

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE

QUARTERLY MEETING

Alexandria, Virginia

Thursday, December 13, 2012

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P R O C E E D I N G S

(12:02 p.m.)

MR. FOREMAN: Good morning, everyone. I'd like to welcome everyone to the public session of the Patent Public Advisory Committee. When we get start this morning, we'll start off by making quick introductions. I'm Louis Foreman, member of PPAC.

MS. FOCARINO: Peggy Focarino, Commissioner for Patents.

MR. SOBON: Wayne Sobon, PPAC..

MS. MCDEVITT: Valerie McDevitt, PPAC.

MS. SHEPPARD: Cristal Sheppard, PPAC.

MR. THURLOW: Peter Thurlow, PPAC.

MR. HIRSCHFELD: Drew Hirschfeld, PTO.

MR. OBERLEITNER: Bob Oberleitner, PTO.

MS. FAINT: Catherine Faint, PPAC.

MR. BUDENS: Robert Budens, PPAC.

MR. JACOBS: Paul Jacobs, PPAC..

MR. HALLMAN: Clinton Hallman, PPAC.

MS. KEPPLINGER: Esther Kepplinger, PPAC.

MR. FAILE: Andrew Faile, U.S. PTO.

MR. FOREMAN: With that said, we've got

a lot to cover this afternoon so I'd like to start by turning it over to Peggy Focarino, Commissioner for Patents.

MS. FOCARINO: Thank you, Wayne. Good afternoon, everyone. It's a pleasure to be here with you this afternoon. I first want to start off by welcoming our three newest PPAC members, Peter Thurlow, Christal Sheppard and Paul Jacobs. We're thrilled to have you as part of our team and we certainly look forward to working with you.

As we get started, let me say that I was downtown this morning and I apologize that I missed the morning session. I understand it was a very productive session. I was downtown with Director Kappos and Deputy Director Rea attending the Partnership for Public Service, the Best Place to Work in the federal government rankings announcement. I'm extremely happy to tell you that the USPTO was ranked as the number five best places to work in the federal government in the subcomponent category which means you're part of a larger agency, in our case the Department of Commerce. There were 292 subagencies in that category so number five out of 292. I had to bring

the plaque. I was telling Louis I wrestled it out of Dave Kappos's arms, but gave it up very willingly. It was great recognition I think for all the hard work that's going on here. And what's clear is we have to continue to focus on doing things better and my goal is to get us to number one. So It's really good news and a tribute to all of our employees also.

So let's talk a little bit about patent operations. Since we met last September we've been very busy working on many issues. I think as you know we're working on lowering the backlog and continuing to do that. We've developed several strategies for our RCE outreach efforts and various implementation details of course of the AIA among other things. Fiscal year 2012 was a very successful year for us and we exceeded everyone's performance expectations in 2012 and made really historic strides during the fiscal year. So This in turn helps us to drive business growth, technological development and certainly creates job opportunities and everyone in this agency knows the important work that they do every day.

So through our various backlog reduction initiatives we've been making steady progress at reducing the backlog from over 760,000 unexamined applications in 2009, down to the current number as of yesterday of 603,159 unexamined applications. As that application backlog of unexamined applications has been declining steadily, our REC backlog has been increasing gradually over the last couple of years. This backlog as of yesterday morning is currently at 104,872 REC applications awaiting a first office action. We recognize that these REC backlogs is an area that our applicants and stakeholders are concerned about and we also concerned about it and we're taking steps to reduce the backlog to lessen the need to file an REC for those who do not want to go that route. We've implemented the after final consideration pilot program, AFCP, and also the QPIDS pilot program in fiscal year 2012 which have been very successful in helping reduce the need to file an RCE, but we also must find other ways to reduce the need to file RCEs again for those who do not wish to go that route. As you know, we will be

working together with PPAC to hold focus sessions with stakeholders to better understand why applicants file RCEs and to get their input and ideas on how we can reduce the number of RECs in the backlog and reduce the need to file RCEs.

A little bit on AIA implementation. We're very busy focusing on implementing the final pieces of that. As you are aware, I think the implementation has been proceeding on a timely basis and in some cases ahead of schedule. I'd like to thank all of you on PPAC for your input, guidance and suggestions on implementation efforts, and your assistance in this has been really invaluable. Our American innovators are already seeing the benefits of these efforts. Further on this AIA implementation front, we've been very busy moving forward with our efforts to open four satellite offices within 3 years of the AIA's enactment. As you know, we opened our first office outside of the Washington, D.C. area when we opened the Detroit satellite office, the Elijah McCoy office, and we are now moving forward to establish offices in Denver, Dallas and Silicon Valley. We've got a lot of work ahead on

those fronts with the clock ticking on us.

Today's agenda and a little bit about what you are going to be hearing in the public session today, Bob Oberleitner who will be giving you some more details on patent operations and some of our initiatives and where we are as we approach the end of the first quarter of fiscal year 2013. We're also going to give you an update, and Drew Hirschfeld will do this, on the AIA. Dana Colarulli will be giving you a legislative update. Chief Judge Smith will come in and talk about what's going on at the Patent Trial and Appeal Board. And our CFO Tony Scardino will give you an update on our finances. Bruce Kisliuk will talk about the cooperative patent classification effort and the innovation expo. Also Deputy Director Terry Rea will be joining us to do some closing remarks. We look forward to your input. We welcome your comments and questions as we move through the agenda today. Now I'll turn the discussion over to Bob Oberleitner who will talk to you about the patent initiatives that are going on and some of the statistics. Thank you.

MR. OBERLEITNER: Thanks, Peggy. As

Peggy mentioned, I have some of the slides and background of some of the points that she had referenced. The first slide is our application filings. It's total UPR which is going to be utility, plant and reissue applications as well as the RCE filings. We're showing on the graph 2002 through 2013 through the numbers that we gathered through this week. And basically the red that you see on the chart is the serialized filings and the blue is the RCE filings. In fiscal year 2012 we had an increase of filings of a little over 5 percent growth over what we had in 2011. For 2013 we're projecting a growth rate of about 8 percent in total filings. As of earlier this week we were at 98,600.

The next slide is the backlog and you can see how the backlog has progressed from fiscal year 2008 going through the fourth quarter of fiscal year 2012 and the last bullet point is through December 11, earlier this week. Again our end of the year backlog for fiscal year 2012 was 608,283 and then a little over 600,000 as of earlier this week. With any backlog there is some point where a backlog is good to have an inventory

so that the employees have applications that they can work on. The red part of the graph is showing what we're calling the excess inventory and the blue is showing what we're calling the optimal inventory. The optimal inventory is that we're taking our firepower, our number of examiners and the amount of cases that we're projecting that they would need for a 10-month inventory. As you can see, the red markings on there are decrease and we're looking to optimally match the red and the blue.

MS. KEPPLINGER: Bob, may I ask a question on the RCEs? How do the dates of the RCEs in the backlog compare to the dates of the backlogged applications? Because of course your COPA initiative was to bring the tail down and get rid of the old applications but some of the RCEs are probably falling over into that same old category.

MR. OBERLEITNER: Right. So the COPA effort, and we have a slide on that a little bit later, But the COPA effort was to address all of the cases in the backlog so that it would be both RCEs and regular initial filings so that that

effort basically did not discriminate. We did have some RCEs that were pulled out based on that effort, but we still have some that are left and we're taking efforts to address those. We do have some older cases that are RCEs that have been multiple filed RCEs or RCEs that have been on people's dockets for some time so that we're taking efforts to address that.

MS. KEPPLINGER: Okay. So in the first year the COPA initiative did not include RCEs, but in this one it did in this past year?

MS. FOCARINO: No, it didn't.

MR. OBERLEITNER: The next slide is the RCE backlog and the growth of where we have been since fiscal year 2009. Our end of year RCE backlog was 95,000 and as of December 11 we had 104,000. And basically as I was addressing earlier, we're taking steps as far as raising awareness, communication and different incentives looking at the performance plan with the employees to address the backlog.

This next slide shows first action and total pendency. What we have at the top is the total average pendency. Our average total

pendency in 2012, our target that we were shooting for, was to get that to 34.7 months, and at the end of last fiscal year our actual results were 32.4 months. Our average total pendency that we're aiming for in fiscal year 2013 is 30.1 months. The lower line and what's also the green markings is the first action pendency. The first action pendency for fiscal year 2012 the target that we were shooting for was 22-1/2 months and the actual results that we had on that was 21.9. The average total pendency that we're shooting for as a target in fiscal year 2013 is 18 months.

MR. THURLOW: Bob, just a quick question on total pendency. How much does the patent office look into the number of petitions for extension of time that an applicant takes during the process? Because I would think if they take any that would skew numbers higher if they had filed some.

