

PATENT PUBLIC ADVISORY COMMITTEE
Wednesday, October 17, 2001

This matter came on for public meeting at the Hyatt Hotel, Arlington, Virginia, commencing at 1:40 p.m., before Patricia A. Edwards, Verbatim Reporter.

P R O C E E D I N G S

1
2 MS. BOULWARE: I would ask that
3 everyone who is on the committee to please
4 keep your voice up as much as possible. We do
5 have a stenographer who is going to be
6 recording the meeting. So let me ask everyone
7 to speak up, enunciate well. And if you're
8 having any trouble hearing us, please let us
9 know, give us a sign here. My voice carries
10 pretty well, so I usually don't have that
11 problem.

12 I would like to call to order the
13 public meeting of the Patent Public Advisory
14 Committee. I'd like to thank everyone for
15 their attendance today, and I'd also like to
16 thank the members of the public for
17 participating.

18 I also want to mention that, at these
19 public sessions, this is the time when the
20 committee gets to have their discussions on
21 the record and have the public record reflect

1 our advise to the Patent Office.

2 Unfortunately, we don't have the luxury at the
3 time to have a public hearing with everybody
4 in the audience participating. We definitely
5 appreciate your presence and your interest.
6 And I will be calling on members of the
7 committee.

8 We do have a web site. Any comments
9 can be sent from the public. I encourage you
10 to do so. Send it to my attention, and we do
11 have a web site set up on the PTO, the address
12 at the PTO web site where you can send
13 comments. I have received some comments from
14 people.

15 Right now, I would like to address one
16 order of business, and that is to recognize
17 the contributions of three of our former
18 members who are not with us today who had one-
19 year terms, Andy Gibbs, Roger May, and
20 Patricia Ingahan. They were founding members
21 of the Public Advisory Committee. They were

1 really valuable contributors, and we miss
2 having them here today.

3 And I would, at this time, like for
4 each of the members of the Public Advisory
5 Committee to introduce themselves for the
6 record, starting with Mr. Mossinghoff.

7 MR. MOSSINGHOFF: Gerald Mossinghoff.

8 MR. NORVIEL: Vern Norviel.

9 MR. FERGASON: James Fergason.

10 MR. MYRICK: Ron Myrick.

11 MS. BOULWARE: Meg Boulware. I'll ask
12 our acting directing to identify himself for
13 the record.

14 MR. GODICI: I'm Nick Godici, Acting
15 Director at the USPTO.

16 MS. WHITE: I'm Kathy White.

17 MR. STERN: I'm Ron Stern, and I'm
18 here as a representative of the Patent Office
19 Professional Association.

20 MS. WATSON: Julie Watson.

21 MR. WHITE: Melvin White, president of

1 the union that represents the clerical support
2 staff for the Patent Office.

3 MS. BOULWARE: Thank you. I would
4 like to conclude my opening remarks with my
5 introduction of our acting director, Mr.
6 Godici, who is going to give a brief
7 director's report.

8 MR. GODICI: Thanks, Meg. I
9 appreciate it very much. And I also want to
10 extend a welcome from the USPTO side, to the
11 P-PAC members and members of the public, and
12 also want to thank the people from the USPTO
13 that are here today that have helped us out,
14 preparing for the meeting, also participating
15 in the meeting.

16 I have three or four issues that I'd
17 like to talk about. The first one is the
18 events of September 11 and the impact of those
19 events on the USPTO. Obviously, the impact of
20 those events being so close to the Pentagon
21 and here in Washington has been particularly

1 disturbing for our employees at the PTO, and
2 we've been working very hard to do everything
3 we possibly can to ensure the safety of our
4 employees.

5 First of all, I want to thank our
6 managers and particularly Clarence Crawford
7 and his security staff, who has responsibility
8 for security issues, and helping us through
9 this, and not only the events of September 11
10 and what's occurred, and what he's done past
11 that.

12 I also want to thank the presidents
13 and the representatives of three unions. Got
14 great support and great cooperation in dealing
15 with the need for higher level security as a
16 result of the events of September 11. So I
17 want to thank those folks too.

18 We've done some special things. There
19 was one intellectual property office that was
20 located in the World Trade Center Towers,
21 Sidley Austin firm, and we are dealing very

1 closely with that firm. They did not have
2 loss of life, but had loss of records and
3 files and so on and so forth. And we've been
4 working very closely to reconstruct files, and
5 so on and so forth.

6 Over and above that, we've taken the
7 necessary steps from the security standpoint
8 at the USPTO to increase the well-being and
9 the safety of our employees, such as increased
10 guard service and increased roaming guards and
11 patrols in our parking areas, and we've
12 ordered some equipment that will allow us to
13 scan incoming packages and letters. So we're
14 attempting to take all of the precautions that
15 we possibly can and working to update and
16 revise and keep our employees current with
17 respect to our evacuation plans and also using
18 this as an opportunity to look forward to
19 future planning, not only the security
20 measures that we will have at our newsite,
21 Carlyle, but also any other steps we can take

1 with respect to backup security systems at the
2 PTO.

3 The next item, I wanted to recognize
4 and make mention of the fact that the USPTO
5 had three executives recognized by the
6 President on Monday and received the highest
7 award that an executive in government can
8 receive. Presidential Rank Awards are given
9 to a very, very small percentage of career
10 government employees across government, and
11 the PTO was fortunate to have three recipients
12 who were recognized, like I said, in a
13 ceremony by the President and most of the
14 cabinet on Monday.

15 The highest award is the Distinguished
16 Presidential Rank Award. Bob Anderson, our
17 Deputy Commissioner of Operations on the
18 trademark side received that award. And
19 Meritorious Presidential Rank Award, we had
20 two recipients from the patent side of the
21 house who are here today, and I'd like to

1 recognize them, Steve Kunin, our Deputy
2 Commissioner for Patent Policy, and Kaz
3 Kazenske, our Deputy Commissioner for Planning
4 and Resources, received the Presidential Rank
5 Meritorious Award.

6 An update on the status of P-PAC
7 nominations and filling of the three seats
8 that were vacant as of this summer. There was
9 a call for nominations in the springtime. We
10 had a large turnout in terms of nominations.
11 We've gone through those materials. The
12 process is that the secretary of commerce, Don
13 Evans, will appoint the three new members of
14 the
15 P-PAC.

16 We've briefed the Secretary's office,
17 we've prepared the materials and the
18 backgrounds on all of the nominees, and we're
19 in contact with him, answering questions,
20 working with the Department, and we're hopeful
21 that the three new members of the

1 P-PAC will be named in the not too distant
2 future, hopefully, certainly by end of
3 January. So that's where we stand in terms of
4 the status of the new people in P-PAC.

5 And then the last thing I wanted to do
6 is to give an update on our new space, our
7 move from Crystal City to Carlyle. All
8 systems are go. We are moving forward. We've
9 worked out some issues with the developer, and
10 we've got those all ironed out. Actually,
11 movement of the utilities on that site has
12 already started, some of the electrical and so
13 and so forth that are needed preliminarily to
14 breaking ground.

15 The next two steps that the public
16 will see is a bond offering, and that public
17 offering will occur probably in the next two
18 to three weeks, and you'll see a public bond
19 offering, and the bond offering will be on the
20 street for approximately three weeks. And
21 we'll actually go to closing, and the closing

1 date will be before the end of November. Then
2 you will see construction in earnest, and the
3 hole will be dug and we'll be moving forward.

4 Our time line is this, moving into the
5 Carlyle site, employees will move in at the
6 very end of calendar year '03. And we will
7 continue that move, for about 15 or 16 months
8 to complete the move from Crystal City to
9 Carlyle. The series of five buildings will be
10 delivered in a series, so we won't get all
11 five buildings delivered at once. It will be
12 two buildings, move into those, there will be
13 some time lag, and then we'll get the other
14 buildings delivered, and we move the rest of
15 our employees then. So just an update for
16 everyone on our move plan. Things
17 are progressing and moving forward.

18 MS. BOULWARE: Thank you, Nick. I
19 would like to continue with our agenda.
20 Esther Kepplinger is going to update us on
21 operations. Esther.

1 MS. KEPPLINGER: This year we will
2 have received about an 11 percent increase in
3 applications over '00. We're projecting 12.
4 We're probably somewhere in between 11 and 12
5 percent. And we are projecting 12 percent
6 growth rate over this for '02. We hired 419
7 examiners in '01, and we lost 251, and the
8 end-of-year examining staff is 3,129.

9 In '01, we issued 170,177 patents, and
10 we published 25,376 publications under pre-
11 grant publication. Next year, we expect to
12 issue 171,600 patents and publish 233,000 PG
13 pub documents.

14 As you can see with the attritions,
15 last year we had 433 with a 14 percent
16 attrition rate, and in '01, we only lost 251,
17 so we brought the attrition rate of examiners
18 down to 7.8 percent, which is our lowest
19 turnover rate since 1995. We think that this
20 is partially due to the economy, but also due
21 to the initiative of things that we've put in

1 place, both the increase in pay of 10 percent
2 for patent examiners, and we have increased
3 the flexibilities that are available to
4 examiners.

5 A couple of highlights for fiscal year
6 '01 include the Millennium Agreement that we
7 reached with POPA, which include the phased
8 elimination for paper search files, a customer
9 service element in the employee's performance
10 appraisal plan, a work-at-home pilot, a 10
11 percent pay increase for patent professionals,
12 and also upgrading the automated tools that we
13 have, such as we're providing flat screen
14 monitors for the examiners that are rotatable
15 on an axis and allow you to view an entire
16 patent document at about 121 percent of the
17 real size, and also high-speed printers which
18 will allow them to print out very quickly
19 documents at the desktop.

20 We started the work-at-home pilot for
21 patent examiners --

1 MR. STERN: There is one other part of
2 the Millennium Agreement that employees
3 consider very significant, and that is the
4 last clause in the agreement that says that
5 the USPTO and POPA will jointly develop a
6 proposal for increased funding to benefit
7 patent quality, a substantial portion of which
8 shall be used for directly increasing time for
9 examination. And the agreement specifies that
10 "substantial" means more than a majority.
11 From an employee's standpoint, that is a very
12 important provision.

13 MS. KEPPLINGER: Thank you, Ron.

14 MR. STERN: Thank you.

15 MS. KEPPLINGER: We started the
16 work-at-home pilot for patent examiners July
17 2nd, and, actually, we are expanding that next
18 week where we had -- right now we have 125
19 working at home. We have three different
20 levels of equipment. Level one provides for
21 all of the automated equipment in the

1 examiner's home, including computer, printer,
2 etcetera. We have 24 people who we have
3 provided equipment. In level two, examiners
4 use their own computer equipment to do
5 applications at home, and level three, people
6 just work at home from the paper files.

7 They're eligible to work at home one
8 day a week. We're expanding that next week to
9 25 percent of the primary examiners, so we
10 will be adding 195 people, taking us up to
11 322. Each of those will be in levels two and
12 three and will be under the same provisions of
13 working one day a week at home.

14 Monday, we began a removal of the U.S.
15 paper search files from the examiners' files,
16 starting in the biotech area, and we'll
17 continue doing that across the corps. We have
18 identified with POPA the first 25 percent of
19 paper that will be removed according to the
20 Millennium Agreement.

21 As I indicated, we reduced attrition

1 from 14 percent to 7.8. Another significant
2 thing is that while first action pendency rose
3 from 13.6 months to 14.4 months, the overall
4 pendency decreased from 25 to 24.7 months.

5 And the reason for this is that we have been
6 identifying any deficiencies and think that we
7 could do better in the various AIPA times, and
8 we focused on the PUBS time, time from payment
9 of issue fee to issue the grant. And we
10 reduced that PUBS time from payment of issue
11 fee to the grant from 3.9 to 2.7 months.

12 So while first action pendency went
13 up, overall pendency actually decreased. And
14 this was a really significant effort.
15 Additionally, for those applications that are
16 over 14 months, have paid the issue fee and
17 are still awaiting the grant, we reduced those
18 numbers from 2,970 in the beginning of this
19 fiscal year to 1,304 at the end of fiscal
20 year, and that's down from 10,000 in February
21 of '00. From this point on, we are trying to

1 make all the significant gains that we can in
2 all the AIPA time frames, but at a certain
3 point, the first action pendency will drive
4 the overall pendency.

5 For our score card, we achieved in the
6 timeliness area, we achieved four of the five
7 targets that we had. The first two, 14 months
8 and 36 months, are driven by the work load.
9 Unfortunately, we didn't quite make the target
10 of 78 percent for completing a first action on
11 all cases within 14 months of filing. We were
12 only at 74.3 percent. In the other AIPA time
13 frames, four months after receiving an
14 amendment, four months from issue fee to
15 grant, and also after board decision, we did
16 meet our target or exceed our target.

17 One thing I would point out is that,
18 while the language that's in here covers
19 patent term adjustment, in fact, we're not at
20 that point yet. I have another slide later.
21 We aren't yet at a point where the

1 applications were filed within a time frame
2 that they would qualify for patent term
3 adjustment, for example, for 36 months, but
4 the slide talks about it in that way. And we
5 did achieve our goal for 87 percent being
6 completed within 36 months from filing.

7 By technology centers, you can see
8 that we have fairly different results.
9 Because it is work-load driven to achieve the
10 14-month time from filing to first office
11 action, our electrical area, which is 2100 and
12 2600, have the most severe challenge of
13 getting all those applications complete within
14 14 months. The other technology centers were
15 much more successful in getting the bulk of
16 their applications completed.

17 We were all pretty successful of
18 technology centers with amendments. For those
19 cases after a board decision either getting
20 allowed or abandoned within four months of a
21 board decision, we were pretty successful

1 across the board except 1600, which does have
2 a significant number of cases back on hearings
3 and also cases back from decisions that they
4 still need to work a little harder getting
5 theirs out more quickly.

6 As I said, we made dramatic
7 improvements in the issue fee payment area.
8 And, again, in the 36-month time frame, our
9 two electrical areas are the most challenged
10 because it is work-load driven, and that's our
11 highest growth rate in applications being
12 filed.

13 For patent term adjustment, those
14 applications filed on or after May 29 would be
15 eligible for the patent term adjustment. And
16 as of October 16 of this year, 25,275 of those
17 applications that would be eligible have
18 issued as patents, and only 572 or about 2.26
19 percent received a patent term adjustment.
20 The average amount of time is about 32 days of
21 additional patent term grant. These are

1 primarily in the area of the PUBS area time
2 that is granted for us failing to achieve four
3 months from payment of issue fee to the grant
4 of the patent.

5 And on quality side, we weren't quite
6 as successful in meeting our targets. We only
7 achieved two of them, the targets that we had
8 set. However, we did make some advances. One
9 of the significant errors that would affect
10 patentability, we were at 6.6 last year, and
11 we brought it down to 5.7. Our target was
12 5.5, so we missed a little bit. Other
13 questions of patentability, which are not
14 quite as significant, our target was 7
15 percent, and we brought it down to 5.1.

16 Written communications, we actually
17 dropped one percentage point. Clarity of our
18 written communications was 63 and 62. On the
19 search of prior art, however, we are still off
20 slightly, 61 to 63, although our target was
21 64. So we didn't quite make it.

1 Unfortunately, on our overall customer
2 satisfaction, we leveled off this year. Over
3 the last two years, we had increased 12
4 percentage points, 7 percent last year and 5
5 percent the year before. So we were flat this
6 year. We're going to have to go back and
7 redouble our effort in that arena.

