 (Signature and Seal on File)

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

21 My Commission Expires: August 31, 2021

22 Notary Public Number 122985