MR. OBERLEITNER: You're asking do we account for that?

MR. THURLOW: Do you consider that? I mean, I would think if I asked for a 3-month extension of time during the process and the total pendency was 36 months, in effect, you know, some

of that is not-- is all the patent office.

MR. OBERLEITNER: It's all in there. I mean, we're just looking at total pendencies.

MS. FOCARINO: We do have some data, Peter, and maybe we can show this the next time, but we break out by there's time awaiting first action, there's prosecution time and you can see applicant's time and what's happening. Gradually it's decreased mainly because we've experienced a decrease in applicants requesting extensions of time for financial reasons.

MR. OBERLEITNER: The next slide is what are calling forward looking pendency. This is the pendency for if someone would file a case today the pendency that they would expect that their application would have. For a forward looking pendency as of the end of November it was 15.9 months. As you'll remember from the last slide, our current first action pendency is 20.4 months.

MS. KEPPLINGER: Just one comment about your question. Actually the office while I was here looked at that and tried to call that cycle time and take out applicant's time and it didn't go over so well. Because it was a different kind

of measure and without a lot of pushback and so we reverted back to the pendency the way it traditionally had been looked at.

MR. OBERLEITNER: The next slide is percent of serial disposals having at least one interview. What we found in different feedback that we'd received that again interviews can be very helpful in helping to crystalize issues, getting the issues on the table and helping people resolve any questions that may be in the application. This slide basically is measuring cases that had the disposal and how many of those had also had an interview and you can see that since fiscal year 2007 that number has been increasing.

MS. FOCARINO: Bob, one thing I'd like to interject here, and I think maybe next time Because we're gathering data on the quality of this, right? And so If you look at the quality in particularly LPQA's review of cases that have had an interview and then versus not, what you see is a substantial increase in quality both in process and final compliance rates with applications that have had an interview versus

those that don't. So it's a pretty significant increase.

MS. KEPPLINGER: That's great. And actually there was some question yesterday and I know you've given a statistic before about the increased allowance rate as a result of interviews and that might be interesting data for us.

MR. SOBON: If I can add to that, we'll be obviously getting the report from Judge Smith on PTAB. I think that the interaction between that data underlying how through some way to creatively look at the data in terms of things that are interviewed, how those fare in the rates of appeal, how well they fare at appeal could also be very, very illustrative to see sort of root cause analysis for quality improvement. Could be really interesting, the interaction of those two sets of data.

MR. THURLOW: The only thing I'll add to the whole interview discussion is what's been a positive development in my personal opinion over the last year is more examiners calling us, not the applicants initiating the interview so

that I think that's a positive development and hopefully that trend continues.

MR. OBERLEITNER: The next slide we have is the 12-month rolling average allowance rate. So as we add one buy week on the front end we drop one buy week off the back end and that average allowance rate as of the beginning of December was just over 51.5 percent. This slide is a 12-month rolling average on actions per disposal. That average is basically 2.51 as of the beginning of December. We're looking at the sustained decrease in actions per disposal as a positive indicator that issues are being resolved most efficiently.

This slide is showing the serial disposals and breaking out the actions per disposal. The top line in blue shows what types of actions are in here. The top line is showing things like nonfinal rejections, final rejections, basically actions in the merits and actions that are also in the first action interview program. The line in red is showing the miscellaneous actions which would be restrictions, defective notices and ex parte

Quayle action. What you're seeing here is that the miscellaneous actions are a part of but they're about 4.4 out of the total number of actions that are being sent out.

This slide is UPR attrition rates where you have an attrition rate of examiners and employees leaving, but you also have an attrition rate due to employees that are being promoted and those that are retiring and we've split those two. The overall attrition rate at the end of November was 3.81 percent and when you pull out transfers and retirees it's 3.07 percent.

This is the COPA that we were talking about a little bit earlier. The goal in 2012 for that fiscal year was to reduce the backlog of the new applications by 260,000 applications and we exceeded that goal by 11,000 so basically 271,600 were removed from the backlog based on COPA effort. This is track one statistics, again through first week.

MR. SOBON: I'm sorry to interrupt you about that but going back to the COPA thing I'm mindful now, this is only from the current application and its current filing date right? So

there's this issue with the proposed technical corrections bill about the Uruguay Round cases that have very early filing dates. It might be interesting maybe at the next meeting you can provide data to us of what that cohort of applications look like, those that may have been filed recently but they have a priority date that extends way back. In a sense you're working a family that's very, very old. It might be interesting to see that data.

MR. OBERLEITNER: These are track one statistics. That we started this in September fiscal year 2011 and it shows the monthly inflow of track one filings. The percent of petitions that we're receiving on these from the small entities is 41.8 percent and the average days to petition you can see are 37. The percent of decided petitions that are granted are 95 percent.

MR. THURLOW: I'm always surprised there are not more people taking the benefit of the track one. It just seems like it's all positive and I'm just curious why you think more people just aren't using it. Not that the number

is low, it just seems to be so positive with so many applications being submitted each year. I just would think more people would use it.

MR. OBERLEITNER: We have gone out with some public advertisement and awareness, but there are a set of people that so far have not used it we were looking at ways to increase awareness.

MR. HIRSCHFELD: I'll add to that sometimes when I'm not speaking I asked the same question as you did because I think people in the public obviously those making the decision to use it or not and I often am seeing that people don't know what the program is, really. So that I think the more we can get out there the better. But all the comments, personally I hear are very positive about the program.

MR. FOREMAN: It probably would be helpful to get some sort of exit poll to find out from applicants why they didn't use track one and if the high percentage are saying because they didn't know about it then the effort really needs to be placed on increasing that awareness.

MR. OBERLEITNER: The final slide is an indication of our quality composite. Basically

we've measured quality in a number of different ways and so this is a means by which we assess a score to assess how we're doing on quality. So basically we've taken the first two columns some historical measures that we have used, the final disposition compliance and an in-process compliance that are based on reviews that are conducted in the office of cases that are being finally disposed and also that are in process. We've combined that with a number of other indicators, first action search review, a complete review of first office actions, external surveys, internal surveys, quality index which is our QIR where we look at a number of different quality metrics of cases that are filed. Basically how many people for example have a third action in the case and things of that sort. We basically take that and we combine them and we come up with a composite score that you see in the yellow column. So the number, what that's representing is our achievement toward our fiscal year 2015 goal. We started this in fiscal year 2011 and we basically broke the goal out so that we would steadily march up to 100 percent in

fiscal year 2015. What this is showing is that we're 72 percent of the way to that goal of fiscal year 2015 which is the goal that we had set for this fiscal year that we're in so that we're a little ahead of schedule and we're working to continue that trend.

MR. JACOBS: For the quality composite score there is no upper bound. Is that correct? It can go above 100?

MR. OBERLEITNER: We're capping, it's at 100.

MR. BUDENS: Bob, going back to slide four, can you tell me what parameters you're using and how you arrived at the optimal inventory number? It's on slide four, excess and optimal inventory and how you're calculating what's an optimal inventory?

MR. OBERLEITNER: So basically again optimal inventory that we're consider here is we're looking at the number of employees that we have at any point along the chart there and then we are projecting what a 10-month to first action inventory that they would need so that they have 10 months' worth of work and that's what we're

considering our optimal inventory.

MR. BUDENS: That would be optimal, just new cases? You're not factoring in how many RCEs they might have or other parts of their docket? It's just how many new cases that they need to have on hand?

MR. OBERLEITNER: We're looking at new filings.

MR. FOREMAN: Are there any other questions for Bob before we move on?

MR. FAILE: To pick up on Peter's comment earlier, so the quality composite there is a target number for each one of the composite parts and what we're actually doing is we're moving from where we are today to 2015 and at 2015 we'll be 100 percent of that particular target for that area? That's what the 100 percent number means. So if you have a certain target let's say in final disposition rate, in 2015 we want to be at 97 percent and we're somewhere south of that now. When we hit 97 percent we'll be 100 of that particular target.

MR. HIRSCHFELD: We're not adding in over 100 percent if you go above the targets as

I think you were asking.

MR. JACOBS: You could be above target in one area and below target in another. That's basically a mathematical question.

MR. HIRSCHFELD: That's correct, and that's something we've been discussing internally, but the way we have calculated the numbers so far is that if you go over the target in any given category, we're not giving ourselves over 100 percent so we're making the most you can get in any category is 100 percent and all the various categories will add up.

MR. THURLOW: To me the quality issue is an amorphous topic. I don't know really what these numbers mean to be quite honest with you. Going back to that last chart, for example, the third column, final action following search review, can you give me an example of how that works? Does the examiner do a search and then does someone follow-up with an independent search and then grade the examiner's initial search?