8 But we had real success in the
9 employee survey because we rose from 55 to 65
10 percent, so we exceeded our target.

11 Any questions?

12 MS. BOULWARE: No questions for
13 Esther? Thank you.

14 MS. KEPPLINGER: Thank you.

15 MS. BOULWARE: Well, we'll continue on
16 our agenda with the financial report from
17 Clarence Crawford, the chief financial officer
18 on the fiscal year 2002 funding level and any
19 other 2002 funding issues that the advisory
20 committee wants to discuss.

21 MR. CRAWFORD: Thank you very much,

1 Madam Chairwoman. Why don't we go to the
2 first slide. Just as a recap, the 2001
3 appropriation, the request from the President
4 was for \$1,139 million which represents about
5 a 10 percent increase over the fiscal year
6 2001 level. If you set aside the fact that
7 we're fee-funded and you look at us like other
8 federal agencies for non-presidential
9 priority, that's a pretty good funding level.

10 With that plan, the main thing we're
11 going to do is to be able to maintain current
12 staffing levels in the Patent and Trademark
13 core organization, so we're not going to
14 increase them. We have an idea, so we'll talk
15 a little bit about that. Let's go to the next
16 slide.

17 This is a recap of that \$100 million
18 increase that we're hopefully going to
19 receive. We are, as I think many of you know,
20 we're about mid way or a little more than half
21 way through the first month of the fiscal year

1 and, like the rest of the federal agencies, we
2 do not have an actual appropriation. About
3 \$43 million, \$44 million was going to cover
4 just the mandatory costs, the mandatory
5 increases in contracts due to inflation.
6 Also, to handle the pay adjustments and the
7 like.

8 The second batch of the money was a
9 program increase. And the first part is to
10 fund the patent special pay rate, and you just
11 heard Esther talk about some of the positive
12 results that that's received already, and that
13 was a good move. Also, the trademark
14 productivity enhancement of \$6.2 million, I
15 think that was another good investment. I
16 want to mention and highlight those in
17 particular because it's not very often that we
18 actually get money for increases of this
19 nature, so in some ways, we've been treated
20 well in allowing us to do that. The other
21 increase was to cover essentially printing-

1 related costs in implementing AIPA. Go to the
2 next slide.

3 Much has happened in 2001 that carries
4 over into 2002. When we put the 2002 request
5 together this time last year, we were
6 expecting a significant continuation of a
7 significant increase in trademarks. We had
8 actually scaled estimates back, but all the
9 indications we had, everyone we were talking
10 with still said that trademarks were going to
11 go up. What we have actually found is that
12 instead of trademarks increasing in 2001,
13 they've actually come down by about 20
14 percent. What we are looking at here in 2002
15 is it looks like much of the trademark fall-
16 off is related to the economy. So what we are
17 looking at here is making adjustments in the
18 estimated fee income. So, as you can see, we
19 had initially estimated about \$1,346 million.
20 Our new estimate is \$1,198 million.

21 The other adjustment is with PG pub

1 revised income estimates. There are certain
2 things about our budget that makes it
3 unusually complicated. One is trying to
4 project income levels based on what's going to
5 happen in the economy and what people will do.
6 The second aspect of it is trying to estimate
7 behaviors, trying to predict behaviors,
8 changes in statutes, and then trying to
9 understand how practitioners and owners will
10 respond to those. Even with these changes and
11 adjustments, and we had to make significant
12 ones, at least by standards, in 2001, we still
13 ended up with about a 95 percent accuracy,
14 overall accuracy in our estimates.

15 So, as you can see for 2002, the good
16 news on the patent side is every indicator
17 that we've seen thus far, and we're monitoring
18 it very, very closely, seems to imply that
19 patent filings are strong and will continue to
20 be strong. Now, we're watching it, working
21 very closely with the patent organization,

1 looking not only at sort of the aggregate, the
2 large dollars, but also looking at segments to
3 see if we see any shift in the patterns. On
4 the trademark side, we're doing the same
5 thing. We're watching that very carefully as
6 well. Next slide.

7 Just want to give you a quick snapshot
8 of the fee collections. I guess one of the
9 main points I want to mention here is that
10 question was raised the other day, do we still
11 adhere to the fence of trademark and patent
12 fees. The answer is, yes, we do still track
13 it that way, we still worry about that as we
14 allocate the money and as we spend money, and
15 we're very careful about spending money. Go
16 to the next slide.

17 On the work-load side, what you will
18 see here is a continuation of an increase on
19 the patent side. I think we're still
20 projecting about a 10, 12 percent for 2002.
21 And on the trademark side, we're assuming a

1 flat filing level at about 300,000. We are
2 monitoring that very carefully as we go
3 through the year. Next slide.

4 And this is the first action pendency,
5 Esther talked a little bit about, for 2001.
6 2002, first action pendency, I hope I have the
7 correct numbers. I've been running a little
8 behind here the last couple of days. It's
9 about 17. Is it 17, Esther?

10 MS. KEPPLINGER: 14.4.

11 MR. CRAWFORD: 14.4, okay. I'm sorry.
12 I read the wrong line. Okay. Let's go to the
13 next slide.

14 My colleagues here have decided that,
15 while I'm here in the Patent and Trademark
16 Office, before I leave, I'm going to actually
17 be an expert. I'll be able to say that first
18 action pendency includes these items and
19 overall pendencies, these are the kinds of
20 things that we worry about. I'm not quite
21 there exactly, but I'm getting there.

1 What I wanted to also show, then, are
2 the registrations, so you can see how they
3 look over time as well. Let's go to the next
4 slide.

5 This is just to give you a summary of
6 where we stand today. When the President made
7 the initial request, that's the first column,
8 listed Request, and that's based on an
9 assumption of \$1,346 million and an operating
10 level of \$1,139 million. As you can see from
11 the House action, they proposed to reduce our
12 operating level by about \$10 million. The
13 Senate is proposing to give us the President's
14 mark. Where we stand now, let's go to the
15 next slide so we can talk about continuing
16 resolution and the like.

17 Continuing resolution, the first one
18 expired midnight last night, the second one
19 has been put in place, and that expires, I
20 believe, midnight October the 23rd. There
21 will probably be one, two, maybe three more

1 continuing resolutions before a final
2 appropriation is passed. As long as the
3 continuing resolutions are concluded in a
4 relatively short period of time, it really
5 won't have much of an adverse effect.

6 But under the OMB rules, which I went
7 back and reread myself because things have
8 changed over the years, this is the first year
9 that we're really affected by a continuing
10 resolution. Prior to this, what we actually
11 had was the carry over money that we had was
12 given to us in what they call an advance
13 appropriation. So we actually had money that
14 was appropriated to us from a prior year that
15 we could spend. And while continuing
16 resolutions occurred, it really had little or
17 no affect because, before we ran out of that
18 money, we always had an appropriation and the
19 like.

20 Well, this year, starting this year
21 2002, the Congress decided not to continue the

1 advance of the appropriation, and we're now
2 affected like all of the other federal
3 programs, affected by continuing resolution.
4 The continuing resolution requires that we
5 spend at a level approximate to the 2001
6 filing level, which is about \$100 million
7 below what we hoped to receive. We're hopeful
8 that the Congress will conclude its business
9 by the end of the month. I think there's
10 still hope that will happen. As long as we
11 get the appropriation in the first month or so
12 of the fiscal year, I think that will help us.
13 In the continuing resolution, we can work
14 through for the duration.

15 The issues that remain are, one, that
16 Congress is proposing a larger pay increase,
17 one percentage point higher than the
18 President. As someone who may get the pay
19 raise, I sort of said this is great. As
20 someone who has to worry about trying to
21 figure out how to pay for it, will cost us

1 about \$4.3 million addition, so mixed feelings
2 on this one.

3 There's also talk on the Hill, CNN and
4 today's Washington Post article from budget
5 director Mitch Daniels that one of the things
6 that they're going to try to do is make sure
7 that they can fully fund the war against
8 terrorism, but they also want to look very
9 closely at all of the other federal programs
10 and accounts that are not associated with that
11 activity and perhaps hold the line or maybe
12 try to bring down spending. Their goal is to
13 try to, at least according to the paper, it
14 appears that the goal is to try to make sure
15 they win the war but, at the same time, try to
16 the best of their ability to avoid increasing
17 the size of the federal deficit that may
18 result. So we'll see.

19 We don't have any ideas if this could
20 happen and it could affect us in '02. If it
21 were to affect us in fiscal year '02, my guess

1 is that in the last days before the
2 appropriation is passed, there will be some
3 kind of across-the-board adjustment. We have
4 no idea what that would be. And it could also
5 impact as well for '03.

6 And the final item that's still in
7 play, and we're hoping that the Senate
8 language will prevail, is the \$10 million,
9 that we wouldn't have to lose the \$10 million.
10 Thank you.

11 MR. MYRICK: I have a question.

12 MR. CRAWFORD: Yes, please.

13 MR. MYRICK: What was the source of
14 that \$10 million?

15 MR. CRAWFORD: What that is, the
16 source of it is, is when you talk about carry
17 over, there are two types of carry over. It's
18 a big carry over that everyone is familiar
19 with, it's been in the press, you know, the
20 couple hundred million dollars and that.
21 There's a second carry over that takes place,

1 and that's a smaller one.

2 By statute, we cannot spend more money
3 than we take in. And what we do is, at the
4 end of the fiscal year, to cover any unknown
5 situations, we intentionally carry over a
6 small amount of money. Those funds become
7 available to us in that succeeding year, so
8 it's not that we lose the money, we just make
9 a conscious decision ot to spend a small
10 amount.

11 So out of a budget of \$1,139 million
12 in 2001, we came down, we worked it down
13 consciously down to \$10 million. That \$10
14 million we held in reserve to make sure that
15 if anything comes up out of the ordinary that
16 we would be in a position to address it. If
17 it didn't and we're still working through our
18 books and it looks like we're in good shape,
19 those funds will be available to us in 2002.

20 MR. MYRICK: Let me make sure I
21 understand it. So the \$10 million, if I

1 understood what I heard about the House's
2 determination, was it because you weren't
3 projected to spend that \$10 million, it was
4 taken away from you. Is that not correct?

5 MR. CRAWFORD: It was projected to be
6 our carry over to our insurance policy to make
7 sure that we do not go anti-deficient, but we
8 intend to spend the money. We had intended to
9 spend the money. We just would not spend it
10 in 2001.

11 MR. MYRICK: What I'm getting at, you
12 were trying to manage prudently so that you
13 didn't overspend.

14 MR. CRAWFORD: That's correct.

15 MR. MYRICK: But, as a result, the
16 House passed a figure that's \$10 million less
17 than you should have had?

18 MR. CRAWFORD: That's correct.

19 MR. MYRICK: So should you be
20 profligate in the future and spend right up to
21 the line?

1 MR. CRAWFORD: Well, with \$10 million
2 reserve, we are right up to the line. I think
3 we did like 99 percent.

4 MR. MYRICK: I just want to make sure
5 it was clear that what you were doing when you
6 were trying to preserve the integrity of your
7 spending process was that you lost \$10 million
8 in the appropriation of the House. Is that
9 what I'm hearing?

10 MR. CRAWFORD: That is a possibility.

11 MR. GODICI: Well, I think Clarence is
12 trying to keep me out of jail by not going
13 into deficiency at the end of the year. But
14 you hit it right on the nose.

15 MR. STERN: I am curious about the
16 examiner hiring situation. Last year, we were
17 authorized lots of hires and had the money to
18 hire folks, even though there was a hiring
19 freeze for a part of the year. Why didn't we
20 hire enough people to account for the 11
21 percent increase in filings? And, actually,

1 that's a increase in filingsthat has been
2 predicted for a long time and, as we just
3 heard, predicted to continue.

4 MR. CRAWFORD: Ron, you and I are
5 perfect straight men. Let's go to the next
6 slide. I think Nick wanted to make a comment.

7 MR. GODICI: I can answer the
8 question.

9 MR. CRAWFORD: Go right ahead.

10 MR. GODICI: We went into the fiscal
11 year with enough money to maintain, as
12 Clarence mentioned early on in his slide,
13 maintain our status. And, at that point in
14 time, we thought that 360 hires would equal
15 360 attritions and we'd maintain staff.
16 You're right. What happened was that we did
17 have a hiring freeze that cut off hiring from
18 the January time frame to the May time frame.
19 We had hired 200 people up until the time of
20 the freeze. We had hopes of hiring the last
21 160 to equal the 360 once the freeze was

1 lifted.

2 We were more successful than we
3 planned, and we actually hired 420 or 419. So
4 we actually exceeded our hiring role in an
5 effort to kind of jump start and get ahead of
6 the curve. But going into the fiscal year
7 last October, we had plans on hiring 360
8 people and that equaled our attrition level,
9 and we actually hired 419.

10 MR. CRAWFORD: The other thing that we
11 did very early on last spring, we made a
12 conscious decision that we were going to -- we
13 had decided we were going, based on
14 information we had gotten from the Hill and
15 the like, that they wanted us to put together
16 a requirements-based budget, and other
17 information we're getting from the new
18 administration is to look at that, look at
19 requirements.

20 We decided as we started to do that,
21 looking at 2003, and we're not privy to talk

1 about those now, but that we wanted to get a
2 jump start on 2003. So we made that a
3 conscious decision to, in effect, go back and
4 zero base our organization and do a zero-base
5 review for 2001 and 2002 to find money that
6 would then be used, that we could actually use
7 to forward fund and actually get a start on
8 implementing our 2003 business plan. So from
9 scrubbing the budgets, we came up with \$38
10 million.

11 Now, let me point out that this was
12 not surplus money. What we did was we put in
13 place a process that said, we're going to
14 focus on our core business activity and we're
15 going to figure out what we need to do to
16 improve pendency and quality. And then we
17 went back and revisited all of our spending
18 plans against those two simple goals across
19 the organization. So what we ended up doing,
20 then, was to defer otherwise worthwhile
21 activities in favor of putting money aside to

1 jump start our 2003 initiative.

2 The other thing that we did was, we
3 decided to maintain to some degree a freeze on
4 some hiring within 2001 so that we could
5 accumulate some of those funds. Now, in the
6 patent side, as Nick pointed out, we went
7 ahead and hired actually above our goal.

8 What we are going to try to do is we
9 found about \$38 million now. The bottom
10 portion of this graph shows what we're going
11 to be doing with those funds. We're going to
12 deal with shortfalls in patent. Most of this,
13 all but about \$4 million, were the accelerated
14 patent and trademark e-government initiatives
15 is about \$4 million there. The rest of the
16 money is patents related.

17 The biggest thing that I want to just
18 mention here is that instead of just hiring
19 attrition for 2002, we've put ourselves in a
20 position to increase the patent examining core
21 by almost 460 additional employees, more than

1 we would have otherwise, as well as we were
2 able to apply about \$14 million to accelerate
3 E-government initiatives so that we could move
4 up some of our plans to roll out some of the
5 E-government initiatives that will give us
6 either a cost savings or improve quality or
7 improve timeliness of our initiatives.

8 As we put together the '02 and as we
9 work on '03 and as we put together our plans,
10 we have a, just to recap, we have a continuing
11 resolution. This assumes that we get all of
12 our money. This assumes that the continuing
13 resolution comes off fairly soon. This
14 assumes that we also get favorable indications
15 of support from the administration for our '03
16 initiatives as well. Feel pretty good about
17 it. Let me stop now and I'd be happy to take
18 any questions.