MR. HIRSCHFELD: I'll answer that for Bob since the Office of Patent Quality Assurance is in my area. Basically we will have the Office

of Patent Quality Assurance review the search completed by examiners on random cases and that review is what results on the correctness or the score that you have in that particular category.

MS. KIPPLINGER: To make it clear, it's FAOM and that's First Action on the Merits. So restriction requirement does not count when the actual next action is a rejection as an FAOM, First Action on the Merits. That's what they're looking at.

MR. HIRSCHFELD: When the quality composite was redone there was an emphasis on First Action on the Merits with the intent of let's get it right initially so that it saves time during prosecution for the rest of prosecution. But there's broken out, you'll see there is complete First Action on the Merits review also and then just the search review, there's two separate categories.

MR. SOBON: Do you have some qualitative information about what has changed especially about the external quality survey between scoring 1.1 three years ago so now it's up to 5. Is 10 the highest for that? Is that the same scale as

the internal quality survey or is it a different scale?

MR. HIRSCHFELD: I'm not sure I understood the last part of your question, but both quality surveys are done by taking the number of positive responses and comparing those to the number of negative responses. In other words, every responder will give their answer on a scale, and we will take out the neutrals and compile the number of positives to the number of negatives. The number of positives has been significantly increasing both internally and externally and certainly internally has gone through the roof.

MR. SOBON: And that's just a one number thing? Is quality good, bad or indifferent or is there also qualitative information you get from that as well?

MR. HIRSCHFELD: It's a perception survey so the surveys themselves don't have specific qualitative measures. It is people's perceptions. But it's not only quality of office actions. I know the external quality survey is more focused on the outside's perception of examiner's quality. The internal survey is

perception of more of a variety of topics such as search tools, availability of training, the quality of tools available to them, the quality even of applications coming in to them and the amendments they're seeing.

MR. SOBON: My question is really if that's true, you have more gradations of questions along "how good", along these things. I think it would be interesting to me at least to know what were some of the key themes 4 or 3 years ago that were leading to 1.1's and what have you addressed and maybe to highlight what have you addressed why you're now scoring significantly higher? And what are the current themes? Maybe they've shifted now and there are different themes that are being addressed that are really driving the scoring to get below the number a bit?

MR. HIRSCHFELD: Right and I would suggest that potentially that's a topic for the next PPAC meeting.

MR. SOBON: I think would be very fascinating to dive below those numbers to see what the drivers are, and what are the current drivers from an external perspective.

MR. FOREMAN: Thank you, Bob. I'm going to turn the floor over to Drew Hirschfeld to brief us on the AIA update.

MR. HIRSCHFELD: I'm going to give a progress report of the AIA and where we stand from a procedural standpoint. I'm going to start with the rules that are still in the rule-making process. And the First Inventor To File rulemaking which we have a timeline which I know you've all seen so I won't go through the steps of the timeline. But suffice it to say that as shown by the key, the gray areas are the completed areas and you can see that our proposed rule of course is in the completed area, and then the green is what is in progress. The green is that we're preparing after the comment period our final rules to be submitted then, what's now in the blue area, to DOC and OMB and then to publish of course in the Federal Register. So we are on track with this particular rulemaking as with all of the ongoing rulemakings, and I'll discuss a couple more of them.

For the First Inventor to File we did receive 125 public comments almost evenly split

between the rule package itself and the examiner guidance package. There is slightly more in the guidance package. As I said, the final rule is in its end stages of the internal review process and it is almost ready for sending to DOC and OMB. The publication date of that rule, the effective date is March 16 and we will publish that no later than February 16, 30 days before the effective date, but we are on track.

MR. THURLOW: So between February 16 and March 16 as we were discussing, since this is such a critical part of the application, it's going to effect every application going forward. Is there any outreach by the PTO expected during that time?

MR. HIRSCHFELD: There will be significant training materials that are in the process of being prepared and those will be for examiners of course and they will be made available to the public as well. As far as additional outreach efforts during that period, I see more of us making our training materials available. I'm not sure if there's anything planned for additional outreach. I will say that it's been the plan all along with the entire AIA

rule-making process that once March 16 comes and there is some time that has passed that we will do additional outreach to see where we can make fixes and improvements at that point. But as far as that 1-month period between, I think it's focused on the training and making available what we have.

MR. THURLOW: So that if people have questions, is there still a hotline set up?

MR. HIRSCHFELD: There is. It's in one of my slides at the end where we do have a hotline for AIA. Also the patent fee setting rulemaking process is also underway and certainly this group who's been very involved in that process. I know I don't need to go through all of the details. Again you'll see on the timeline the gray areas are the completed areas. With this particular package we have recently sent the package over to DOC for their review so that we are well on the stage of moving forward in the fee setting. The effective time we're expecting to be in April 2013 and all of the documents we will be making public on our website. With the fee setting rulemaking we received 28 public comments that we took into

account as we made the final rules.

There is one more rulemaking that I wanted to discuss and that is in-process and that's micro entity rulemaking. Again we're at a similar place as with the fee. We have finished the NPTO internal clearance process of the final rule and have sent that rule also over to DOC and OMB. We're expecting that rule also be effective at the same time as the proposed fees which will in April 2013. Here we received 27 comments on this rule.

I'm going to move to the genetic testing study. As you all know, under the AIA, the PTO was tasked to do a study on genetic diagnostic testing. There were a number of roundtables that were held back in February and PTO was tasked with creating a report within 9 months of the effective date so that would have been back in June. Given the complexities of this issue and recent case law, of course "Mayo v. Prometheus" and the "Myriad" case it was decided that it would be best to continue the process of going through the study. And so on the genetic testing study we will be having another roundtable which is scheduled for

January 10 from 1:00 to 4:00 and I have the information on the slide about webcasting if anybody would like to webcast in. Requests for written commentary are due by December 20. There is of course a notice of this study but this will be the third genetic testing study and then the plan is to move forward with the report to the extent we'll get more information from the study. I have a slide listing the topics for the commentary, they're the same that have been tasked in the AIA so I certainly don't need to read those here, but they are available for everybody's reference.

I'm now going to move into a quick overview of the board's completed rulemakings. Here as you will see the entire timeline is gray which of course is good news. That means we've implemented all of these packages. Again I won't go through the individual packages. There is a variety of packages for both the patent rules and the board rules. They are completed, we are working on them and for my staff and others throughout patents, a lot of hard work has just begun for us so rulemaking was part of it and now

keeping the implementation moving forward properly is another story, but the rulemaking has gone very well and kudos to people like Janet Gongola for keeping that on track. The patent and board rules are all completed as shown on this slide.

I have some statistics about filings. So far for preissuance submissions, there are 214 preissuance submissions which have been filed so far as of December 7, so I'm sure they're slightly higher now. Supplemental exam there have been five filings so far, and interparte's review there have been 68 filings and with the covered business methods there have been 15 total filings.

Moving on to some additional information, Peter brought up the feedback and the helpline. As we receive information from people on what some of the concerns and problems are, we have been trying to make more information available to everybody. We have made more information available on say, preissuance submissions that we've put on the AIA micro site. We also have made available information on the

inventor's oath and declaration and I will tell you that that seems to be always a topic of questions and there are so many nuances to it. We have put significantly more information about what changes there are for applicants and what changes they need to make. Again we have put that information on the micro site. There will be two additional sets of information that are planned, one on supplemental examination and the other on various topics of the PTAB's trials. Those will be coming hopefully soon this month on both supplemental exam and the administrative trials.

MR. THURLOW: That's good news. To the extent that the PTO reviews the submissions and learns ways to improve it, they are making the changes, so it's not set in stone and that's very helpful to know.

MR. HIRSCHFELD: To be clear, we're not changing provisions. We're making sure we get more information about if we weren't clear on something or people felt they needed more information to be able to make their submission or whatever the issue is.

Lastly I'll end with the telephone line

which I referenced earlier. We do have an AIA dedicated telephone line. And we also have dedicated email. So we have received almost 4,000 inquiries either by calls or email so that there is significant input coming to us in the form of questions.

MR. FOREMAN: Just a reminder, this is a public session so we welcome questions from the public whether in person or if you are listening in at home you can reach us at ppac@uspto.gov and we'll try to answer your questions during the public session. Are there any other questions or comments for Drew? I'd like to turn it over to Dana.

MR. COLARULLI: Good afternoon and happy holidays. The staff and your USPTO Office of Government Affairs has been busy preparing Christmas presents in the way of legislation during this lame duck session so that while others are peering over the fiscal cliff, we're trying to still be productive.