19 MR. MOSSINGHOFF: Today's report of
20 Senator Lott says that they are getting ready
21 to get out of town at this point. If that

1 happens, if they do adjourn, that means you've
2 got to last through, what, next February with
3 the continued resolution?

4 MR. CRAWFORD: No. I think the
5 Congress -- I've heard also that Congress will
6 actually recess, not adjourn, and the last
7 I've heard is that they will return on the
8 23rd, which means that there's going to be at
9 least another seven --

10 MR. MOSSINGHOFF: 23rd of October?

11 MR. CRAWFORD: Yes. So we are
12 expecting one, two, maybe three, seven to 10-
13 day continuing resolutions before the '02
14 funding is together. I don't think there's
15 going to be much of a controversy over that.
16 Yes, Madam Chair.

17 MS. BOULWARE: I had a question. You
18 were talking about on this particular slide,
19 mentioning the scrub of 2001, 2002 budgets,
20 identifying surpluses for use, and you were
21 saying that assumes that we get all of our

1 fees. But we're still looking at a diversion
2 here for the 2002 budget, are we not?

3 MR. CRAWFORD: We will not get all the
4 fee income, that's correct.

5 MS. BOULWARE: Because I just want to
6 get that on the record, this is something this
7 Public Advisory Committee has been very
8 strongly critical of. And my good friend, Mr.
9 Mossinghoff, he has even stronger words. But
10 what I wanted to do was identify on the slide
11 a little bit earlier, the current estimate of
12 the fee collections and what is going to
13 become available from our current estimates in
14 2002, so we're just clear on what we
15 anticipate and what I think we're going to
16 have available for the operations.

17 MR. CRAWFORD: What will be withheld,
18 if I'm looking at this correctly, is about \$60
19 million over what we will actually use. In
20 the carry over situation, when we run short
21 because of the economy, the issue becomes --

1 it quite often doesn't hurt you immediately if
2 it has like a year lag. Now, because we will
3 be putting less money aside than what was
4 requested initially, we're having to work with
5 the Office of Management and Budget on how we
6 would structure this issue potentially in
7 2003.

8 MS. BOULWARE: For the 2002, under
9 this slide, it's available from current year
10 as listed as \$341 million.

11 MR. CRAWFORD: Unavailable, that's
12 correct.

13 MS. BOULWARE: Unavailable.

14 MR. CRAWFORD: Yes, that's correct.

15 MS. BOULWARE: So continuing under
16 this scenario.

17 MR. CRAWFORD: That's correct.

18 MR. MOSSINGHOFF: Madam Chair, that
19 might be good to ask Clarence what the total
20 amount diverted by Congress and the executive
21 branch, this is bicameral and bipartisan,

1 what's the total that's been diverted from fee
2 money intended for the Patent Office by the
3 applicants that file their cases and what has
4 been applied to other things. In other words,
5 how much diversion has there been? My
6 recollection is somewhere between \$800 million
7 and a billion dollars.

8 MR. CRAWFORD: That's correct. It's
9 in that range.

10 MR. MOSSINGHOFF: So there's been
11 almost a billion dollars taken out of patent
12 applicants' pockets and trademark applicants'
13 pockets for other purposes.

14 MS. BOULWARE: And it's continuing.

15 MR. MOSSINGHOFF: You think it's
16 higher than that?

17 MS. BOULWARE: Jerry's talking about
18 over the -- since diversion has been --

19 MR. MOSSINGHOFF: Since the sin began,
20 how much have we sinned?

21 MR. CRAWFORD: It would actually have

1 been, had the income not fallen, I think we
2 would have been right at about a billion
3 dollars. With the income falling, that
4 dropped us just below a billion, in that \$800
5 to \$900 million range, had the income not
6 fallen in 2001-2002, it's in that range.
7 Frances.

8 MS. MICHALKEWICZ: Yes, Director
9 Frances Michalkewicz. Let me just clarify.
10 The \$60 million that you referred to before,
11 that's the difference between what's not
12 available in 2002, the \$341 million and the
13 \$282 million that's coming forward into 2002.

14 MR. CRAWFORD: Thank you, Frances.

15 MR. MYRICK: And all of that is based
16 upon the President's mark of \$1139 million
17 which may, in fact, be the House mark.

18 MR. CRAWFORD: That's correct.

19 MR. MYRICK: So there's another \$10
20 million in 2001?

21 MR. CRAWFORD: That is correct.

1 MS. BOULWARE: Any other questions or
2 clarifications?

3 MR. NORVIEL: I think that maybe just
4 to wrap up the real point there is that,
5 again, in a technology-based economy which
6 that is what our country has, it's very
7 important to have a patent system to support
8 it with issues of quality patents quickly.
9 When at least a billion dollars, it sounds
10 like, has been effectively diverted to other
11 things, it seems, particularly given that the
12 Patent Office is charging based upon what it
13 costs, they can't do their job effectively in
14 the current situation. That leaves a problem
15 for our economy.

16 MR. STERN: I do want to clarify what
17 I asked about before, and I'm not so sure I
18 understood the answer. I thought I heard Nick
19 say that the planned hiring level was to only
20 cover attrition for 2001, this past year. And
21 what I remember from the budgets is that there

1 were huge increases authorized by Congress and
2 the President in the examining staff. It's
3 those increased hires that are necessary in
4 order to get pendency down and to do a good,
5 quality job.

6 When we're authorized to hire people
7 and we don't, we threaten both pendency and
8 quality.

9 MR. CRAWFORD: I believe that in 2001,
10 we were going to hire -- was it 200 above
11 attrition?

12 MS. BOULWARE: Yes.

13 MR. CRAWFORD: But we lost two, three
14 months of time with the transition, and this
15 happens with all of these transitions. And it
16 was hard to recapture all of that. We did
17 make pretty good progress, but we didn't
18 recapture everything.

19 MR. GODICI: If we have a second, go
20 back and look at the records. But we had
21 originally -- this may be where Ron is coming

1 from -- had said that we would do attritions
2 plus 200, which would have gotten us at about
3 the 566 level. I think, as a result of the
4 cuts and the results of the cutbacks and the
5 continuing resolution that we had through the
6 beginning of 2001, the revision was to go back
7 to 360.

8 And what I was pointing out is that we
9 actually exceeded 360 and got 419 on board.
10 And the other part of the good news is we were
11 anticipating about 370 or 377 attritions, and
12 we only had 250.

13 So the bottom line is we were able to
14 net increase our examining staff by over 200
15 examiners, and we were able to do that in a
16 year where we had a freeze through five or six
17 months and limited funds for hiring going into
18 the fiscal year. That increase of 200 people
19 doesn't equal what we would have needed to
20 attack the 11 or 12 percent growth rate in
21 filings, and that, coupled with our inability

1 in the previous year, we actually lost staff
2 in the previous year, it's a starting point,
3 but it's nowhere near what we need in terms of
4 staff to attack that backlog that's been
5 developing as a result of that 12 percent
6 growth.

7 MR. MOSSINGHOFF: As a result of that,
8 in terms that people can understand, not the
9 experts at the Patent and Trademark Office,
10 people understand that as a result of the
11 diversion and the other problems, the fact is
12 that the time it takes to get a patent was
13 reaching record levels in modern times, in
14 recent times. We're going to be up to 38
15 months on the plan that this 2002 budget has
16 in front of us, and I would submit that's an
17 unacceptable length of time for U.S. industry,
18 for our technology industry.

19 MR. GODICI: I think the other issue
20 other than just the money, the aggregate
21 dollars, the other issue is the uncertainty of

1 the funding. It causes starts and stops in
2 whether it's hiring, which is difficult.
3 You're either on campuses or not. It causes
4 starts and stops with respect to IT. If you
5 have to delay an IT project, you probably lose
6 those people that have learned your business.

7 By the time you get the money to pick
8 it up again, you've lost ground because those
9 people have generally gone and you have to
10 start again, so it costs more. It takes
11 longer. It's another challenge with the
12 variation and the lack of sort of a stable
13 funding money.

14 MS. BOULWARE: Any other discussion on
15 the 2002 budget? Thank you.

16 MR. CRAWFORD: Thank you.

17 MS. BOULWARE: I think this group has
18 been through a budget discussion before. We
19 have a scheduled break right now. Well, we
20 have a scheduled break at 2:45, which I'd like
21 to go ahead and take a bit early now because

1 the next two reports we have on the E-
2 government and equality subcommittees are
3 going to be very important discussions.

4 And, also, I'd like to make an
5 announcement that I meant to make at the
6 beginning of the meeting, that the Patent
7 Office Museum is having an opening this
8 afternoon at 5:30, after this meeting is
9 adjourned, and, of course, everybody on the
10 Public Advisory Committee and I'm sure
11 everybody in the room is invited to attend the
12 opening of the new Patent Museum exhibit,
13 Patent and Trademark exhibits, I should say.

14 Because we're the patent side, I
15 should not forget about our trademark brethren
16 and sisters. So I meant to mention that
17 earlier. But if we can have our break a
18 little bit earlier, and then we will resume at
19 10 until 3:00, hopefully. And then we'll ask
20 Ron and Kaz, and hopefully Doug Bougeoise will
21 be here too, to discuss the electronic filing,

1 which is a very, very important initiative.

2 (Off the record.)

3 MS. BOULWARE: We'll continue our
4 session, and the next agenda item is a report
5 from the E-government subcommittee, and I
6 would like to recognize one of the members of
7 the public who came in while we were in our
8 proceedings earlier, Andy Gibbs, who was a
9 member of the E-government subcommittee and a
10 former member of the Patent Public Advisory
11 Committee. And I'll turn it over to Ron
12 Myrick.

13 MR. MYRICK: Thank you very much. I
14 just would like also to recognize Julie
15 Watson, who is a member of our subcommittee,
16 and Vern Norviel, who is also.

17 We've had a wonderful year with a
18 great deal of exchange with the PTO and
19 wonderful cooperation in providing us
20 information so we could give them input in the
21 end. Of course, the PTO was running their own

1 shop here, but we're more than happy to
2 comment and add suggestions here and there. I
3 think it's been a very productive process this
4 year.

5 What I'd like to do at this time is to
6 turn the meeting over to Kaz Kazenske and I
7 think Doug Bougeoise are both here. I think
8 Kaz is going to be the principal spokesman, at
9 least for the beginning, to present our report
10 of this subcommittee.

11 MR. KAZENSKE: Thanks, Ron. Doug and
12 I are going to kind of go through this. We're
13 going to cover two aspects. We're going to
14 cover the EFS, which is the electronic filing
15 system, and then try to give everybody a
16 little bit of update. I'm going to let Doug
17 maybe focus some on that because he's had some
18 extensive people with IBM and that looking at
19 some of the business case and some of the
20 issues that will be part of these slides.

21 So, with that, let me just start with

1 the EFS. First of all, there's an error here.
2 The total filers today is 392. We have 392
3 filers using EFS today, not that 806 that's in
4 that small box. I have no idea why that's in
5 the small box there. But we have 392 unique
6 users of the system that have actually filed
7 an EFS application to date.

8 The other next slide, I just want to
9 show some volumes here. Ron asked, there was
10 an issue here, has there been impacts since
11 September 11. There certainly has in E
12 filing. The filings on our electronic systems
13 since that date have dropped off
14 significantly. Maybe you have some input on
15 those. We seemed to be rising up until that
16 point in time, but we had a significant drop
17 after that point in time. If you notice to
18 date, though, we've got about 1750
19 applications that were filed by EFS to date in
20 that.

21 I'm going to talk about two aspects

1 here. I think last time, Madam Chairman, we
2 were talking, there was going to be a new
3 release of EFS here, both of the ePAVE, which
4 is the bundling program for filing, and the
5 PASAT, which is the authoring tool for that,
6 which puts the document into an XML. Since
7 that time, though, the update, we've been
8 going through some testing in that. We're
9 going to be releasing the ePAVE separately
10 from the PASAT and delaying the PASAT a few
11 more months to work with the contractor here
12 to get some bugs worked out.

13 And Doug's had numerous mission
14 meetings with them, and I've had a couple
15 myself with them and my staff on this.

16 MR. BOUGEOISE: In a nutshell, the
17 bugs that we're working through are related to
18 table handling and the fact that the
19 particular applications where it's multiple
20 versions of WordPerfect and Microsoft Word,
21 five, in fact, and those applications support

1 tables differently. So since we have to solve
2 that problem five times, five different ways,
3 the contractors haven't been the challenge in
4 working through that. We need a little bit
5 more time to work through it.

6 MS. BOULWARE: You mean tables, like
7 tables in columns and rows?

8 MR. BOUGEOISE: Yes.

9 MS. BOULWARE: I just didn't know
10 whether this was a new buzz word or whatever.

11 MR. KAZENSKE: Over my signature last
12 week, letters went to six unique users that
13 are our heaviest users of EFS to beta test the
14 ePAVE. Those letters are out there, and we're
15 waiting for their response. As soon as we
16 receive it, we will mail them that new
17 software for them to test in a work
18 environment and ask them to file a certain
19 number of applications. We believe that will
20 take about three weeks to get the right
21 feedback from them, and then this will be

1 released to the public.

2 What is in this new version of ePAVE?
3 You can now file a provisional application
4 with it then, which we've had a lot of
5 requests for. Multiple assignments on that,
6 you can have separate covers for those
7 assignments. That was one of the -- I'm just
8 pointing out a couple of the things on this.
9 Enhanced performance, things like which
10 directories. There was a lot of concern of
11 how things were stored by directories here,
12 the drawings and that.

13 This gives a lot of flexibility of
14 where you want to store those documents in
15 total, in which directories. And the last one
16 was the number one item that we wanted, that
17 the system work on a network instead of on an
18 individual hard drive of a PC. So this would
19 allow you to have this up on a network so a
20 person that is composing does not have to be
21 the same PC that transmits. They can be on

1 different work stations to do that. These
2 were some of the bigger issues.

3 We really worked about 52 bugs in the
4 system on this ePAVE through the new software.

5 MR. STERN: Could you remind us what
6 ePAVE and PASAT stand for?

7 UNKNOWN: ePAVE is the package itself,
8 where it bundles all of the pieces of the
9 application and readies it for transmission to
10 the Office. PASAT is the author's tool.

11 MR. BOUGEOISE: What those letters
12 stand for, I'm not sure, but that's the
13 definition.

14 MR. KAZENSKE: Anyway, that should be
15 to the public here fairly quickly if we get
16 through the beta. Now, if we do have problems
17 with the users in the beta, we're going to try
18 to clean those up before that would be
19 released.

20 On the PASAT, the next slide, this is
21 what Doug was talking about. We're looking at

1 a January release now on this PASAT. There's
2 some problems, but the release, these are the
3 issues we're looking at improving and making
4 shortcuts in some of these. One of the big
5 issues in the authoring tool is make it more
6 Microsoft Word, so they have same
7 functionalities as Word, make it look alike.
8 And we're trying to do that in this.

9 Both Doug and I have made a commitment
10 with the contractor. We're sending small
11 staffs to their office, sitting with them,
12 physically doing this for about a week of our
13 time to make sure this January date happens
14 out of this. We are putting our resources
15 with theirs at the same time on this to try to
16 make that happen.

17 I'm going to move here, then -- oh, I
18 have one more on this. This is the biggie.
19 This is trying to get international uniform
20 standards. We've been working with WIPO and
21 the trilateral offices in this. There is a

1 trilateral meeting and WIPO will be at that
2 meeting in November this year.

3 We want to finalize Annex F, which are
4 the standards of electronic filing, so WIPO
5 can publish that. This also has a big effect.
6 If you remember, we were putting an RFA on the
7 street that if vendors were interested in
8 this. One of the issues that, that is not
9 moved forward is, before they move forward,
10 they wanted to make clear what all the
11 standards are. These will be the
12 international standards for standardizing
13 filing protocols for the DTDs, which are the
14 formatting of the documents and the standards
15 on that.

16 The purpose here is you may make your
17 content once, use it many times to file in all
18 of these countries. It will be fairly
19 standardized there. Somebody said, will this
20 allow an EPO line, if I'm on EPO line, can I
21 directly file to the PTO. Ultimately, we

1 would hope that would be the case, but today,
2 no. One of the biggest issues is the
3 certificate. We do not have international
4 recognition of common certificates around the
5 world on these things. Now, that would be a
6 discussion with WIPO to start looking at that.
7 That is a discussion item.

8 But what this will do is standardize
9 content. That's not saying that you'll have
10 other what I call bubbles to file in the EPO.
11 Example, you might do a U.S. case, but when
12 you go to an EPO case, in the U.S. case, you
13 don't have fields like name the countries, the
14 protection. You'll have a field in that, that
15 you'll have to fill out. So there are side
16 issues where there are slight differences in
17 practice.

18 Where there is commonality, though,
19 the data is transferable. It is common data
20 and it may be moved from one to the other
21 systems without reconstruction between those

1 systems. And we're hoping to standardize
2 across those issues. Hopefully in this
3 November meeting, we can come to a total
4 agreement, and that will be published for WIPO
5 common. I believe we're hoping to get that in
6 the agreement in November in trilateral.

7 So the point here is we've got
8 multiple usage, whether it's a PCT, whether
9 it's an EPO case. You notice JPO isn't there
10 right now, but JPO has made a great step in
11 the last meeting. When we first started this
12 process in this discussion, JPO said it would
13 take approximately 10 years before they would
14 be standardized. At the last meeting, they
15 would hope to join this in four years to be
16 standardized on some type of common formatting
17 of these within a four-year period. We'll see
18 on that.

19 This is where we're going to jump to
20 TEAM. And I think with Doug here, he can
21 explain some of these. Really, TEAM is a

1 myriad of systems that we currently have that
2 have to be integrated into place to allow us
3 to do things. The EFS, which I've just talked
4 about, that's the filing of an application
5 over the net. OACS is the acronym, and that
6 is the software that is being used for patent
7 examiners to compose applications.

8 I believe the biggest issue that's
9 going to happen here is this will be put up on
10 a central server for central storage of this.
11 These are all in DTVs. This will be the
12 mechanism, then, that you as an applicant
13 would start receiving office actions back
14 electronically because this would be the
15 central storage of those office actions.

16 I'll let you talk about the next one,
17 OEMS, the ordering system. I believe that's
18 to get the documents and stuff back and forth
19 that you've ordered in this system.

20 MR. BOUGEOISE: And for the
21 assignments to share electronically, so they

1 don't have to be manually entered.

2 MR. KAZENSKE: The PACR system, this
3 is the system, even if everything were
4 electronic, we're still going to get some
5 applications coming in on paper. This is the
6 scanning operation that will take the paper
7 systems and move them to an electronic
8 version, first as an image and then OCR and
9 move to a digital, so we have one format to
10 operate across the Office.

11 The PAIR system, that's the
12 application information data which we hope to
13 use, as it's up on the net now where you can
14 go in and look at statuses, the status of the
15 application and check your application on the
16 net.

17 PALM is the total location and
18 management system. This is the system where
19 we'll track the status of the application,
20 where the applications are, what examiner it's
21 assigned to, what art it's in.

1 The RAM is the finance issue, the
2 payments of fees out of that. And the last
3 one is the one we're really a whole new
4 system. This is the total file jacket
5 electronically, which is going to be some
6 challenge to do on part of that. Where do we
7 pull that data from, where do we get it. This
8 is where you'll have basically everything
9 wrapped as you do today. Search for examiner
10 searches, status of claims, all of that, all
11 of the amendments, which we're calling an
12 electronic file wrapper piece of that. Do you
13 want to add anything?

14 MR. BOUGEOISE: Yes. As you can see,
15 with so many of these applications already
16 existing and then one new application being
17 added, what it requires is to build the layer
18 underneath it technically so that they all
19 integrate together and share information
20 seamlessly and don't impose any additional
21 burden on the user to transfer that

1 information around or to access it very
2 readily. It has some back-end pieces which
3 are very significant which have done well, and
4 they will be done well, are transparent and
5 the user never sees it.

6 MR. KAZENSKE: The next one that we've
7 outlined is challenges to do this in this time
8 frame. Certainly, getting through our
9 requirements of labor relations because
10 there's going to be a lot of changes of how we
11 operate in this working environment.
12 Controlling the scope of this project.
13 Everybody's going to want their whistles and
14 bows on here. It's not going to probably be a
15 system that has every whistle and bow by '04
16 for individual out there. It's going to be
17 controlling scope somewhat on that.

18 Customer acceptance, I think in this
19 room I've talked to some of you, big issue,
20 getting out there, making sure that this is
21 what the applicants can work with and use.

1 This is going to be a big challenge because I,
2 personally, have been around a lot of places.
3 It's going to be very difficult for all of the
4 different baselines I've seen, fire laws I've
5 seen, all of those various issues to get
6 through some of this.

7 Our move. I think Nick at the
8 beginning talked about we're going to be
9 moving in part of this process. Managing that
10 move and managing the development and making
11 sure we keep those systems in two locations as
12 we go through this process. I believe Doug
13 talked about that. This will be a big
14 challenge I think for him on that one.

15 MR. MYRICK: Yes. But on the other
16 hand, that is a real opportunity to build in
17 everything you could use between now and the
18 year 2040 in the new building. With all the
19 complexability to move to a new building out
20 of 18 has got to be a marvelous.

21 MR. KAZENSKE: Once you're there.

1 It's making that transition.

2 MR. MYRICK: And also identify now
3 that these creative terms are possible. If
4 you set that building up for 40 years of IT.
5 I don't know what IT is going to be like 40
6 years from now, but the building ought to be
7 ready for it.

8 MR. KAZENSKE: The staffing, it's just
9 keeping the expertise we need. I think this
10 is about the biggest challenge today is
11 keeping IT expertise in this environment and
12 what he needs to do that.

13 Customer expectations on this, I think
14 some of this is going to need to be a lot more
15 open with communications as we get to that a
16 little bit so they communicate exactly what
17 we're putting out and what they will be
18 working with, not just throwing things over
19 the transom, so to speak. It's much more of
20 an outreach.

21 The amendment process, everybody

1 thinks this is one of the most difficult
2 challenges out there is the amendment process
3 and keeping a legal record of everything
4 constantly at what point in time. One of our
5 biggest challenges to have that done in the
6 EFW and having it done right.

7 MR. BOUGEOISE: To give you some idea
8 of the complexity there, we're looking at very
9 industrial-strength COTS product, commercial
10 off-the-shelf software, I'll document them,
11 which is repeated to be the best in the
12 industry for him on very large scale, large
13 volume type of an application. And we very
14 well may present the most significant and
15 challenging requirements on that system
16 anywhere in the world.

17 We have that application in the lab
18 and we've made a lot of progress, still have a
19 couple of hurdles to clear, but we've cleared
20 about 80 percent of them already in terms of
21 concerns that we had initially. It's

1 certainly a major taxing use for that
2 application as well, but their technical
3 people -- their top technical people are on
4 site working with us day in and day out. They
5 continue to be involved with we from the time
6 that we deployed this and significantly
7 improved our capabilities.

8 MR. KAZENSKE: The next one is
9 Esther's biggest challenge. It's on the
10 operation side of the House, your parallel
11 processing work, meaning one application the
12 examiner will have will be electronic, the
13 very next application may be paper. As you
14 will have dual systems for a time here, in
15 view of the scheduling, to meet the date. In
16 operating in a dual process, there's going to
17 be a significant challenge, not only for the
18 examiner, but for moving a case to issue.
19 Triggers, how do you make sure that, that
20 electronic case is there. We know how to do
21 it on paper today.

1 All of those technical programs behind
2 that for dual systems and the triggering
3 mechanisms to make things happen. I think on
4 the operations, it's one of the biggest
5 hurdles we have there. Technical
6 implementation, what this was referring to,
7 and I'll let Doug do it, is you just saw the
8 myriad of systems that's doing. How do you
9 phase those, how do you develop those, which
10 one comes to the backbone, in what sequence do
11 they come to the backbone. I'll let you
12 expound. But this gets to your side of
13 coordination, project management, bringing all
14 those systems into one at the right time, at
15 the right moment.

16 MR. BOUGEOISE: Yes, the coordination
17 is the challenge. We had configuration
18 management systems which we used to help us
19 keep track of the various versions of the
20 software components during the process, and as
21 we go through our testing cycle, there's very

1 well defined ways to integrate those in to
2 make sure that we're aware of changes and
3 where each version is so that we don't fix
4 something and introduce a change that we've
5 already fixed before, which sounds simple, but
6 it's very difficult when you're working with
7 that many applications at the same time.

8 MR. KAZENSKE: Always there's
9 exceptions. There just is. And the biggest
10 issue here is trying to identify them so we
11 can address them. One issue here is, say, you
12 file electronically, something does happen,
13 who knows, and you want to file a paper as
14 your response. We have no mechanism. How are
15 we going to get that in through an electronic
16 system, what's going to be the requirements
17 there, how are we going to handle that when no
18 paper file exists out of that.

19 Or you're in the reverse. You file
20 electronically, and you decided due course,
21 you know, I really like this electronic, and

1 start filing amendments, and we have nothing
2 in the system to identify those. These
3 exceptions we're trying to work through here,
4 which we call mix mode exceptions right now.

5 The last one, we have teams, and I'll
6 get to that. It's called the legal. Should
7 we want to change processes or other parts of
8 the law to make this work in the best way
9 possible, the legal aspects have tremendous
10 lead times, particularly if they should be
11 statutory and we need those changes. Trying
12 to work through and minimize those to make the
13 system as friendly as possible and yet as
14 efficient as possible and meet these lead
15 times.

16 Anyway, we just wanted to point these
17 out to all of you. These are what's been
18 identified as the most, the top challenges to
19 this. We seem to be working on it pretty
20 closely here. I know we're meeting weekly on
21 these things. Yes, Jerry.

1 MR. MOSSINGHOFF: If you end up with
2 an electronic app that you get and somebody
3 wants to create a prosecution history file
4 wrapper, we call it now, to present to the
5 court, in the case you have to do that, can
6 you print out exactly what happened as you
7 went through, where you have amendment A,
8 amendment B, amendment C?

9 MR. KAZENSKE: That's what we're
10 trying to do. We're trying to work through
11 that in the amendment. And what we would hope
12 is not give you a paper, but hand you a CD or
13 whatever.

14 MR. MOSSINGHOFF: Ultimately, probably
15 the District Court in South Dakota is going to
16 want a piece of paper with a seal on it.

17 UNKNOWN: What's complicated here is
18 what you see as the current process is
19 probably not the way it is best implementable
20 electrically. So the complexity here with
21 respect to the due process that would have to

1 be designed is going to be one where, instead
2 of, for example, you have this submission of
3 documents, and your file wrapper is a
4 collection of these integral documents,
5 regardless of what media it is, in electronic
6 environment, the most efficient way is to have
7 the submission combined and have it torn
8 apart, so to speak, and stored separately, and
9 then when you want to create a file history,
10 essentially, you bring the components that you
11 need to reconstruct each of those phases of
12 the prosecution to produce right now what
13 might look like electronic replica of the
14 paper prosecution history.

15 So you'll need to be able, on the
16 output end, to have the computer generate an
17 output like that. But the way the computer
18 system probably would work is it won't store
19 these documents as integral documents because
20 the capacity to do that eats up a substantial
21 amount of memory, plus it's so inefficient in

1 terms of the sluggishness of being able to
2 manipulate the records, that you have to use
3 more of an associated data structure, and
4 that's a real challenge because there isn't
5 any real system out there like that now. This
6 is what we have to get to.

7 MR. MOSSINGHOFF: Ultimately, an
8 unsophisticated District Court is going to
9 want to have a piece of paper that's got a
10 seal on it. Can you put a seal on a CD-ROM?

11 MR. KAZENSKE: That's an issue we're
12 addressing right now in another forum.

13 This is a thing that's come up from
14 the executive committee of the Office under
15 next direction here. And Doug and I have
16 started putting this -- actually, it's
17 actually running now, the administrative
18 structure of this program inside the Office.
19 We've created a steering committee, and I'll
20 get to this, a coordinating committee, and a
21 series of working groups under this.

1 On the steering committee, I've
2 chaired that, but its membership is the senior
3 executives from the various parts of the
4 Office that sit on that. We meet once a month
5 or on an as-needed basis at the direction of
6 the coordinating committee. We set the policy
7 direction, we bring the issues to the
8 executive committee for answers, decisions on
9 that, we help guide the coordinating committee
10 in their direction here, and we monitor
11 progress every month on every program.

12 If you go to the next one, this is a
13 coordinating committee and the number of
14 working groups. This committee is attended by
15 the chairs of every one of these working
16 groups. And we have the working group here on
17 HR/LR, we have an automation, we have a
18 training, we have a publication, these are
19 operational issues for the PUBS, the exam, the
20 pre-exam, the legal, and a customer outreach
21 working group, which is internal and external

1 for the customers on this. Identifying time
2 lines, putting the Gant charts, where's the
3 miss queues, where's the overlaps, where are
4 we missing it.

5 Those are being prepared in Doug's
6 office as we speak. Each one of these groups
7 is identifying that right now. They're also
8 responsible for the first draft of what's
9 called a ConOps, of how the operation system
10 will work. It's a concept of operations on
11 this. We're in the process of sorting
12 through. You can imagine when you've got this
13 many working groups, it's like a bunch of
14 people touching an elephant, and we want one
15 document that goes together, they each have
16 their own views of this, from their
17 perspective on that.

18 Everybody in the business processes
19 are represented. This coordinating meets
20 every week at 2:00 on Tuesday. Every week the
21 heads meet to go through progress. And I've

1 been attending part of those, part I don't. I
2 don't know if you've sat in on any of the
3 coordinating.

4 MR. BOUGEOISE: Not the last few
5 weeks. You'll notice that each one of these
6 groups is targeted at, if you notice, the
7 challenges that we went through before, so it
8 enables those groups to maintain the focus on
9 driving through the issues associated with
10 each one of those challenges and coming back
11 to the steering committee with recommendations
12 on how we manage those risks and resolve those
13 issues so that we'll stay on target.

14 MR. KAZENSKE: Crosscutting
15 assignments on this for the ConOps, the
16 working groups are working on this, as I said,
17 the high-level requirements and beginnings of
18 discussion of beta testing or how we'll run
19 some beta tests on this. Some of these
20 working groups are meeting every day. I mean,
21 they are literally meeting daily to identify

1 issues and discuss it between themselves on
2 that.