What I thought I'd do today is make public my slides which is the general overview of O.G. I'll go through some of this quickly and I

thought it would be productive to spend a little bit of time giving a high-level overview of the AIA technicals, one of the Christmas presents that hill staff put on my plate over the last couple of weeks, seeing the opportunity to move forward. So I'll give a sense of what's been introduced publicly, some of the changes that I know they're making and their expectation to move forward.

So first, Christmas presents. Some presents are worth waiting for. This first one, the patent law treaties implementing legislation took about 12 years or a little bit more. The U.S. signed on to both the patent law treaty and the Geneva Act of The Hague Agreement on Designs back in 1999. The Senate ratified the agreement in 2007. The administration had been working to implement the legislation so we could make available the benefits of The Hague international registration system for patent design available to U.S. applicants and address some of the formalities on the patent side that PLT provides. I think I've mentioned this in this group before that staff was delaying in part because of the AIA

but they got some traction this year and 3486 was the vehicle that moved, that's the Senate bill, and it passed the House last Wednesday on suspension. So it's on its way to the president we'd expect, sometime in the next week or so for the president to sign the bill. We have a team already formed here at PTO that's working to design an effective implementation plan. It's worthwhile saying that the agency has some experience in implementing a similar regime with the Madrid Protocol on the trademark side so that we're trying to tap resources on the trademark side. Certainly our OCIO to build the systems to be able to effectively implement these provisions and certainly Patent Operations in drafting regulations and building the capacity to do that. So we can press a check on that one finally after 12 plus years it's done.

AIA technicals bill was introduced by House Judiciary staff. Lamar Smith, the outgoing chair of the Judiciary Committee, one of the named members in Leahy-Smith America Invents Act had an interest in trying to move forward a series of noncontroversial items in the lame duck. As I'll

talk about some of them. There were a number of questions raised by both the agency and folks in the user community. Some were not as controversial and I think they're attempting to address those and I'll talk a little bit more about that. With the Patents for Humanity Program Improvement Act there was again more activity during this lame duck. Senator Leahy introduced a bill in view of the Patents for Humanity program currently going on here at the PTO, we expect award winners in that program hopefully next year, I know that process is moving forward. But this particular legislation proposes an enhancement to the program and that is to provide transferability for the vouchers that are issued. So the award winners in the current program will receive a voucher for accelerated either reexamination or examination. That voucher they currently need to use for their own patents and their own portfolio. This provision modeling after a similar statute that the FDA currently has would allow transfer of these vouchers as a way to potentially raise funding to support the humanitarian technology that they're trying to

distribute. It's certainly an interesting idea and one that I think we support and I'm sure there will be more conversation in the next Congress. Don't expect action on this bill here during the waning days of the 112th Congress.

Last, I highlighted this bill which passed the Senate at the end of last month on trade secrets. I think we'll see additional legislation next year affecting trade secrets. This is one bill that addresses one small part of the statute, but I think there have been other proposals that are been floating around, so I highlight that as something that might my team is watching certainly and I know the folks in the Office Policy and External Affairs are looking at other legislation that might be addressed here and what the impact would be.

Those were active pieces of legislation and certainly there have been proposals this Congress addressing software, addressing designs in the auto parts industry and fashion design and we're always watching closely our appropriations bills which you'll hear from Tony Scardino a little bit later today on the status of our

appropriations during this time of the fiscal cliff and C.R. But those are other pieces of legislation that my team at least is watching closely and will continue to be watching.

Drew talked a bit about the reports under the America Invents act focused on this first one where we're conducting another roundtable, January 10, The impact on First Inventor to File on small business. This is a report that PTO is not required to do but the SBA Office of Advocacy in consultation with our own Bernie Knight our General Counsel here at PTO need to complete. I understand from the SBA advocacy staff that the timeline of that has been pushed off a bit pending funding, but we'll be continuing to work with them as they look to complete that report. There is the benefit of this particular delay in that by the time they do the report we'll have implemented the First Inventor to File provisions and they might have more to comment on. Patent litigation by nonpracticing entities, NPEs or PAEs if you will, both terms I know are used, completed by the GAO understand they are completing the report I understood maybe this

month or maybe at the beginning of next year so we're watching that for when that comes out. The FTC and the DOJ many of you are aware held a workshop earlier this week on this same issue and right after the December 10 roundtable here at PTO, on January 11 we'll be hosting another roundtable on one issue that was discussed during those workshops addresses this issue and that's recordation of assignments and the benefit that that might provide to transparency of the transfer of these rights. The last report on AIA implementation, on our list, frankly I'm not sure the team has turned to starting to draft or outline this report, but we'll have the opportunity just before 2015 to be able to report on our progress once we've implemented all the provisions.

I won't spend time on this because I think we've seen this slide before. It is all the hearings during the 112th Congress we've testified at. It's been quite an active time up on the Hill for the agency. I think my team during this month outside of watching legislation is preparing for the 113th Congress. We've got a few

members in the incoming class that hold patents and who are involved in the intellectual property industry in some way so that we're looking to do specific outreach to those folks planning things like Day In The Life to bring staff in try to educate them on what we're doing both on the patent and the trademark side. Certainly working with those few offices around each of our satellite offices, our soon to be open satellite offices now in three additional areas. There is a great thirst for information there and we're trying to keep them close to the process and I think our success is tied to their success here and I think they see us as a welcome addition to their districts. Our IP Attaches are in town this week. I'm leaving here and bringing them up to the Hill to get House Judiciary staff, Ways and Means, Senate Foreign Relations staff who are interested an idea of what these folks do on the ground, certainly what they're doing to help aid the enforcement efforts and working with the host governments to develop reasonable regimes on the law side. I'm not going to discuss sequestration. We've talked a little bit about that last meeting

and I know Tony will address that.

Since I have three or four more minutes, I'll quickly give an overview of what at least the agency has seen in the AIA technicals bill and I'll highlight the five kind of big areas that we see them addressing. These are corrections and in some cases clarifications to the AIA as passed, provisions addressing effective dates. In some cases there was no effective date in a particular provision of the AIA so it fell to the umbrella effective date which was 1 year from enactment where we believe the intent was upon signature, no substantive impact there except it does clarify the statute; addressing some clerical corrections and drafting errors or omissions that we saw or the Hill staff raised to us. So there is certainly that category. The Bill HR 6621 also addresses two dead zones as we see them, one that the office had raised, one that the stakeholder community raised. It to address time periods when neither interparte's review nor a post grant review proceeding is available to an applicant and in particular there is a so-called dead zone between September 16, 2012 and March 16, 2013 when

the First Inventor to File provisions come into play. For those holders of a recently issued patent there is no opportunity to file interparte's review so it's affecting applicants right now and certainly a change here would be helpful. There is a second provision that would prohibit reissued patents from being able to avail themselves of either proceeding and the bill would address that issue. The bill also addresses at our request the patent fence and the trademark fence. As many of you know under the previous statute a trademark fence that shows that trademark fees went to fund trademark operations and a proportionate share came to the agency. The AIA changed that language. We are requesting that they change it back because the language previously was very clear to us and make the new patent fence consistent with that so that it's clear that patent fees also will go to support patent operations.

The last two other items, one that affects this body and I think attempts to track some of the discussions that have happened here about the timing of terms for members and the

appointment of the designation of leadership. There were some provisions that Senate staff had circulated to us offered by the stakeholder community that we took a look at. I think we in consultation with PPAC raised some concern on the particular timing of the appointments. We want to make sure that the PPAC is able to complete their annual report with seasoned members so we expressed some concern on that and provided some feedback and I understand a new bill will be circulated as soon as tomorrow or next week for consideration by that body. In addition, again language that came from House staff, there was language that would address pre-1995 pre GATT cases. So the office currently has a number of pending cases in this area. Hill staff had proposed language that essentially would transition out the option for a 17-year term put in place in 1995 when the changes to 20-year term from filing went into effect in the statute. We expressed some concern about parts of that provision. I understand a number of folks in the stakeholder community also did the same. The language that we expect or House staff has

indicated they're going to now have is simply a report. They had asked the office to report out on the number of pending applications currently at the office and talk about this issue.

Certainly it will give us an opportunity to talk about some of the things that we've been doing to proactively work with applicants that fall into this category to move them toward allowance.

That's the AIA technicals bill. It's important for me to say I think there will be other opportunities certainly to address either technical or nontechnical provisions next year and Hill staff are already thinking about that. This was as I said an attempt to get done what we can get done, move off of the table some of the specific issues that were identified in the AIA that could have been better clarified. And that's the bill. I'll stop there.

MR. THURLOW: Dana, do you have a rough number of how many applications would be affected by the change for those older application?

MR. COLARULLI: I'm told that it's around 480 or so applications that are pending.