3 UNKNOWN: Have those working groups
4 been existence for a long time or is that a
5 recent development?

6 MR. KAZENSKE: Just recent.

7 UNKNOWN: They just started?

8 MR. KAZENSKE: So we're asking for you
9 to put some members here on those. The
10 concept of them, a letter went out, we're
11 asking for unions to be on these groups, one,
12 in an advisory capacity at the highest level,
13 and that falls from I think the Millennium
14 Agreement, but there's advisors. And then
15 we've also asked them to please put members, I
16 think Ron worked on some of that, identify
17 members to every one of those working -- not
18 every one, for the working groups that are
19 particular to them, I think for MT Hill, six
20 working groups and hope that there's four
21 working groups that are specific to that. I

1 would like to put members, working members on
2 those working groups to work with those
3 employees of that and representatives on that.

4 MR. MOSSINGHOFF: This is, I'm sure, a
5 very old-fashioned kind of question, but as
6 one who sees that billboard come up too often
7 on my machine, this machine has performed an
8 illegal operation and is going to be shut
9 down, if the problem persists, call your
10 vendor. Hello, Microsoft, I've got a little
11 problem here. Will there be in storage
12 somewhere, somebody files an amendment, let's
13 say, the second amendment in this case, where
14 it will be in deep storage, a way to retrieve
15 that? I don't mean in real time, I mean just
16 on memory somewhere in a cave in Pennsylvania.
17 Worst case happens, you know, some kind of a
18 pastry, how do we bring the world back
19 together again with all of this electronic
20 stuff?

21 MR. BOUGEOISE: I have two answers,

1 actually. The mission critical nature of the
2 data associated with this system, we have the
3 requirement to make sure we have a backup, a
4 way of backing up that information.

5 MR. KAZENSKE: It's something that I
6 think we will have to address in this as we
7 move the implementation.

8 UNKNOWN: You can't say yes to that
9 question. I think the Bar might be very
10 concerned about it.

11 MR. KAZENSKE: Sure, you're right.
12 Next, maybe you want to talk, Doug, on this
13 piece here.

14 MR. BOUGEOISE: Yes, I can talk to
15 business case. We commissioned IBM Global
16 Services Group to come in and help us take a
17 very objective look at potential benefits of
18 this system. And we looked at the existing
19 applications from a technical perspective as
20 well to make sure that we understood the
21 technical complexities when putting these

1 things together.

2 But back to the business benefit side,
3 we identified -- we projected out, using a 10
4 percent year-per-year growth rate in the
5 filing of applications, what the costs would
6 be of handling all this paper in out years,
7 and those years specifically were '03 through
8 '08. And then we projected what it would be
9 with the system and summed up those cash flows
10 and had identified about \$119 million in costs
11 avoidance over that time period.

12 And then when we netted in the cost of
13 the system, we had \$33.8 million in net cost
14 avoidance over that time. So that translates
15 to ROI using OMB's method of 31 percent. So
16 even at that estimate, we would be in a 30
17 percent plus ROI. The break-even point is
18 important to note in our analysis where we
19 identify the 44 percent of patent applications
20 must be filed electronically, starting in '04
21 for TEAM to recover its costs. That's really

1 our break-even point, the electronic rate of
2 44 percent. So we're working on some
3 strategies related to that as to how do we
4 continue to encourage electronic filing to
5 conclude our financial objectives.

6 UNKNOWN: In view of that analysis,
7 where does it show the biggest cost savings?
8 What are the activities where you're actually
9 saving money?

10 MR. BOUGEOISE: It's in the contracts
11 or contractors that we have that handle paper.

12 MR. KAZENSKE: The biggest costs are
13 all of the paper contract managements. That's
14 the biggest ANOIPPE, pre-exam area. Both of
15 those two areas of handling those papers,
16 those contracts are growing by tens of
17 millions. That's the biggest savings. Their
18 administrative costs of the paper system.

19 MR. BOUGEOISE: There's also a
20 significant chunk associated with formatting
21 and data handling and going from paper to

1 publication on the back end of the process
2 involved.

3 MR. MYRICK: I'm delighted that --
4 well, I don't want to prejudge the end report,
5 so I'll save my delight for the end. But I
6 should like to see that IBM report. Is that
7 going to be available?

8 MR. BOUGEOISE: Yes, we can make that
9 available in a matter of days.

10 MR. MYRICK: Good. Because I think
11 it's extremely advantageous that we have such
12 an independent look that substantiated this at
13 that level.

14 MR. KAZENSKE: The next slide here is
15 the technical assessment. This is from Doug's
16 side that was done through -- I think had some
17 outside independent review.

18 MR. BOUGEOISE: Yes, IBM, they looked
19 at the technical architecture as well. I
20 mentioned looking to the existing systems, but
21 also looked at the security architecture as

1 well to assure that we go from the IT security
2 requirements associated with maintaining the
3 integrity of all of this critical data.

4 And our network architecture, as you
5 might imagine, with this much information
6 online, it is going to strain the network
7 architecture as well with additional traffic
8 that wasn't there before, so we have to take
9 that into consideration and design
10 accordingly.

11 We've developed as part of that
12 analysis a conceptual view of the future
13 technical architecture. And without getting
14 into specifics of the technology that we're
15 looking at, I do believe that it will enable
16 us to use an incremental development kind of
17 approach where we can potentially -- you can
18 go into production with some back end
19 integration modifications that will be
20 transparent to the user earlier than the '03
21 time frame so that we can actually phase into

1 production some aspects of this system and not
2 have to take it all at one time when you
3 significantly increase your risk.

4 So there's some very positive
5 approach, kind of project management approach
6 in coordination kind of conclusions that came
7 out of this technical assessment as well, so
8 we're very, very pleased with the results.

9 MR. STERN: One last question in this
10 area, technically. EPO has done a lot of
11 this. Is there anything that it has been
12 possible to just copy instead of going off and
13 developing our own entirely?

14 MR. KAZENSKE: Let me address that.
15 EPO has done none of this, absolutely none.
16 They had a unique system. They scan an image,
17 period. They do not have a digital system.
18 So they have done none of this. As a matter
19 of fact, they're looking at this man real
20 close here. All of their applications are
21 merely an image. They scan.

1 MR. STERN: So we can look at it the
2 other way and say that we'll a commission when
3 we sell them our software.

4 MR. BOUGEOISE: We'll spin off a new
5 business.

6 MR. KAZENSKE: Let me just say, in
7 view of these two extensive IBM reports, we
8 did ask them, because I was meeting with Doug
9 in both of them, give us some feedback, what
10 do you think we've done so far good, where's
11 some holes, where do you want us to look at,
12 just from an independent review. One of the
13 biggest things they thought is the
14 structurally we've aligned with the committee
15 structure and how operations and CIO is
16 forming jointly on this because this is one of
17 the strongest teams they've seen, even in the
18 private sector.

19 There was a huge kind of pat on the
20 back for us for what we've done. Where they
21 thought we would wear some of the

1 recommendations, I already mentioned one. The
2 main recommendation there is only those needed
3 for '04. Don't keep putting every whistle and
4 bow out there. High risk to keep adding once
5 you've developed your ConOps out there what
6 you want for '04. They believe we should
7 establish a project office to help on this
8 coordination committee for management of the
9 day-to-day coordination of all the tasks
10 against the requirements we need, and there
11 should be a small office established to do so.
12 I believe in Doug's organization, and then
13 they should be support back to the
14 coordinating committee to keep tabs of all of
15 this and put this coordination together.

16 They really need and it was emphasized
17 almost in a marketing aspect to put some real
18 professionals to reach out to external
19 customers and internal customers on a constant
20 basis and put a lot energy to just keeping
21 people appraised, not whether you've

1 accomplished something or not, just where
2 you're at, where you're going, how it will
3 work, as much data as you can get out there in
4 a marketing way under this.

5 And the last one, a recommendation
6 that there be a small organization put
7 together for risk management and how we'll do
8 on risk management and then should be
9 organized, I believe, in our organization as a
10 small organization of people for risk
11 management of this system against what would
12 we do in the alternative on this.

13 And those were the recommendations
14 from them on this, and we are going through
15 this. All these have budget issues and stuff,
16 but we're evaluating through this process now.

17 The first slide, the numbers, October,
18 November '01, not '02. We're hoping within
19 the next three weeks to have the first draft
20 of a finalized, and we're pushing hard. We're
21 putting these teams together and pushing them

1 now. It may be a month at the most, but I'm
2 looking for three weeks.

3 We want to pilot some technical
4 aspects, pieces here that really need some
5 feedback from certain people in the March time
6 frame. We want to be able to incorporate
7 what's coming out as Annex F and make sure
8 that's all integrated in from comments back
9 and everything on the international standards
10 by September, so making sure we're consistent
11 with what we're doing now.

12 We'll be beta testing this October
13 '03. We will begin production January '04.
14 It will probably be a single TC. Out of that,
15 by the end of '04, sometime in that year, the
16 whole Office will be operational with TEAM,
17 having the capability to manage and accept
18 electronic applications and to communicate
19 electronically. That's the
20 high-level ConOps as of today to meet the
21 Congressional reports and where we want to go

1 in the next budget cycles.

2 I think that's it, and I'd love to
3 answer all the questions now. Yes, Madam
4 Chairman.

5 MS. BOULWARE: I wanted to ask Ron
6 Myrick if he wanted to have any follow-up on
7 this.

8 MR. MYRICK: Well, yes. First, I'd
9 like to open up the members of the
10 subcommittee and their questions.

11 MR. NORVIEL: Actually, I was going to
12 submit a comment. I just wanted to point out
13 that the plans that we saw when we first
14 started this whole committee, actually, the P-
15 PAC, are I'd say extraordinarily different
16 from what we saw today. And I wanted to
17 simply say that I'm really very pleased with
18 what I've seen here. This group has acted in
19 an extremely professional way. This is
20 dramatically, I think, different than what was
21 originally proposed. What is proposed here

1 will change, I think, the way that the patent
2 system is conducted in this country in a very
3 positive, profound way.

4 MR. MYRICK: I'd like to invite our
5 honorary participant, Andy Gibbs, and see if
6 he has something to say.

7 MR. GIBBS: Just a couple of quick
8 questions. With the parallel processing, have
9 you requested the affects on the budget and on
10 the pendency?

11 MR. KAZENSKE: Pendency, since
12 docketing is first in and first out, it's a
13 process issue, but budgeting we have built in
14 on that. There is some cost. As we build the
15 ConOps, though, you'll see, this was getting
16 us to '04, but the ConOps will go out beyond
17 that. And the piece beyond that is taking
18 that paper and making it electronically so
19 everything comes in, and we will start
20 operating, whether we get it electronically,
21 in paper or not, in an electronic environment.

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Then those budget costs will start coming down, Andy, but there is some added cost of operating these dual systems for a couple years in the budget.

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MR. GIBBS: During the operation, what will be reported? Are you running parallel as a validation, not really going on line live with electronic or are you going to have a paper and electronic version of everything.

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MR. KAZENSKE: There will be certain patent applications which will be totally paper. There will be other applications totally online, totally electronic. There won't be any crossing. There will be two systems. And if you notice that one challenge to make that bridge, it's one of the biggest challenges for exceptional work. What if people cross that bridge, how are we going to handle that in mid prosecution.

21

MR. GIBBS: And that starts with EFS?

1 MR. KAZENSKE: Yes, it starts with
2 EFS.

3 MR. GIBBS: I understand. Thank you.

4 MR. MYRICK: Thank you. Let me see,
5 are there any other questions?

6 MR. STERN: I am curious as to how
7 much this all costs. Nobody has mentioned any
8 money figures. What is it that's been
9 budgeted for between now and '04? What do you
10 expect it to cost between now and '04?

11 MR. BOUGEOISE: It's about \$30 million
12 or so between now and '04, maybe even a little
13 more than that.

14 MR. STERN: Sounds like a bargain.

15 MR. BOUGEOISE: The number I have in
16 my head is \$85 million, which is the total
17 six-year cost for delivering in increments.

18 MR. STERN: The bargain just got a
19 little more expensive. \$30 million to \$85
20 million?

21 MR. BOUGEOISE: That still nets \$32

1 million in cost avoidance, so the benefits are
2 still \$119 million, which would present a 31-
3 percent return on investment.

4 MR. MYRICK: If I may comment, one of
5 the reasons why I was asking about
6 accessibility to the IBM report, because I'm
7 sure all these numbers are in that report.
8 Absent any objection from the Office, I'd like
9 to make that, part of that report, part of our
10 operational record from which we can also draw
11 for the report at the end of the year.

12 I believe we asked the question of the
13 Office is there any concern they would have
14 about us being able to draw from that report
15 for us to make our P-PAC report at the end of
16 the year.

17 MR. GODICI: At this time, I don't
18 have any problem with making that -- I'll
19 check with our general counsel to see if
20 there's some contractual issue, but I don't
21 think so. And, if at all possible, we will

1 make part of the record.

2 MR. MYRICK: And so we'll leave it
3 contingent, if you don't mind, Madam Chairman,
4 on the availability of that. Obviously, it
5 may have restrictions on it, but I suspect it
6 would be a useful set of data that we can use
7 in doing our report at the end of the year,
8 and would supply some very worthwhile
9 background. I think it also substantiates
10 that the Office has done a very professional
11 job.

12 I have to join Vern in his comment, as
13 I was trying to say earlier and a little
14 prematurely, I am delighted with what we've
15 seen here. The cooperation that we've seen
16 with the Office has been extraordinary, and
17 the program they're putting forward here is
18 visionary. It's also gutsy. And that's
19 something we should see in our government
20 agencies more often, perhaps, to actually
21 stick their necks out and try to accomplish

1 something that would be a really forward.

2 I think this is a way forward. To see
3 that it has a 31-percent return on investment
4 with an independent agency is to be
5 remarkable. The whole payback, though, hinges
6 on one thing. First, that the schedule is
7 accurate and that the cost estimates are
8 accurate. But I think the real thing it
9 hinges on may be that EFS works. I think it's
10 just very important that we all work together
11 to find a way that sells EFS to the public.
12 And I think the recommendation that the team
13 had, the IBM team having a marketing program
14 for this whole effort was extremely insightful
15 in that as soon as we get EFS out there
16 working, with ePAVE and PASAT improved. We
17 are really going to have to sell that to the
18 population because the break-even point on
19 them depends upon 44 percent of the patent
20 applications filing on EFS, starting fiscal
21 '04.

1 When does fiscal '04 start?

2 MR. BOUGEOISE: It's October '03.

3 MR. MYRICK: '03. Two years, so we've
4 got a lot of sales job to do, and I think
5 that's going to be a major effort. I recommend
6 that the Office have a major effort to sell
7 EFS to the user community. We'll certainly do
8 our part, and I think in the industry, as we
9 become familiar with it and can sell it to the
10 law firms, but it's still an issue of selling
11 it to the industry to get them to buy into it.

12 Frankly, I have to stop for a minute
13 and say I personally sat down just for the
14 heck of it the other day and filed an
15 electronic trademark application, and what a
16 delight it was. Totally delightful. If we
17 can get patents on it, with that kind of a
18 standard, I can't imagine why we can't sell
19 EFS to everybody. It was magnificent.

20 I complement the trademark side at the
21 Patent and Trademark Office. That's all I

1 have. I think that concludes our report.

2 MS. BOULWARE: Thank you.

3 MR. NORVIEL: Actually, I have one
4 more comment to add. The Patent Office does
5 have the ability to sell it in a different
6 way, which is the same way the SEC sold their
7 electronic filing system. That probably is
8 not something you'd want to do in 2004 because
9 it sounds like there may still be some places
10 where people need to work some things out and
11 so forth. But at some point, in the not too
12 distant future from that point, at least for
13 large entities, it would seem to me that it's
14 not at all inconceivable the Patent Office can
15 drive those rates of return by simply making
16 electronic filing a rule as other agencies
17 have done.