MR. FOREMAN: Are there any other

questions for Dana? A lot of information. Thank you, Dana.

MR. COLARULLI: Absolutely.

MR. FOREMAN: With that we are going to take an 8- minute break to stay on schedule, so we will pick back up at 1:10.

(Recess)

MR. FOREMAN: Good afternoon. It's time to again start. I'd like to turn the floor over to Chief Judge Smith to give us an update on PTAB.

JUDGE SMITH: Good afternoon. Thank you again for inviting us to provide an update. Before getting to the slides, let me touch on a couple of things that are not treated much in the slides. First, you may be wondering as to our progress with AIA cases. We can let you know that currently there are 87 petitions to institute AIA trials that have been submitted. Of those 87, 70 percent are for interparte's reviews and the other 30 percent is for covered business method proceedings. We have not yet made a decision to institute any trials. That is not a function of our failing to take action. As you know, the statute and the rules call for a period during

which the patent owner may submit a preliminary response and after the elapse of the time in which that is allowed, the PTAB is called on to make a decision as to whether or not to institute the trial..

Very soon in the next week to 2 weeks, we will see the first of those decisions as to whether or not to institute a trial and likely we will post those decisions in a particularly prominent place on our website so that those who are interested in what those decisions will look like will have ready visibility as to what they look like. Generally we're pleased with the resourcing we've been able to put on the AIA matters and already we have made prominent on the website a number of decisions made by expanded or nonexpanded panels which we think are of special note having to do with a variety of different issues that have been presented in those matters including for example motions for admission pro hac vice. We recommended to the members of PPAC and members of the public generally that they go to our site if they wish for any further visibility as to what we are doing in that area.

With respect to visibility to decisions, let me also address a point which has been raised by PPAC in my prior two meetings with you. There has been some urging by PPAC that the BPAI and now the PTAB be a bit more affirmative with regard to identifying and then making known precedential decisions. We have made some progress in this area and actually have a committee of the board formed now, the Published Cases Committee, to move ahead recommendations for informative decisions and precedential decisions. More of those are already beginning to appear at our website. We also took the step connecting this with the things I mentioned earlier about AIA to also put forward noteworthy procedural decisions on AIA matters so those are as readily visible as are our increasing number of informative and precedential decisions. There should be a substantial number of newly designated precedential decisions over the course of the next 30 to 60 days. Going now to the slides, some of what appears here will at least in its overall content be familiar to you because the slides include the matters about which we have been

speaking for at least the last year. Here we primarily do not move to new areas but just update the kind of information we have been providing to you. We continue to move forward very aggressively with regard to the expansion of the board. Over the course of fiscal year 2012 we have made a substantial number of nominations. We had targeted to nominate 100 new judges in this period. We haven't quite reached that stretched goal, but we are not embarrassed about that. We have in fact selected 80 new judges over this time period and expect to have nominated more than 100 by February 2013. Since October 2011 we've reviewed 1,200 applicant records and interviewed nearly 200 candidates. I think just half an hour ago we concluded the one-hundred-and-ninety- seventh interview for a new judge. As I mentioned, we selected 80 and we now stand at 160 judges which is about 65 more than where we stood in November 2011, and we actually have another 12 or so judges in the pipeline so that we will be at 175 when we've completed all of what we've started so far.

The selections now include judges for Detroit, Denver, Dallas and Silicon Valley, and

in fact last week we had present here in Alexandria the first of the judges who will serve in Denver, Dallas and in California. We have start dates for additional judges who will sit in those locations and we plan on new postings for judges for those positions early in 2013. As before, we continue to get candidates from a variety of places from within the Patent and Trademark Office, from the Office of General Counsel within the agency, from the Solicitor's Office and some number of judges, fewer lately, who were once patent attorneys at the board. We have continued to receive applications from the International Trade Commission and the Department of Justice and recently a week or two ago added another lawyer who was at the Department of Justice litigating patent cases on behalf of the United States. Private practice and private industry also continue to be solid contributors to our effort in expanding the board.

This graph roughly shows what we've accomplished in the last 100 years with a particular focus on the last year or so. You'll see that the board has essentially doubled in size

even without looking at additional judges in the pipeline and judges who we hope will be in the pipeline by early 2013. As you can imagine, this has represented an enormous challenge for us, and that amount of growth for any entity over so short a period of time would necessarily represent a challenge.

Has the effort been worthwhile? We think unquestionably so. Among other things, the new judge strength has helped us begin to meet the AIA challenge. We think that we are meeting that challenge and will become more apparent in the upcoming months. As I mentioned, we'll have first decisions about the instituting or not instituting of trials very soon. Maybe more importantly, if not more importantly more immediately, this effort has helped us meet the challenge of the backlog. I want to emphasize that the main success against the backlog has been that of incumbent judges and not so much new judges because of course they are new and still learning how to do this thing we do at the PTAB, but their contribution has been substantial. We track contributions of the incumbent judges

relative to the new ones. The new ones already are responsible for a good 15 to 20 percent of our output and that's growing. Next month it may be as high as 30 percent. The backlog again you will remember we estimated might reach the 40,000 ex parte appeal number by early 2014. We have thought it would top 35,000 by early 2013. Right now it's holding at under 27,000 and continues to decline at a modest rate. The rate of this decline we hope will increase as more of our new judges get accustomed to their duties.

This chart on the screen shows the decline in the backlog. At one time we did top the 27,100 mark for a brief period shortly after the end of the fiscal year. We were not concerned about it much though because it involved attention begin given to some other administrative matters at the board by the judges and a few other things, and it also was taking place while we were continuing to on board a significant number of new judges. Much as we had anticipated, the decline has proceeded at the pace we anticipated. This does not include the most recent bar which we had put on the chart as

of yesterday which had a further decline in the backlog of about 150 cases. We hope sometime in early 2013 to once again go past the 26,000 mark, but this time not passed it on the way up but passed it on the way down.

Here is a quick view again of the way we keep the numbers as we do every 7 days a rolling 30-day look at our progress against the backlog. You will observe that when it comes to the totals we have 873 cases that we received and during that same time period we disposed of 992 cases, the difference being positive as to our progress against the backlog. This is another graphic depiction of the same sort of challenge. The blue bar represents the number of cases coming in and the red is the number of cases going out. The last two snapshots not shown on this chart again have the red exceeding the blue by an amount sufficient to continue to cause the backlog to head down.

Where are we deciding? Well, the relative proportions of the decisions remain about the same. Slightly more than half the time we're affirming the decision made in the examining corps. The remaining half is a mixed

group of partially reversed or fully reversed cases and some become the subject of administrative remand or dismissal. There's not much of a change there. This is another depiction of the backlog shown on a quarterly basis. You see that it has essentially at worst flattened, and if you look at the numbers more precisely and carrying out through the end of the current quarter, we begin to capture the decline. I mentioned we are trying to charge new judge contribution. You've seen this slide before. I'll skip through the first two slides quickly because it's historic information. I'll pause long enough to give you the orientation. The blue chart is the incoming cases. The red bar is the contribution of incumbent judges, that is, the judges who were present at the board through the end of 2011. The third bar, the gray bar, is the contribution of the new judges, and the yellow bar is our progress against the backlog essentially derived by adding the red and gray bars and comparing them with the blue bar. Again, this chart goes back to early in the year when we were gearing up the expansion machine and when we had

fewer new judges and of course they were not new in being here and low in number but also quite new. You'll note how the gray bar continues to go up which is to say with the new judges as one would expect making a greater contribution. As far back as August we had 200 cases per month being added by the new judges. Their number now is consistently near or above 300 and we expect there will be 400 cases per month very soon, moving us even more close to a place where we can knock down the backlog at a respectable pace.

We have been working with the examining corps in recognizing the contributions of examiners whose decisions we have been able to adopt in per curiam decisions of the adoption of the examiner's answer when appropriate reduces the amount of at least writing or drafting work necessary at the board. We of course don't intend it to reduce the amount of analysis of cases that judges are willing to give to any particular case, but certainly if we can quickly get to the conclusion, the examiner has gotten the decision correct and can use the examiner's answer, that helps with efficiency. We now have a completed

chart showing the results of fiscal year 2012. We didn't have that the last time we met. You will see that as we predicted, we had seven times more per curiam decisions in 2012 than we had in 2010 and something like 21 times more than we did in 2011. I think it's been a very successful effort to drill down and seizing those opportunities when the examining corps has represented in its output a quality of work that we are happy to adopt as its own. We're especially pleased about this because already we have seen decisions from the federal circuit where its decisions by way of a Rule 36 decision, i.e., they are not writing their own opinion but adopting ours, they have adopted the board's adoption of an examiner answer which represents perhaps the ultimate in government efficiency and perhaps the ultimate statement to the examiner working on the case that two levels of tribunal have found the work to be acceptable. Our outcomes to the federal circuit continue to be very good and affirmed in most instances. There are some number of remands and dismissals for various reasons and very few reversals.