18 MR. KAZENSKE: I just wanted to say
19 one thing, back to Madam Chairman, to the
20 establishment of this group with Ron and Vern
21 and Andy, from the Office side, this has been

1 a real pleasure. We thank all of you because
2 I think we've had some very meaningful
3 discussions and excellent feedback from these
4 people during these subcommittee meetings, and
5 hopefully that will continue as we go through
6 this process to make that happen.

7 And I'd like to add one thing to
8 Ron's. He's identified the critical elements,
9 but, in my experience, there's one more to
10 add. That the money is delivered to make sure
11 this continues.

12 MS. BOULWARE: I have a question for
13 you. Right now, we're looking at the ePAVE
14 release fall of 2001 and January for the PASAT
15 release, which is basically right now. And I
16 hope that your working groups, the one that's
17 the customer working group is coming up with
18 something fairly quickly to get out of the box
19 with these new electronic filing procedures.
20 And I'd like to know a little bit about that
21 because one of the things that needs to be

1 considered is how you're going to deliver this
2 to your user group throughout the country.

3 And I've said this before that I think
4 sometimes we get a little more eccentric
5 sitting up here, having these meetings. And
6 coming from Texas, we've got a lot of filers
7 in Texas, but if nobody's going to show up
8 there to kind of beat the drum and be of
9 assistance for people who are pulling their
10 hair out and they can't get the system to
11 work, I mean, they'll just stop. So I'd like
12 to know if you have a program that's going to
13 be ready pretty quickly on these and, if not,
14 when you're going to have that program ready,
15 for ePAVE and PASAT.

16 MR. KAZENSKE: That's something we're
17 discussing, as a matter of fact. If you
18 notice e-filing, we've learned one thing, and
19 we did about 11 cities. As soon as we sent a
20 team to a city, filing went up. Every place
21 we didn't send a team are struggling. The

1 biggest thing we're learning, though, in our
2 '02, most of you see the budget and what's
3 happening and it's on the Hill, it's a unique
4 experience for me and I think my staff, coming
5 from government maybe is the experience.

6 When people get a product, whether
7 they're given or they buy, they expect there's
8 a service commitment behind the product. That
9 is not normal operating procedures in the
10 government environment. We give a product and
11 then, when it's not working, you can't call
12 Microsoft Jerry or something. People expect
13 that. That is something we are now working
14 on, to say how do we have a service type
15 function for that, do we send people out.

16 But one issue we're working through on
17 that is -- I don't see our general counsel
18 here -- there are some issues about how that
19 service because we're looking can we do it on
20 a cost efficient or every independent
21 inventor, do send out. I don't know. There

1 was an issue on that, and we're trying to work
2 through that with general counsel now, just
3 how that would work.

4 But, certainly, what we would hope to
5 do is send out to at least cities and have
6 these programs offered in cities. But there's
7 still this need, could you come in and help us
8 for a day or could you do that, and we're
9 working through that with general counsel a
10 little bit on how far do we take that and how
11 do we do that. Nick, you wanted to chime in
12 on that?

13 MR. FERGASON: I have a question. How
14 many independent inventors do not use patent
15 counsel?

16 MR. KAZENSKE: I don't know.

17 UNKNOWN: I would expect if we had to
18 statistically pro se the percentage of pro se
19 is in the two- to three-percent range, so it's
20 a small number of applicants that do not use
21 patent counsel.

1 MR. FERGASON: And, therefore, your
2 sales target the attorneys when the attorneys
3 are easier to sell than the independent?

4 MR. BOUGEOISE: My comment was going
5 to be along those lines. In our first release
6 of EFS system, we did two or three things.
7 One of the things we did was ala AOL. We sent
8 everyone who's an attorney and a registered
9 attorney to practice before the Office a CD, a
10 mailer, basically, a
11 shrink-wrap mailer with the software. We also
12 did road shows. And Kaz mentioned 11 cities.
13 We sent out our troops, they put on demos,
14 they invited the bar and the attorneys in each
15 of those cities to come and learn more about
16 the electronic filing.

17 I think what is being suggested here
18 is we need to do that a second time with this
19 new release and the new software coming out,
20 we need to do the same kinds of things to get
21 it out there and get it in front of people.

1 MR. MOSSINGHOFF: This is something
2 that IPO and AIPLA and ABA patent have thrown
3 themselves into. They've got a very well
4 organized -- round number, 20,000 constituents
5 that you had, they're well organized and most
6 of them in the three organizations. You
7 really ought to emphasize getting those guys
8 to be your good salesmen and your service
9 salesmen. Thank you.

10 MS. BOULWARE: And the National
11 Council of Intellectual Property Association
12 for property associations, that's one that's
13 even more important because that's all the
14 grass roots organization around the country.
15 I know that the PTO was invited to their
16 meeting tomorrow morning at 7:30. If we're
17 looking at a 44-percent filing, what I would
18 suggest to the subcommittee, quite frankly,
19 this is the way we might want to break it down
20 is, okay, to get 44-percent filing, we need to
21 get so many percentage from different parts of

1 the country, look at our statistics right now
2 and do some scenarios on those statistics on
3 where we're going to need to get those filers,
4 where the low-hanging crew is, if you will,
5 and go for it.

6 I mean, I really think that the
7 internal part, we can control. What we can't
8 control is the external part. So I think
9 that's the part that we've really got to put
10 as much thought into it as we can. And I'd
11 like to see some almost in a graphic set up
12 on, you know, where do we think we can get our
13 44 percent.

14 MR. MOSSINGHOFF: Well, the normal
15 plan I would fully endorse at some point. Not
16 a lot of persuasion if I'm just told to 37
17 C.F.R.

18 MS. BOULWARE: I couldn't agree with
19 you more. I mean, it's basically what Japan
20 has. That's what Japan has right now, you
21 know, is basically you file electronically and

1 that's the way it is.

2 MR. MOSSINGHOFF: Well, you want to
3 file it also not electronic because they just
4 want to get a filing fee.

5 MS. BOULWARE: You don't have to file
6 electronically in Japan, but a fee is -- the
7 difference in the fees is so astronomical,
8 that the people are filing electronically.
9 But I think Vern's point was well taken,
10 particularly, -- I don't get involved in
11 securities law. I didn't realize that they
12 had just mandated the Edgar filings, and I
13 knew everybody did it.

14 MR. NORVIEL: I was in the middle of
15 an IPO at the time that happened. And the
16 general law firms were a part. It happened
17 and everything was fine.

18 MS. BOULWARE: The world did not end
19 as we know it.

20 MR. MOSSINGHOFF: We should continue
21 to call it the Norviel plan.

1 MS. BOULWARE: Yes.

2 MR. KAZENSKE: Just one comment,
3 though. EPO implemented EPO line one week
4 after we did. Now, they're not mandatory.
5 They received about a third of what we've
6 received to date on voluntary filing. We'll
7 get an update I think at the trilateral on
8 that, but they were about a week behind us,
9 and they're struggling with the same issue, to
10 get volume up on this.

11 MR. KUMIN: I think one way that we
12 can look at this is sort of the multiple prong
13 approach. We talked about making the software
14 highly attractive, which I think is extremely
15 important. We've got to do the marketing,
16 which we've mentioned. We've got to address
17 the point that you made with respect to the
18 disincentive to file paper and sort of the
19 incentive to file electronic.

20 I think those have to be the
21 antecedents before we go to mandate the

1 electronic filings because I think, once you
2 do all of those three things well, the last
3 thing will bowl you over the difference
4 between where you are and where you need to
5 be.

6 The aspect of legal component is we
7 really will not be able to mandate electronic
8 filing until June of 2005. And even when we
9 mandate electronic filing, we will be unable
10 to prevent the filing of an application on
11 paper for filing date purposes, which means
12 that after we receive it on paper, there's a
13 filing date, and then we can mandate that
14 within a prescribed period if they submit us
15 the electronic version for processing.

16 MR. MOSSINGHOFF: Who negotiated that?

17 UNKNOWN: I was just going to make
18 that point. It started out being 10 years, we
19 got down to 5 years, and you ask us beyond
20 that.

21 MS. BOULWARE: Thank you very much.

1 Good report. And thank you, government
2 subcommittee. The next subcommittee I would
3 like to ask to make a presentation is
4 Katherine White's subcommittee on quality.
5 And she's been working with Esther Kepplinger
6 on quality issues. And I'll turn the program
7 over to Katherine.

8 MS. WHITE: First, I want to recognize
9 the other members of the subcommittee, that's
10 Jim Ferguson, Esther Kepplinger, Mary Lee and
11 Melvin White. And we've also consulted Ronald
12 Stern, who is very knowledgeable about some of
13 these issues that we need to address in going
14 forward. And today we're going to make a
15 presentation on the quality data that we have
16 accumulated this year. And, at this time, I'd
17 like to turn the meeting over to Esther to
18 present that data to you.

19 MS. KEPPLINGER: Thank you. We wanted
20 to give a little background on some of the
21 quality data that we do use in determining the

1 quality of our products and services.

2 We use the information from the Patent
3 Quality Review, which Mary's organization
4 handles. Mary is the director of the Office
5 of Quality Management and Training, and they
6 oversee quality review. Quality review has a
7 certain statistically significant sample of
8 end product reviews, those applications which
9 we have allowed, and they look for the cases
10 based on significant questions of
11 patentability which involve questions of 102,
12 103, 112/1st, and they also look for other
13 less substantial errors, but nevertheless
14 should be corrected, and give us reports back
15 each month.

16 Additionally, we have process reviews
17 that are done in the technology centers.
18 Those are reviews of pending applications
19 typically after a first action. There are
20 quality assurance specialists or QUAS, and
21 from that, we can identify trends in quality,

1 also areas for improvement, and we design
2 training that are specifically addressed
3 within the technology centers for problems
4 that exist within that TC.

5 We also have used the second pair of
6 eyes, and this has been a particularly
7 successful approach, we think, as we can use
8 them in class 705 in which we review, we have
9 management officials review each issue that
10 comes out of class 705 to make sure that we
11 have done all the requisite searching, that we
12 have identified that that's prior art, and
13 that the scope of the claims is appropriate
14 for the disclosure.

15 We also get information back from
16 signatory reviews, both partial and full. We
17 can use those in the tech centers to, again,
18 identify trends and see whether or not we are
19 providing the training necessary for our
20 employees to be successful when they go onto
21 this program, to make sure that we've given

1 them all the information that will be sure
2 that they are able to handle the grand
3 signatory employee.

4 We utilize the data that comes back
5 from decisions from the Board of Patent
6 Appeals and Interferences. The kinds of
7 decisions that we get back, again, we catalog
8 that data and look for trends across
9 technology centers to identify ways that we
10 could improve the handling of the cases and
11 sending to the Board of Appeals.

12 We have the SPREs who review the
13 special law applications, reexams, reissues,
14 and, again, can identify places where we are
15 deficient perhaps or have areas for
16 improvement and identify training also for how
17 we can better handle these applications.

18 The SPEs are direct supervisors of the
19 examiner's initial reviews over a course of
20 the year of each examiner's work product, and
21 from that, we can identify areas, in that

1 case, more specifically directed to the
2 individual examiners, but identify areas that
3 could be done better and also recognize
4 absolute good performance.

5 And we also look for information from
6 our customers. We have a variety of
7 mechanisms. We have our surveys, customer
8 surveys, and we have things like focus
9 sessions. Each of the technology centers this
10 year held a customer open session on search in
11 which we sought information from our customers
12 as to what things we do well and what things
13 we could do better in the area of search.

14 So we have gotten a fair amount of
15 information there, which we will be utilizing
16 this year in order to improve on performance
17 on that particular area. Some of the
18 initiations that we're looking at, one area
19 that we have identified is that we have both
20 the supervisors and, in some cases, primary
21 examiners reviewing the work of junior people.

1 And we have never really trained people on
2 what is an effective way to review that work
3 product.

4 So we are in the process, Mary's
5 organization is in the process of developing
6 the training that will allow us to give to the
7 supervisors and primary examiners some
8 training on better ways to effectively review
9 that work to ensure that we're doing it
10 efficiently and that we are giving the
11 feedback to the employees on things that they
12 could do differently and feedback on whether
13 or not they are handling all of the statutes
14 properly.

15 We're also looking at doing more
16 extensive reviews of allowances based on
17 performance data. As I indicated, in class
18 705, in business methods, we have been using
19 second pair of eyes and, as a result of that,
20 we think we have seen an improvement in
21 quality. The core average on reopenings was

1 5.7, but in technology center 2100, it was
2 only 3.4, so it was significantly lower than
3 the core as a whole. And so we figured that
4 we could utilize this model, and as we
5 identify areas from our OPQR data, target
6 specific areas for an interim period of
7 looking more extensively at those allowances
8 to ensure that we are doing the best job
9 possible.

10 We are looking at training. We had 20
11 hours of mandatory automation training in this
12 calendar year. We will continue to provide
13 automation training to ensure the competency
14 of our employees with the automated tools. We
15 do that on a more corporate level. But,
16 additionally, we have significant legal and
17 technical training that's available to the
18 examiners. This it typically done more at the
19 technology center level. As I indicated, we
20 use all of the quality data to identify trends
21 and areas for improvement, and so that

1 training was typically developed within the
2 technology center, although we do have some
3 overriding legal training that Mary's
4 organization sets up. We have legal lectures
5 over the course of the year that all employees
6 can attend. And Steve's area, when we have
7 significant case law court decisions come down
8 or we have legislative changes, then our
9 corporate level, Steve's organization, will
10 provide legal training, develop it and then
11 deliver it to the technology centers. So we
12 do that as needed and as circumstances
13 warrant.

14 Additionally, we're transitioning to
15 e-government in an effort to improve the
16 quality in paper handling. We just had an
17 excellent report. And they're a pretty hard
18 act to follow, by the way. But we feel that
19 we will be able to improve the overall quality
20 of the product by utilizing
21 e-government initiatives, at least the paper

1 part of the product.

2 And, finally, we are looking at key
3 initiatives on how we can improve our searches
4 and written communications. We have goal
5 teams on each of the goals, quality of our
6 products, quality of our services. We have
7 group directors on these and also teams from
8 each of the technology centers. And they meet
9 regularly to identify areas in which we can
10 improve. And we will be looking, delving into
11 the customer satisfaction information to
12 identify various things that we could do.
13 Then we will identify a couple of key
14 initiatives for each of these areas on which
15 we'll focus over '02 in order to try to
16 improve our performance in those areas.

17 And, finally, the score card which I
18 showed you earlier, the first two parts of the
19 score card, as indicated, those come from the
20 Office of Patent Quality Review, from Mary's
21 area. Our customer satisfaction level with

1 written communications, the search and overall
2 customer satisfaction comes from our annual
3 customer satisfaction survey. And the final
4 time comes from our employee survey which
5 we've been doing for a couple of years.

6 Any questions?

7 MR. STERN: I have a major concern
8 with the quality issue. What's conspicuous by
9 its absence is more time to do a search o find
10 the appropriate prior art, something that, as
11 I understand it, was really a proven technique
12 in the business methods class 705 area. When
13 those employees were provided more time, they
14 did a much better job of finding art. The
15 issue of the need for more time has been
16 reinforced over and over again. A year ago,
17 the agency, in essence, asked the employees if
18 they wanted a 10 percent raise for being
19 willing to enhance the searches that they were
20 doing. And, an overwhelming 80 percent voted
21 no.

1 The consensus of most employees is
2 that we do not have enough time to do a
3 quality job. I thought that the agency
4 actually had recognized that and had made a
5 commitment in the Millennium Agreement to try
6 to get the kind of funding that is necessary
7 to provide more time. What has happened?

8 MS. KEPPLINGER: Well, until we can
9 keep our fees, it's kind of difficult to raise
10 the fees in that particular area. However, as
11 far as more time for quality, we're focusing
12 on a couple of ways to address that. One, as
13 you earlier heard, we have a re-engineering
14 pilot which we believe, by peeling away tasks
15 from the examiners, will free up time for the
16 examiners to spend more extensively on a
17 search or whatever aspects of quality are
18 involved.

19 Additionally, the second pair of eyes
20 in targeted areas, that's some additional time
21 that's being spent on it, but it is focused

1 towards quality. In relation to your comment
2 about class 705, my understanding that there
3 wasn't an extensive amount of time taken,
4 additional time. So they are searching, the
5 do search across a lot of the databases, they
6 are required to search, as should all
7 examiners search, U.S. patents, foreign
8 patents and non-patent literature since we, as
9 examiners, are responsible for finding all of
10 the best prior art.

11 MR. STERN: The amount of time that
12 the folks working in class 705 have is
13 approximately 31.6 hours at the GS12 level,
14 whereas most of the people who have much, much
15 more complicated arts, have only about 20
16 hours.

17 MS. KEPPLINGER: Well, that goal was
18 set, that had nothing to do with the search
19 template or the mandatory search.

20 MS. WHITE: One of the critical issues
21 that we have to work on is -- Esther has

1 talked about how the more time that was given
2 to review, we knew it was for quality. That's
3 the critical issue. We've got to make sure
4 that if there is more time, that it's being
5 used directly for quality issues.

6 MR. MOSSINGHOFF: I agree with that.
7 I think there's a stepwise approach here to
8 increase income by increasing fees that go to
9 quality. I think there's a critical first
10 step and Esther mentioned it, so we can keep,
11 until we know that we could actually use that
12 money that we raise by a fee increase towards
13 quality, that's step number one. We have to
14 have that environment before we put that kind
15 of thing on the table.

16 And then number two, we go ahead and
17 revise goals or give them more time, the
18 question is, is it ensuring -- and Ron and I
19 have had this conversation. There are
20 probably ways to do this, but we need to
21 ensure that the time that it's given is spent

1 on quality aspects such as search and so and
2 so forth, and it's not put to just more
3 output, more production. So I think there's a
4 stepwise approach. I think there's the
5 critical first piece.

6 We have to be in an environment where
7 we have the ability to operate such that we
8 can make the decision to increase fees and
9 hope the quality use of those fees. Until we
10 are there, we have no assurance that we would
11 be able to do that.

12 MR. MOSSINGHOFF: What's the
13 difference between the top one and the second
14 one?

15 MS. KEPPLINGER: The significant
16 defects are things like 112/1st, 102, 103,
17 things that, in our view, a judge might hold a
18 case invalid if it went to court. They're the
19 kinds of errors -- we look to see in court
20 cases the kinds of errors for which a court
21 would hold it invalid. The second one are

1 errors but, for example, 112/2nd where you
2 rarely have a judge hold the patent to be
3 invalid because of a 112/2 problem or errors
4 of that nature.

5 MS. BOULWARE: The other comment that
6 I'd like to make is that, in my position as
7 chair interacting outside the PTO, we are
8 really up against the wall on this one because
9 what the outside the PTO, the question is how
10 can we get more out of the examiners. We've
11 really got a challenge here because what they
12 want to do is give us less money and get more
13 production, and so this is really something
14 that, addressing as a committee, we need to
15 make a strong case for. And I just want to
16 emphasize that.

17 MR. STERN: Many have mentioned that
18 there is always the concern and we have
19 discussed this that if you provide an examiner
20 with more time, how do you really know that
21 it's going to improve the quality.

1 There's no question that we're in favor of
2 establishing systems so that it will happen
3 that way. There has to be accountability, and
4 I don't think employees mind the existence of
5 accountability.

6 But, on occasion, the agency says, you
7 know, here's a great new database that you
8 haven't used before. No one is saying, well,
9 we'll stop searching something else so you can
10 search this other database. The general
11 requirement is to include everything, just
12 add. There's no subtraction. And if you add
13 databases to search, there has to be the time
14 to search them. That is basic accountability
15 for the agency.

16 We are definitely in favor of targeted
17 times for targeted improvements.

18 MS. KEPPLINGER: One of the things
19 that we have done over the last decade, we've
20 put in an awful lot automated systems in order
21 to search both our U.S. patents and non-patent

1 literature. These automated systems provide
2 ways to get accurate information more
3 efficiently if you use text searches, so our
4 view is that by utilizing a combination of the
5 two, text and image, you can accomplish more
6 and search more information.

7 MS. WHITE: I wanted to move away from
8 this a little bit. I was curious about the
9 patent employee satisfaction overall. It was
10 higher than our target. Do you have a
11 breakdown of what categories? Is it gain
12 through work at home?

13 MS. KEPPLINGER: Mary's going to come
14 up and give a presentation on a number of the
15 surveys, and she'll be able to address that.
16 But, yes, we do have. It's a lot of things.

17 MR. MYRICK: I think that the issue
18 -- the concern we've had all along, talking
19 about, the pendency problem. From the
20 outside, the easy way to solve pendency is to
21 push the examiners in order to do the maximum.

1 For those of us who understand the system,
2 that doesn't work. One of the things you have
3 done so well at the PTO is recognize that
4 quality is job one. However, when we look at
5 the sources in quality data, I think we need
6 to scratch our heads about these. They are
7 not objective enough.

8 Now, I don't know whether or not the
9 new efforts by the EPO will curtail being an
10 independent search authority. I don't know
11 how it's going to play out. But I give you
12 one source of data. I think we may have
13 talked about this in an earlier meeting. So
14 many people, prior to this new thing from the
15 EPO, have walked with their feet, voted with
16 their feet. They have voted for an EPO search
17 as opposed to a U.S. search.

18 And I think while that is subjective
19 in one sense, it's also somewhat objective.
20 Those are independent observers making their
21 own determinations, how do they want to get

1 their cases done. And I would say that,
2 provided that remains a viable option in view
3 of the events of the EPO, that that's a piece
4 of data that you should capture and ultimately
5 we would see if our searches are really
6 driving for the best in the world, which is
7 what we want, you would see that number or
8 that percentage of people going down
9 voluntarily.

10 MS. KEPPLINGER: And I think that's a
11 good point, however --

12 MR. MYRICK: But maybe not necessarily
13 in passing, there are other reasons why. It's
14 a piece of data.

15 MS. KEPPLINGER: It is definitely a
16 piece of data. But I think the other thing
17 that you have to consider is that they're
18 utilizing it initially to get a second search
19 because they are typically U.S. applicants,
20 they are going to get their search in the U.S.
21 case so they use that to get a second search.

1 MR. MYRICK: And I'll give you all
2 that. I'm just saying there is some way you'd
3 have some useful data out of this. Maybe
4 we've got to start asking the question
5 differently at the EPO or maybe even
6 afterwards.

7 MS. KEPPLINGER: What can we do better
8 to provide the service that they need that
9 they are getting at the EPO.

10 MR. MYRICK: We need more sources of
11 quality data than just these.

12 MS. WHITE: Ron, you mentioned
13 something I was going to talk about a little
14 bit later, but I think it's time to talk about
15 it now. What we need to get immediately, we
16 need to get a task force together in order to
17 assess new quality and pendencies, some kind
18 of metrics to measure quality. We've been
19 looking at these, and these are good, but we
20 do need to make more of an effort and put a
21 task force together to move forward.

1 UNKNOWN: Just to chime in, and I know
2 Mary will too, but I welcome that. I think we
3 have been looking, and Mary and I have talked
4 a lot about how do we measure quality and
5 what's the cutting edge, what's the best
6 practice with respect to measuring quality,
7 and pulling together more data points other
8 than the ones that we've used in the past, add
9 to those data points, and come up with a way
10 of pulling that together in some kind of
11 indices would be very welcomed by us in a task
12 force or a team or group that would help us do
13 that is something that would be attractive.

14 MS. LEE: I do want to add also that
15 we met with the EPO quality review
16 organization. We spent a couple of days with
17 them talking about what they do and how they
18 review quality and how they report it out and
19 the kinds of things they do with regard to
20 search. First of all, it was interesting that
21 they don't research cases like we do in our

1 quality review shop, so their statistics don't
2 include going out and researching a case. So
3 it's just finding errors on the record.

4 Also, they don't report their error
5 rate. It's not public knowledge. Like we put
6 ours out on the web site and everybody knows
7 what our error rate is, they do not record
8 their errors. So they could talk to us about
9 where they were, but they couldn't talk to us
10 in ways that we could talk about to anybody
11 else.

12 But the point is, they have some of
13 the same issues that we do. And when you talk
14 about the kinds of errors they're finding, the
15 way they're finding the errors, except for the
16 fact that they don't find errors through
17 traditional searching because they don't do
18 additional searching, and how they use their
19 error rates. A lot of things they do similar
20 to us. The fact that we go out, our customers
21 go out and get EPO searches, I think it's

1 mostly to get a second search, two different
2 searches.

3 MR. MYRICK: Listening to the
4 scuttlebutt around the table that I feel
5 that's not necessarily the case. So I think
6 maybe in your customer survey, get at some of
7 that data. Do that and see what they come
8 back with, because I honestly don't know, I'm
9 not that close to the searches in my own
10 organization, but I am interested in listening
11 to other people and why they do these things,
12 and I hear these, in that respect, it's
13 subjective.

14 We do it because we get a better
15 search. Yes, maybe they get a second search,
16 but they get a better search. And maybe
17 that's the point, they're seeing two searches,
18 and one is better than the other one. But I
19 think you've got the right idea. Let's have
20 objective study group that comes back because,
21 in the end, the best friend, your best friend,

1 the PTO's best friend is good measures of
2 quality.

3 MR. KAZENSKE: Let me just ask one
4 thing. I think it's a great idea that the
5 task force has. But if people are concerned
6 with quality, I think they should look more
7 than within the Patent Office. How that can
8 be measured and how that can be enhanced
9 because it's not just in the Office that we
10 can make advances. You hear Ron's concerns.
11 But there's other things that could be drawn
12 out I think for this body to look at a quality
13 system. I wholeheartedly recommend how this
14 system as a whole is being looked at, not just
15 at the Office.

16 UNKNOWN: I think that is a very good
17 point, Kaz. Actually, when I had my meeting
18 with Sam Bodman (ph), we discussed because
19 you've got garbage going in, you may have
20 garbage going out, that old thing. And so
21 it's not just inside the Patent Office, but

1 outside the Patent Office that we need to deal
2 with. And the Patent Office has to examine
3 anything that comes with a filing fee. You're
4 not a selective body here, picking out the
5 quality inventions to examine.

6 So that's the system that we're
7 working with and it's something that needs to
8 be factored into the quality of the product
9 going out. Of course, the PTO is the gate
10 keeper for all four quality applications. I
11 mean, we give to the gate keeper, and that's a
12 huge responsibility.

13 MR. FERGASON: There's another factor.
14 If you have poor pendency, your attitude to
15 the customer becomes shall we say tainted. So
16 having longer pendency will tend to make him
17 not answer the questions of quality with as
18 high a mark. I think you can show that pretty
19 well. So there's a lot of human factors here
20 that get factored in, in terms of the search
21 that you get.

1 They're searching different databases
2 too, which makes a difference. If you get
3 different numbers which you usually do when
4 you get a search, not necessary -- I don't
5 think it's necessary. I just think its
6 different. So I'm going to say that coming
7 down on the side that it's the devil you don't
8 know rather than the devil you do know that
9 makes the search problems bigger.

10 I'm not sure what to do about that,
11 except again expand your electronic searches
12 and databases.

13 MS. LEE: I just want to say that we,
14 in the government employment management
15 training, we have been looking at all our
16 measures of quality and trying to come up with
17 quality index. We are also trying to look at
18 all our measures to see how they link
19 together.

20 We have done a number of things to try
21 to link the data that we do have, customer

1 satisfaction, employee satisfaction,
2 performance measures, and see where there are
3 links and where one drives the other. We
4 haven't had particular success to this point
5 because we don't have enough data points that
6 are common to all these areas of measures, so
7 I think the task force will help us in that.
8 But we have been trying to do that. It's just
9 not as easy as it might sound.

10 You've heard a lot about the customer
11 satisfaction data. We've been measuring
12 customer satisfaction since 1995. And from
13 '95 to '98, it stayed about constant at around
14 50, 51, 52 percent. That's when patents
15 really started using that data and trying to
16 make improvements. And we heard Esther say
17 about between '98 and 2000, they increased
18 customer satisfaction by 12 percent.
19 Unfortunately, this year it stayed flat, but
20 aside from looking at the positive, the
21 customer satisfaction part, I think you can

1 focus on the fact that only 13 percent of our
2 customers are dissatisfied and that, when
3 we're looking at ways to improve, and we're
4 actually talking about the improvement
5 initiative, if we focus on that mutual factor,
6 22 percent in there that you could easily
7 control into the satisfaction.

8 I think this shows there's a good
9 potential to move that a lot higher by
10 focusing on the mutual focus. We've also been
11 looking at employee satisfaction for a few
12 years now and, again, trying to see if there
13 are ways of linking these two together. Had a
14 huge bump up in employee satisfaction this
15 year, and Esther talked about the Millennium
16 Agreement and the pay raise and a lot of the
17 things that probably were a cause of that.
18 We'll see more specific data in a couple of
19 slides. But, again, in addition to bumping it
20 up 10 percent on those that are satisfied, we
21 also dropped the dissatisfied from 19 to 14

1 percent, so I think that's a really good sign
2 for our employees.

3 As I said, we had an initiative to
4 show where customer satisfaction, employee
5 satisfaction, performance results were
6 interrelated. Didn't really come up with a
7 lot of good data on that, but this just shows
8 the different technology centers and their
9 employee-customer satisfaction rate. You can
10 see that they do so much back each other. I
11 don't know if that's significant at this
12 point, but it's of interest.

13 MS. KEPPLINGER: It was really very
14 interesting. The thing is, the employee
15 number and customer numbers stayed the same,
16 but having gone back, Mary's shop had put this
17 together, and I was really surprised when I
18 heard, but we need to see over a course of a
19 couple of years how it comes out.

20 MS. LEE: Right. And if now can link
21 that back to some of the performance data that

1 we have in terms of the QR data that you did
2 and see if there's any correlation there, we
3 can maybe focus our attentions on those areas
4 that we can get the biggest bang for the buck.

5 Along with the overall data which the
6 customer satisfaction data will be out -- will
7 probably be on our web site in the next month
8 or so. The paper versions will be mailed out
9 to all our customers probably in January.

10 We'll be able to identify the key drivers of
11 satisfaction and then track them to see how
12 they trend, are we improving or are we having
13 a problem in that area.

14 We also look to see where, using 60
15 percent as a kind of a baseline, if we're
16 above 60 percent, okay, maybe that's good,
17 it's not great. But if we're below 60
18 percent, that's a real problem. So if you
19 look at that data, those areas that are kind
20 of a service areas, directing you promptly to
21 the right office, we're up 70 percent, and

1 that was an increase. Returning phone calls,
2 we're at 64 percent, and that was an increase.
3 It needs improvement, but it's not too bad.