As I mentioned, we have collaborations

ongoing with the patent corps including how we identify and recognize instances in which examiner answers can be used. We also continue to collaborate on generally with respect to technology centers cases coming to the court, speaking about matters of the treatment of cases and how generally we can have cooperation with the kinds of arguments being made in cases are addressed in general terms by the board to help the examiners with their work and get some help from them in how we might view their work products so as to be able to fully interpret that work and opine on it more effectively.

I already mentioned that we have undertaken efforts to increase the number of published opinions and we're also looking at how to optimize the manner in which we post published opinions so that they can provide the most recognizable and easy-to-engage opportunity for the public to know what we've decided in that respect.

MR. FOREMAN: Thank you. Are there any questions or comments?

MR. THURLOW: To take a step back and

tell you some basic thoughts. There's a feeling outside the Patent Office in the stakeholder community that we get the final too early. To give you an example, the time we file the applications, get nonfinal office action, file the response that includes an amendment and then the office action goes final. Then from our perspective it gets to be a very difficult situation because then we have to choose between going to the board or filing an RCE. So I guess my general comment would be there's a lot of work being done at the Patent Office which is all well deserved and appropriate of a focus on the RCEs and what to do. In my opinion you can't look at the RCEs in isolation so as the Patent Office reviews it it would be my hope and request that at least they show you those results because it's part of the whole process of whether we go to the board or the RCEs and certain steps that can be taken in total. I hope you get involved in that process.

MR. FOREMAN: Thank you. I'll turn the floor over to Tony Scardino for a finance update.

MR. SCARDINO: Good afternoon. I've got some slides here. I wanted to kind of start with

fiscal 2012. We haven't met since the fiscal year ended and I want to make a brief comment about what an incredible year it was due to AIA enactment and on September 2011. We had this bubble of fees we've talked about before. So we ended up collecting over \$2 million less than we had projected we'd collect in 2012. Despite that it's been an incredible year. We hired 1,500 examiners, opened an office in Detroit, we met incredible backlogs, significant decline. We did some really incredible stuff. I wanted to lay the background to start with and I'm going to tell you about 2013 and 2014 which looks kind of grim fiscally too, and I'm going to give you some reasons why.

So with the outlook for 2013 is roughly \$2.5 billion. With projected spending, it's just about that as well. So you will see at the last bullet over here that we had an operating reserve of \$110 million. That actually went up a little bit in 2012, just a tiny bit, which is incredible again considering like I said we collected so much less in fees than we thought we were going to collect in 2012. That's really good in terms of

helping us because we're operating now under a continuing resolution for the first 6 months of the fiscal year. And today's news if you follow it that closely, rumor is that with the fiscal cliff coming we may have a continuing resolution all year so that we're unclear as to what our 2013 funding level is going to be. We're also unclear what our collections are going to be for 2013 since we have fees go into effect sometime in March or April. We're pushing every day to get the new fees into place as quickly as possible, but we're not entirely sure when they will hit.

Also revenue for the first couple of months of this year is a little lower than we had estimated and we're not really sure whether that's elasticity associated with the 15- percent surcharge the AIA granted us or whether it's just effects of the economy, whether it's folks are looking at the fact that our fees are going up which we would think would be the opposite, that folks would start paying us early which we anticipate will happen next January, February and March but trust me, we are tracking this very closely.

We're also continuing to be very cautious on our spending side because of that. Since there are so many unknowns, we have a fairly strict hiring freeze. We've only hired essential hires. As well as even on the patent examiner side, we're hoping to hire 1,000 examiners this year but we've only hired 74 to date which for the first quarter as Andy always reminds me, it makes it harder to hit 1,000 if we only hire 74 in the first quarter, but hope to get there. It's the best way for us to manage the unknowns of what kind of money we'll have to deal with later in the year.

As I mentioned, Section 10 the final rule, we have been working that as hard as we can but there is a process and PPAC is a big part of that process. We're still working within the administration and hopefully it will go to the Federal Register very soon and we're hoping it's going to go into effect like I said in late March or early April.

And then the fiscal cliff; sequestration. Like all federal agencies that operate with appropriated funding, we would be subject to sequestration. As you know, folks are

working around the clock to avoid. I don't have too much more to say since it's literally no one knows what's going to happen. We hope that it won't happen because sequestration would require cuts to our appropriated funding amount to the tune of \$200 to \$250 million depending on what they actually use as a base, whether they use the appropriated level of the president's budget for 2013 or whether they use a 2012 continuing resolution number. We're seeking clarification on that.

Not knowing what's happening in 2013 makes developing a 2014 budget that much more challenging. We submitted a budget you'll recall to OMB back in September. Normally we would hear back from OMB by now as to what they think our budget should be for 2014 and we'll be submitting a budget to Congress on the first Monday in February. But due to the fiscal cliff and other things that are going on, OMB and the president haven't decided what his budget request will be for 2014 yet. So we don't have the initial, what's called a pass-back. So we're waiting like every other federal agency for the pass-back and then

we'll putting together a budget for 2014 and submitting it to PPAC for your review as always. So that's kind of where we are, I'm hoping for questions.

MR. FOREMAN: Questions or comments for Tony.

MS. KEPPLINGER: Tony, besides the initial drop or trough that was caused by the earlier bubble at the end of last year, did you say that you're getting fewer revenues than you would have anticipated?

MR. SCARDINO: I think a little less. The trough was probably to the tune of \$150 million. It's hard to know exactly what it was because we collected over \$200 million over that 10-day period but some of it would have been normal collections and some was folks paying early. Last year we collected to the tune of about \$250 million less than we initially projected so I would say that collections are probably coming a little slower than we initially anticipated. Again we're not sure if that's elasticity associated with the surcharge or folks' budgets weren't quite there to account for fees are going

up so that maybe that will kick back in next year.

MS. KEPPLINGER: Or not, with the additional fee increase.

MR. SCARDINO: Right. We're trying to manage expectations internally and externally.

MR. FOREMAN: Thank you, Tony. With that I would like to turn it over to Bruce Kisliuk and Richard Maulsby.

MR. KISLIUK: Thank you and good afternoon. I'm going to give a brief update of the Cooperative Patent Classification Project. I know we have briefed the PPAC a number of times and I know there are some new members. For those of you who need more background information, there is a website so I'll dive right into the slides.

This is a timeline, let me step through the key elements. So agreement was signed between Under Secretary Kappos and EPO President Battiselli back in October 2010 so that we're coming up just over the 2-year mark. The official launch is in January which is about a month. Where we are right now is in October just recently a couple of months ago we published a launch scheme.

So it's like a preliminary launch scheme; made that public. That included both PDF and XML versions of the CPC scheme and that allowed our users to see the scheme and map it into their system so they're ready to go when we go live. We've also been working hard on our examiner training. Training is two key aspects. One is understanding the system, how CPC works, how to place documents and work within the CPC, and another one is the more technical aspects of the actual technical fields, what we call field specific training, and that's how examiners will learn where their art is in the CPC and those are the two components we are working on training for examiners.

In January our transition begins. I always have to remind people that when I say our transition that there is a 2-year period of time in which we will maintain the USPC, the U.S. Patent Classification System, and then add the CPC. So the tools for our examiners and the public will allow them to be able to search both systems for a 2-year period of time before we stop placing new symbols on USPC. That will mean that at the

end of the 2 years you can search USPC, it will just be static so that it can still be used as a training tool and some mapping tools even beyond that point. CPC will be available for search in January. The original symbols will be placed on the A or the PG pub documents as well as our grants. Again during the 2 years we are going to continue to route our applications using the USPC. What that allows us to do is not to try to anticipate how the CPC may change our organization, it allows us to route it normally the way we are today and then over the 2 years learn what do we have to change and maybe what do we not have to change so that that makes the transition a little bit easier for us. I'll be working closely with the union and Robert to make sure that we are preparing our examiners and have all the flexibility in place to adapt to things we may not be able to anticipate. Also during these first 2 years we begin reclass projects with the EPO we'll be jointly be working on those and it will be much more aggressive than we've done in USPC. We haven't done many recalls projects for in decades.

Just a little bit more detail on this

transition. We are already working on what we call our field specific training. There will be about 400 modules and that's an experienced EPO examiner in a certain technical field doing kind of a 2-year briefing and talking with the U.S. examiners in that field about the schedule, about the placement so they can understand how it works relative to USPC. We're also working closely with both our internal staff, with our management team as well as the EPO on the development implementation in the transition plan because we are going to go from an implementation that's taken us 2 years to get to this point into ready operations where we share operations in terms of reclassifies with EPO. That's a pretty big thing. Again we start reclass projects this year and bring up our online systems, and that includes not just the search systems for examiners who may put symbols, they will also have forms in OATS and some of their office action tools and a lot of things we're developing in PE2E we're making I'll call it CPC compliant so that it fits right in as we move into CPC.

For the users, this how will it affect

me, it's a highlight for those on the outside more so than examiners on the inside. Of course, the source of the symbols changes so that the documents are the same relatively, actually we'll have more documents, but you could search it again by CPC and not just USPC. I'll show you an example of what a document will look like in just a moment. Search systems that the public use both Pub-East and Pub-West will be accommodating CPC so we'll build the same tools that we have for examiners on the east and west sides so the public will see the same thing. Also I explained to you we're doing training for examiners where we call it blocks where there are blocks of training for examiners about how to use CPC. We're equivalent blocks of training for the public, we'll be posting those, in terms of computer-based training modules online working with EPO on that as well so those will be available to the public. We are having our second Public User's Day tomorrow morning here at the USPTO and we had one a couple of months ago that was very well received so that we're working closely with the public. EPO is also working very closely with their user

community as well so that it's out there worldwide already.

Here is quick example of what a published patent would look like when it has CPC symbols. The regular classification occurs in fields 51 and 52 of a published patent. The international class is your IPC and the IPC is not changing. That will still occur on the document. Under the U.S. classification we'll be adding CPC so during the transition for the 2 years we'll be adding CPC and including USPC so that that doesn't change, so we should be adding it. Similarly, in the field of classification, the examiner searches CPC and will be adding the CPC field as well. That's how it will show in a published application. I mentioned a new website. EPO actually hosts website that we share with them for CPC, there is a lot of information along the side that includes all the materials that we launched in October. This is the site where we will be put public training documents as well.

MR. FOREMAN: Thank you. Are there any comments or questions for Bruce before we turn it over? Richard?

MR. MAULSBY:: Thank you very much. I'm sure everybody here follows our website religiously and reads all the news there, but just in case you didn't, we announced on November 13 the first Innovation Expo which will be held here on our campus in Alexandria, on June 20, 21 and 22. It is designed to be a showcase for the latest in cutting-edge American technology and innovation from corporations, small businesses, independent inventors, the academic community and from government agencies. Of course also part of the narrative of the expo will be the vital role that the United States Patent and Trademark Office plays in promoting and protecting American innovation. Obviously, this type of cutting-edge technology does not occur unless you have a strong intellectual property protection system. The application deadline is February 13 and we are going to probably announce and award the first exhibit spots after the first of the year. We've gotten about six very good applications in so far including one from Georgia Tech University. I think the we'll be working with our independent committee to select the exhibitors, we expect

that we will announce the first ones after the first of the year and it will be done on a rolling basis.

Our selection committee is comprised of the American Intellectual Property Law Association, intellectual property owners, Edison's Nation, the National Academy of Inventors which by the way is a fairly new organization that represents inventors associated with colleges and universities, and finally the Inventors Alliance. I think we have a good, well- balanced selection committee and they're also helping with proactive outreach. In thinking of the Innovation Expo, I think everybody is familiar with the Trademark Expo, essentially mirroring what Trademarks has been doing for some period of time, but the focus here is on the latest and greatest in cutting-edge American technology and the anticipation is that those who come here to exhibit will be existing exhibits that they already have developed of their latest technology. We will use both the atrium and the Dulaney Gardens area for the expo. If you want to find out more and apply, go to

uspto.gov.

MR. FAILLE: Is there anything that the PPAC or the user community can do to help?

MR. MAULSBY:: Spread the word. Suggest strongly to people that you are aware of who might be good candidates to be exhibitors to apply. It is a simple process. We made it as simple as we could, a description of the patented technology, the patent number and hopefully a picture or clear description of what the exhibit looks like. I would want to emphasize that this is not a pipe and drape expo. This is really supposed to cool kinds of stuff. As an example, by the way, we've had conversations with NASA about this. We're looking at the possibility that they will participate exhibiting the technology that has made the Mars Rover such a great success and source of fascination I think for all of us. That's the type of thing that we're looking for, things that people will say that's cool and will be interactive and this is gee whiz kind of stuff. Please spread the word.

MR. FOREMAN: Are there questions from the public?

MS. GROSSMAN: Do you anticipate working with your Government Affairs Department to use your expo as an educational tool for members of Congress who seem particularly interested when they have constituents who are being recognized for their innovations?

MR. MAULSBY:: Absolutely. We've already had some conversations with Dana Shaw, and as soon as we have the exhibitors identified we'll make sure that the members of Congress in whose districts those exhibitors come from are aware of it. Of course, we'll be doing everything we can to attract members of Congress to come to the event itself.

MR. THURLOW: Last year when the PTO had the exhibit of Steve Jobs, that got a lot of attention. I didn't realize they had so many design patents so something like that was really great.

MR. MAULSBY:: Of course, it not only was here. It was at the Smithsonian. It's also over in Geneva and out at the L.A. County Fair. It's now been retired. It's like a race horse.

MR. SOBON: Your comment about when you

look at the website formed a question in my mind which is is there action or thought to create an actual USPTO mobile app? I ask this because I think that's the sort of thing that could drive content like the exhibits could be actually a sort of thing that you could have and increasingly everybody's getting their news pushed them through apps. I'm wondering if that is something that you're looking at. But it would be a way that you can actually then, it'd be sort geeky. There are a lot of geeky people in our ecosystem have a USPTO app and then you could naturally go to those things and look at what's the latest from the Patent Office.

MS. REA: Thank you so much. That's a very good question and we do geeky well here and we are looking into a variety of apps. This one particular app I don't recall discussing to date, but I think it's a marvelous idea and we will look into it. Thank you so much.

MR. FOREMAN: Thank you, Richard. We appreciate the feedback. Now we're fortunate to have Deputy Director Rea here for her to give us her remarks.

MS. REA: Thank you so much. It's great to be with you all here right now. You've had a long, hard day so far. You've done a lot of work to prepare. I want to tell you at the outset that the American public as well as the United States Patent and Trademark Office would sincerely like to thank each and every member of the Patent Public Advisory Committee or PPAC for all of your hard work and effort. The American public really benefits greatly from your oversight and your contributions that you are able to make. You are sort of the unsung heroes of the intellectual property system here in the United States, but we do tout your talents as best as we can when we speak here in the U.S. as well as internationally. Thank you so much.

I actually think of the PPAC as being sort of an extended family. You're all quasi-governmental agency people. So when I see you walking the halls I feel like you are one of us and I welcome each and every one of you to come visit my office should you so wish to. In particular I'd also like to welcome the new members of the family, Peter, Christal and Paul.

Your combined legal, scientific and technical expertise is just amazing. You have value and you're bringing us your perspectives from the Hill, the White House, the judiciary, the ITC, the private sector as well as academia, so we expect phenomenal contributions from the new members as well. Not too much pressure.

Of course PPAC is not the only thing that's changed recently. You may have heard from passing news that there has been some mention of personnel here at the agency. As far as that goes, I would like to tell you that we are truly thankful for the amazing work that David Kappos has done as undersecretary and director and he has now set new standards for performance and service in this office, standards that we expect to maintain or exceed in the future with your help. And from each and every one of us that have been on PPAC and USPTO, it's been an honor and a privilege to have worked with him. So we all have a lot to work to do to maintain his legacy here at the agency.

During his leadership, the USPTO has become one of the best places to work in the federal government and I believe that Peggy

shared her enthusiasm with you earlier today when we ranked I believe fifth out of about 292 separate agencies. It really is quite an honor. I think that our workforce is energized. I think that with Dave's leadership and frankly the contributions of the unions that are present here as members of PPAC also, the ability of us to remain critical, to cautiously proceed forward and to team has been extremely productive for each and every one of our employees. Of course people who enjoy their jobs are by definition more productive so I think that the agency is gaining efficiencies on this.

Your cooperation is vital. PPAC we are looking to you and your advice is instrumental as we continue to improve both our productivity as well as our quality going forward. We want to assess the work that we've done here at this agency and we want to have candid conversations with you. The open door policy doesn't just extend to me. It extends to every aspect of this agency if there is something that you're curious about or you think that perhaps could be made more efficient. Your contributions are not limited to

formal agendas of a particular program. Your creativity and your curiosity is welcomed here.