4 I think the timeliness issues,
5 responding to amendments within four months,
6 we're at 68 percent. It's down two points,
7 but it's still not in the area that I think is
8 something to really get totally upset about.

9 If you look down at the bottom,
10 respond to status letters within 30 days, it's
11 at 47 percent. So even though it's up eight
12 percent, it's still a real problem. I think
13 the issue there is the PAIR system. We assume
14 our customers would go to the web site and
15 look on PAIR to find out the status. It's
16 still sending in all these status letters. We
17 haven't prepared ourselves to answer them
18 because we assumed our customers would use the
19 systems that we gave them, and so they're not,
20 and it's either a marketing issue or maybe we
21 need to refocus our attention to --

1 MR. NORVIEL: I wouldn't dwell too
2 much on that. It's coming on the behavior of
3 attorneys, i believe. if you send a status
4 letter in, they assume something moves. That
5 may not be right, but I think they believe it.

6 MS. LEE: So maybe it's marketing.

7 MS. KEPPLINGER: I think that's the
8 perception, yes, absolutely. And the clients
9 want to see that you sent a status letter in,
10 from the private practice side. Yes, they
11 should not be sitting around, you know. You
12 can't tell them, though, we got a computer and
13 blah, blah, blah. You've got the physical
14 piece of paper. This is more of the same
15 position of e-government, but there's going to
16 have to be a lot of education with the
17 transition.

18 MS. LEE: Because we've talked about
19 potential initiatives, like sending out with
20 the filing receipt when you could expect to
21 get a first action, even though we've put it

1 in the OG, which would avoid these status
2 letters coming in. But if they're coming in
3 for a reason, that's not going to help.

4 MS. KEPPLINGER: I think if you do
5 have a response going back, saying when to
6 expect your action, I think that would should
7 alleviate --

8 MR. NORVIEL: Most of these forms
9 generate out if somebody has a thing on their
10 docketing, it comes into you, you can always
11 just turn it around and send something back.

12 MS. KEPPLINGER: Well, you know, it's
13 kind of interesting that the thing is it takes
14 a tremendous amount of resources to handle
15 these things, so we are looking for some more
16 automated way to handle these. But the truth
17 is, I mean, we have to handle the cases in
18 order, so rarely do the status letters do
19 anything, unless there's really something that
20 happens extraordinarily to get it moving on.

21 MR. KAZENSKE: Most of the written

1 comments on that would ask for status of the
2 first office action, when am I going to get my
3 first action. We were looking at updating our
4 program care which would keep to date, if we
5 can practice from PALM, on what in that case
6 is technology, what's the average time, what
7 cases are the examiners working on today, and
8 have that posted. But because you need a
9 physical letter, we wouldn't want to go
10 through that whole software change if that's
11 not what you need.

12 MR. NORVIEL: I hate to be redundant
13 about it, but a lot of these things are just
14 form generated, hoping to stir something up so
15 you can send something to the client, and
16 maybe the best way to do it is --

17 MS. KEPPLINGER: Well, we're not
18 matching them in cases right now, but it's
19 still thousands and thousands. So we've got
20 our customer service center doing a
21 significant amounts of work. So it is a large

1 --

2 MR. STERN: It does sound, however,
3 like we're hearing good advice as to how we
4 can handle this, inexpensive ways of handling
5 this. And I'm hearing Vernon, and it sounds
6 good to me.

7 MR. NORVIEL: It's on the docket and
8 we're here to do something.

9 MR. KAZENSKE: So an electronically
10 generated form is the way to go.

11 MS. KEPPLINGER: I think so.

12 MS. LEE: The other area that came out
13 really low here is mailing accurate filing
14 notices. And, in past years, we asked the
15 question, did you get accurate and timely, and
16 this year we divided it out, accurate on one
17 question and timely on the other. And, as it
18 turns out, the accurate is the problem,
19 according to our customer survey. So there
20 are a couple of quality communications, and,
21 again, there's above 60 percent on these we

1 need improvement in that range.

2 When you look at the employee
3 satisfaction data, I think you can look at it
4 in a couple of ways. I feel proud to work for
5 the USPTO, that's 70 percent, which I think is
6 quite good. Again, up 10 percent from the
7 2000. Satisfaction with job done by immediate
8 supervisor, that gets you down into your work
9 unit. We asked that survey question on the
10 PTO level, at the work unit level, and then an
11 individual level so that we get information
12 about how they feel about the office from a
13 number of different perspectives.
14 Satisfaction with job done by the supervisor,
15 70 percent.

16 That was down a little bit, and the
17 upper management part, that question went up
18 substantially, and we feel like, since they
19 got a pay raise, they're happy with upper
20 management this year, but they have to take it
21 out on somebody, so they knock the immediate

1 supervisors.

2 I trust and respect the management of
3 the USPTO, that's up 17 percent, so that very
4 good. My pay is fair, it went up 31 percent,
5 which is a big improvement. It's still 51
6 percent, which is not particularly good, but
7 certainly they tell us that in any employee
8 survey, no matter where you ask it, nobody is
9 ever happy with their pay.

10 And then we get to Ron's issue, the
11 amount of work is reasonable, allowing
12 employees time to provide high quality
13 products and services. It's up five percent,
14 to a high of 25 percent.

15 MR. STERN: That is why it's my issue.
16 That figure is absolutely dramatic compared to
17 every other figure on the board. A 25 percent
18 satisfaction, when everything else -- the
19 closest thing is, what, 47 percent on the
20 customer satisfaction side? That's just
21 absolutely dramatic when you see something in

1 the 20s. That tells you that there really is
2 a consensus, and rather than being a personal
3 concern of one or two people, it is the
4 concern of the overwhelming majority of
5 employees.

6 MS. WHITE: I would like to add that I
7 would like to see specific questions with
8 issues, like the training, what kind of
9 training.

10 MS. KEPPLINGER: These were just the
11 key drivers of satisfaction. We asked a lot
12 more questions, and we're in the process now
13 of punching the data down to the work unit
14 levels and getting it out to our employees.
15 We haven't really done that yet, so this is
16 just the preliminary data for employee
17 satisfaction.

18 MR. STERN: Mary, do you agree with
19 that 20 percent or even 25 percent is a
20 dramatic figure?

21 MS. LEE: I'm sure that is a dramatic

1 figure.

2 MR. GIBBS: Mary, is there a way to
3 take that last 25 percent, instead of just
4 putting it as reasonable, take it into a
5 similar bar chart if you can, how many felt it
6 was unreasonable and how many were neutral,
7 because that would give some perspective to it
8 because 25 percent saying it's reasonable
9 doesn't really give you the whole picture.

10 MS. LEE: We will have that data when
11 we break it up from -- when we have all the
12 charts, and we'll have satisfied, neutral, and
13 unreasonable at the PTO level, patent level
14 and the working unit level, we will have that
15 data. We don't have it punched out yet.

16 MR. STERN: I just happen to have
17 brought last year's figures on that particular
18 item.

19 MS. KEPPLINGER: Hopefully, we'll get
20 this year's figures at one of our next
21 meetings.

1 MR. STERN: The overall percentage
2 distribution in last year's figures, and this
3 is the agency as a whole, was 27 percent
4 favorable, 14 percent neutral, and 59 percent
5 unfavorable.

6 MS. KEPPLINGER: I agree, Ron, that
7 it's dramatic. However, I cannot agree with
8 what something said earlier, which is that 78
9 percent of what the examiners are over 14
10 months of filing.

11 MS. LEE: And I think, on Esther's
12 point, having examiners do those, then there
13 are times when those things that are most
14 efficient for their job, I think that might
15 have an impact also.

16 This last slide shows the trend over
17 the last few years, and you can see that it
18 was positive direction, customer satisfaction
19 has gone up, flattened off this year, but it
20 had dramatic increases from '98 through 2000,
21 and the employee satisfaction certainly had a

1 dramatic increase from 47 percent to 65
2 percent. So I think if we focus in on the
3 data and try to link the data together, we are
4 seeing improvement, but it takes time to make
5 improvement.

6 MR. MOSSINGHOFF: Have you had any
7 other government agencies to compare with?

8 MS. LEE: We used to participate --

9 MR. MOSSINGHOFF: I don't like the
10 IRS, so you put me down as a negative there.

11 MS. LEE: We participated in producing
12 our discovery last year and we have a lot of
13 comparative data. We're not participating in
14 that this year.

15 MR. STERN: There is some comparative
16 data on the web. I think the University of
17 Michigan publishes customer satisfaction data,
18 including IRS and Postal Service data, and
19 they do pretty well.

20 MS. LEE: That was the one we
21 participated in, in Michigan.

1 MR. MOSSINGHOFF: I think there's some
2 calibration.

3 MS. LEE: The main reason they get to
4 choose is it's a very small audience surveyed.
5 They telephoned 250 customers. I think the
6 agencies got to choose their customers. Those
7 people chose customers like those they gave
8 money to.

9 MR. MOSSINGHOFF: The IRS.

10 MS. LEE: There's no comparison. We
11 got the same data we got here. Everybody else
12 has done really lousy.

13 MR. MOSSINGHOFF: And that's as good a
14 data as exists, do you think?

15 MS. LEE: As far as comparing --

16 MR. MOSSINGHOFF: Comparing ourselves
17 with --

18 MS. LEE: Well, we've been using this
19 particular set of questions, so we do print
20 them out over the years. If we were to
21 compare with somebody else, they all wouldn't

1 be on the same survey or the same record.

2 MR. STERN: It is interesting to see
3 how well IRS and the Postal Service do in
4 spite of their popular reputation.

5 MS. LEE: Well, the IRS surveys their
6 electronic filers and electronic filers are
7 pretty happy.

8 MS. BOULWARE: Thank you very much.
9 The quality subcommittee has a daunting
10 challenge to come up with metrics and measures
11 of quality, and also to not only do that, but
12 from our perspective, assist and advise the
13 PTO in areas where we feel there can be
14 advances made with the quality of the patents,
15 not only measuring it, but also helping with
16 quality.

17 I would like to say that Kathy is
18 charged with the responsibility of
19 coordinating this group, but I don't think
20 it's just the subcommittee. Everybody on the
21 P-PAC, if you have got some good ideas that

1 you want to have thrown out for discussion or
2 included in any of our meetings, Kathy is your
3 point person, and I think it's going to take
4 everybody's ideas to come up with something
5 that's going to really give us the feedback
6 that we're going to have.

7 It's going to be interesting that it's
8 being asked for outside the PTO when we go ask
9 for more funding, etcetera. We've got to come
10 up with these benchmarks.

11 MS. WHITE: Absolutely.

12 MS. BOULWARE: One of the things, too,
13 that I'd like to mention on quality is I think
14 we also need to take a critical eye and sum
15 the data points that have been proposed by
16 others that may not be good data points, that
17 is, patents that go to litigation. That may
18 not be your good sampling for quality. And I
19 think that's another part of the quality
20 committee is to really -- quality subcommittee
21 is to really get the good data points.

1 With that, I would like to discuss the
2 preparation of our annual report that is due
3 on November the 30th. The challenge we always
4 face with these reports is that we generally
5 have a meeting about this time of year, and we
6 would like to include in our report what we
7 have discussed in our most recent meeting. So
8 that puts us on a little bit of a shorter time
9 line than we like.

10 I had asked Ron and Kathy to prepare
11 sections of the report that deal with the e-
12 government issue and the quality issues. And,
13 right now, we're going to need to get those
14 drafts in very quickly, by the end of the
15 month, so we have time to put together a draft
16 and circulate it to the rest of the committee
17 for review and comments. So I know we're on a
18 short time line, but that's the nature of the
19 scheduling here, unfortunately. We were able
20 to put together the report last year that I
21 thought covered the bases, and I'm sure we

1 will be able to do the same this year.

2 I will be coordinating the preparation
3 of the report with Bo. And she's already
4 gotten in touch with you on some issues on
5 getting the -- we're going to include in the
6 report this year a little bit of a summary and
7 background of the various committee members
8 which would be of interest to the people that
9 we circulate the report to -- to know what our
10 background is because our backgrounds are
11 fairly diverse, even with just the six members
12 of the committee.

13 The other thing that I would like to
14 remind everyone of, and I know I got this
15 mailing, by the 31st of the month, we need to
16 update our financial disclosures. That was on
17 my to-do list. And if you haven't gotten
18 update material, I'm sure Bo can help you get
19 that. So if you could spend some time doing a
20 little paperwork.

21 MR. MOSSINGHOFF: Who got a not

1 satisfied rating.

2 MR. STERN: The Office of Government
3 Ethics is very proud. They estimated it will
4 only take you an hour and a half to complete
5 your financial disclosure form.

6 MS. BOULWARE: We'll have to find out
7 if that's one of the options, Jerry. If it
8 is, we'll let everybody know about that one.
9 And as far as the committee report, all I will
10 tell you is we're going to start processing as
11 soon as we can and give you as much time to
12 review it.

13 As I said, the problem that we have
14 is, because it's 60 days, we have until
15 November the 30th, this is October the 17th,
16 so we're just going to have to get behind it.
17 And when you do get it, it won't be 85 pages
18 to review. It will definitely not be that
19 long, but it will be of a length that I think
20 everybody can hopefully review and turn around
21 in several days.

1 Also, if there is a particular issue
2 that you want to have covered in the report
3 that's outside the quality and the
4 e-government -- we will, of course, be
5 reporting on what we can report publically on
6 budget. We can't report on certain things on
7 budget because they're confidential. But if
8 there are other items outside the
9 e-government and quality that you want to have
10 included in the report, please contact me
11 because I will be putting the report overall
12 and the outline of the report together, and
13 would welcome -- I'm looking for help, so any
14 help you want to provide, I'm all ears.

15 MS. BOULWARE: I think one of the
16 features that we can include in our report
17 this year, and particularly in the e-
18 government piece, there has been a real move,
19 I mean, we can really report some progress on
20 the e-government, and I think we can be proud
21 of it. And also I think, Ron, on the

1 e-government piece, the criticism that you
2 hear is taking small incremental steps. When
3 you look at what we're talking about
4 achieving, if that's not incremental, that's
5 major. It would set high goals for ourselves
6 in the next few years. I think that's
7 something we need to present very clearly in
8 this report.

9 MR. STERN: Ron made an interesting
10 issue. Is that report going to be circulated
11 among all the members? If it's available in
12 electronic form, I guess it would be easy to
13 email it to everyone, and I know I and others
14 are certainly interested in that IBM study. I
15 don't know what form it's available in.

16 MR. GODICI: We can check -- I think
17 we're going to check with the general counsel
18 to see if it is available. I know we are
19 close to the end here. I just want to thank
20 everyone. Ron mentioned that we had stuck our
21 neck out on a couple of cases. I just wanted

1 to extent my appreciation for the team that
2 takes your job very seriously and executive
3 committee meeting or patent staff meeting and
4 part of the way we manage the Patent and
5 Trademark Office.

6 MS. BOULWARE: Thank you for the kind
7 words. I think that we feel like we're just
8 doing our job, but it's gratifying to see
9 results on this work. We're seeing it and
10 also we're enjoying working with the Patent
11 and Trademark Office and seeing those results.

12 Unless we have any further discussion
13 on any other issues, I would call the meeting
14 adjourned. We will have our next meeting
15 sometime in 2002. We'll all be in touch by
16 email on the report, so fire up your computers
17 because you'll be hearing from us. Thank you.

18 (Thereupon, the proceedings were
19 adjourned at 4:44 p.m.)

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18

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19