I also want to take a moment to thank Peggy Focarino to my right who with Dave has kept us continually engaged with and responsive to the public that we serve, and their leadership, Peggy and Dave's combined with PPAC's guidance drove our successes this year and helped made us number five and number five is pretty good. If you look at the size of the agencies, most of them are relatively small but had very high employee satisfaction. This is a huge agency and for us to have the level of cooperation, understanding and vision of our employees as well as PPAC, we are especially gifted here at this agency.

I want to summarize a little bit where we were in 2012 through 2013 and beyond. You can see that this year was a win at multiple levels. Bob Oberleitner has already reported on operations, good things in terms of the backlog, first action pendency, examiner attrition, unexamined patents, the patent side of our shop has made wonderful progress. You heard from Drew Hirschfeld everything that we're doing with

implementing AIA. I think that is something that our user community to really appreciate and will find efficiencies and decreases in cost there. Drew and his team and Peggy's group conducted heroic efforts getting this implementation done at such a rapid clip. Once implemented, I do think AIA will simplify the process of acquiring inventive rights and bringing ideas to market and that's why we're all here today. Dana Colarulli also outlined the legislative action that we've taken this year with AIA, steps we can expect either in this 113th Congress or the next Congress, the 114th, but more change is likely to come, some more work this agency is going to have to do and of course we want to do everything that Congress wants us to do and that the American public wants us to do, but plus we want to make improvements, especially operational efficiencies on our own just to raise the level of everyone's game here. Chief Judge James Smith gave an excellent report on the PTAB. That was all good news. They've put in heroic efforts, they've given us the highest quality work this year and they had tremendous change. I think we went from 80 to 160 PTAB judges

in less than 2 years. What they're producing now and what they're doing in terms of handling the backlog as well as our new AIA proceedings is nothing short of magic in my mind.

The historic opening of our first satellite office in Detroit was greeted with tremendous enthusiasm especially in Detroit, but other cities throughout the United States, and we will be opening more satellite offices to hopefully better serve our community. Richard Maulsby of course told you about the upcoming Innovation Expo showcasing cutting-edge advances that are made possible by the mission of this agency. We're showcasing American talent that depends moment by moment on what this agency does today. Bruce Kisliuk gave us great details about the CPC and our international cooperation with other countries coming up with common classifications that hopefully will lead to more common search techniques and greater work sharing in the long term. That's what CPC is going to be bringing us. Tony Scardino told us to proceed cautiously. He attends every meeting. He watches the finances. I think that we can still make great

achievements in 2013. If our proven record of success shows one thing, it's that this agency is both the guardian of ingenuity and the source of ingenuity. We get things done no matter what and we do it with your help. Your participation and expert contributions are desperately needed and appreciated and I want to thank you once again for all of your efforts. Thank you.

MR. FOREMAN: Thank you, Deputy Director Rea and Commissioner Focarino. The record should reflect PPAC's praise and gratitude to Director Kappos for his leadership. It's been an absolute pleasure working with him for these years under PPAC and we look forward to the agency's future path and working collectively to make this a great agency.

At this point we have a break scheduled, but I'd like to move beyond the break if there are no objections. One of the things that we wanted to discuss as an organization is how do we make PPAC more meaningful to the stakeholders of the intellectual property community and be more useful to the office? I thought we would take this time to open up a discussion to what can PPAC be

in 2013 to make us more valuable to the office in terms of maybe carrying the message out to the user community or being a friendly interface for our constituents to interact with the agency. Then importantly, how do we engage the intellectual property community to use PPAC as a way to get information back to the office? That may be through public roundtables. Certainly we've love to see more attendance and people logging into these open public sessions. But I'd like to open the floor up at this point to members of PPAC and also to the public to talk about how we become more relevant in 2013.

MR. SOBON: I have maybe a couple of suggestions. One is in light of as to opening new offices is to hold these meetings, like when the Detroit office is really fully operational, have one of the PPAC quarterly meetings at the local satellite office and was thinking about a similar kind of thing maybe once a year perhaps at one of the local offices to bring it more to the public. The other thing suggested by several of us in the past and some of the new members as well is I think having maybe a particular topic for a given

meeting where we might invite some key speakers pro and con, some spectrum on a given topic to have a more engaged debate or discussion. So something a little bit like what we did with the hearings for the fee setting report, but where we had invited speakers who gave a position topic and then we have an open discussion about that. I think that would be more engaging with some of these things.

MR. HALLMAN: I wanted to pick up on that and say the same thing. By way of example, I serve on the board of a fairly good sized charity back in the Chicago area where I live and those board meetings, half of them are held at the headquarters of the charity, the other half are held in poor neighborhoods in Chicago that are served by this charity and it's very, very important when we think of the group of the board members, the people who have the mission to be very close to the people who are being served. I do understand that there is a fair amount of work that goes into preparing all the materials that PPAC gets, but I'll have to tell you that for at least some of the slide presentations that are put

out by members of staff, I would be just as happy to get slides in email and read it and give you questions say in advance of a meeting and have them discussed. I think we can reduce the amount of work that goes into the meetings because everybody has got a lot to do and I consider it to be a higher objective or a more important objective to get this group closer to the people that we're supposed to serve than it is to have very stylish presentations put on here in Alexandria. I guess I would second what Wayne said.

MR. THURLOW: I think there are few opportunities for the public to go to the PTO's website and see all the top management folks at the Patent Office give presentations and status on it. So I find the information extremely helpful and I find that these presentations are extremely helpful and include valuable updates and statistics, data submissions especially with all the new AIA things going on. And I think when I send this information out to my colleagues and representatives at the bar associations I always get very positive feedback. So I think it's a

thing going back to the basic marketing of this and publicizing it are good things that are going on. One of the basic steps if you go on the PTO website, many know there's a section where you get USPTO updates and you go in and they give you six or seven things. I think you can add one of those as being for PPAC and if people are interested we can give them updates and we can send reminders to do that as I do send out through regular email notifications from the PTO. That's very basic. When they start getting on their own these presentations and finding statistics, markets will start watching the webcasts and more people will see how informative it is. We as PPAC members and others out there that find these things helpful, I think we can do a better job also. For the New York bar association, next time I'll make sure they spread the word more. And I think we'll get more positive feedback -- publicity for something that I think is very helpful and should be considered.

MR. FOREMAN: Are there any comments from the public on how PPAC can be more responsive or relevant?

MR. GARLOCK: Vince Garlock with AIPLA.

I would like to quickly second Peter's suggestion. I know over the years it has been difficult and it's been somewhat uneven even finding out when these meetings are. You all know, but unless you proactively look for it, it's difficult to even identify the notice and enough time to schedule it and make sure that there's coverage and that we know what issues are going to be discussed, even a list to get notice of meetings and the agenda so that our members have a little bit more time would be most helpful.

MR. FOREMAN: Thank you, Vince. Are there any other comments or questions for the open discussion on PPAC?

MR. SOBON: I would just say both those things relate again to this thought that came up about an overall USPTO app that if you have that on your iPhone like other apps like news apps like CNN shows you and things blip up and say there's a new news item to go look to or it comes up on your banners that show there's a new thing to look at, it's an impressive thing. Then you would go and look at it and say a PPAC meeting just got

scheduled for 3 months from now and it would be a way to be very current and keep people focused. If you're looking at that, I would highly recommend the office to have a great outreach the generation using that type of technology would be very helpful.

MS. KEPPLINGER: That's a really good point. Apart from the PPAC, but the meetings that some of the TCs have, I get notification of the VCP meetings, the Biotech ones, but I know for example Med Device has them sometimes. And it isn't easy to find out about those if you're not already sort of on the list. What Wayne is suggesting I think would be very valuable. I think you would get a lot more participation in some of these things because people do need to schedule it on their calendar in advance.

MR. FOREMAN: That seems very reasonable. I think at our next PPAC meeting that can be accomplished or should be a goal at least.

MR. THURLOW: One final thing. When I was chair of the CLE Committee for the bar association, these days with the technology should be I believe, I see it's being videotaped

and easy to put the webcast on the PPAC webpage of this meeting and the presentations from today. The presentations are helpful and there is a lot of discussion. To give one example, outside these walls and America, about this technical amendments bill, and I bet you, five percent of the stakeholder community if that much knows about it. And the issues that we talked about as far as the effect of the so-called older applications and the fact that someone may be able to file an IPR now that they were not aware of, that's really big news to get out there.

MR. FOREMAN: Are there any other comments or questions for the public session? Do I have a motion to adjourn?

SPEAKER: So moved.

MR. FOREMAN: Second?

SPEAKER: Second.

MR. FOREMAN: All in favor?

(Chorus of ayes.)

MR. FOREMAN: Motion carries and we're adjourned.

(Whereupon, at 2:12 p.m. the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

**Notary Public, in and for the Commonwealth of
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