

PATENT PUBLIC ADVISORY COMMITTEE
Marriott Courtyard Hotel
Arlington, Virginia

Wednesday, May 2, 2001
1:10 p.m. - 5:12 p.m.

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APPEARANCES :

PATRICIA W. INGRAHAM

KATHERINE E. WHITE

ROGER L. MAY

VERNON A. NORVIEL

NICHOLAS P. GODICI

MARGARET BOULWARE

RONALD E. MYRICK

ANDY GIBBS

GERALD J. MOSSINGHOFF

JULIE WATSON

MELVIN T. WHITE

RONALD J. STERN

P R O C E E D I N G S

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2 MARGARET BOULWARE: Well, I'd like
3 to call the meeting to order. My name is Meg
4 Boulware. I'm chair of the Patent Public
5 Advisory Committee. And it's a good thing
6 it's a public meeting because we may open
7 doors and windows to get a little bit of
8 circulation in here in addition to the
9 ceiling fans. I'd like to call the public
10 meeting to order, and for the first order of
11 business I would like to once again go around
12 the room so that for the record we have an
13 introduction of the Patent Public Advisory
14 Committee members who are present, and I'll
15 start with Mr. Mossinghoff.

16 GERALD MOSSINGHOFF: Jerry
17 Mossinghoff.

18 PATRICIA INGRAHAM: I'm Patricia
19 Ingraham.

20 KATHERINE WHITE: I'm Kathy White.

21 RONALD MYRICK: I'm Ron Myrick and

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1 I'd like to note that in the thing we've been
2 given, my e-mail is not correct. It's
3 MyrickR, not Myrick.

4 KATHERINE WHITE: I'd like to note
5 a correction as well. My home address is --
6 the name is Ann Arbor A-N-N not A-N-N-E.

7 VERNON NORVIEL: My name is Vernon
8 Norviel and mine is correct.

9 NICHOLAS GODICI: I am not a member
10 of the committee, but I'm here so I'll
11 introduce myself. My name is Nick Godici.

12 ANDY GIBBS: Andy Gibbs.

13 ROGER MAY: I'm Roger May. I'll
14 just say -- give credit to whoever did this
15 because I just moved yesterday and my address
16 is correct.

17 JULIE WATSON: Julie Watson.

18 RONALD STERN: Hi, I'm Ron Stern.
19 I'm President of POPA and unfortunately my
20 telephone number is not listed correctly.
21 What is listed as the fax number really is my

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1 telephone number is 308-0818.

2 MARGARET BOULWARE: What is listed
3 as your telephone number, is that somebody
4 else's number, Ron?

5 RONALD STERN: No; that's a
6 different line.

7 MARGARET BOULWARE: Oh, two lines
8 listed. And I'll note that I believe Melvin
9 White who is one of our nonvoting members
10 should be arriving. We expect him to be
11 arriving. The meeting today is in advance of
12 an executive session meeting which will be
13 held tomorrow on budget matters. I'm going
14 to ask that we start our meeting out with the
15 director's report, but I want to clear
16 something with our counsel. Is Bernie around
17 here? I believe we voted for the executive
18 session for tomorrow already. I don't
19 believe we need to vote on that, but in case
20 we do, as a matter of housekeeping, I will
21 ask the members of the P-PAC to vote that we

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1 meet in executive session on May 3rd. All in
2 favor?

3 MEMBERS: Aye.

4 MARGARET BOULWARE: Opposed? Thank
5 you. Just want to make sure you're all
6 paying attention. For those of you who did
7 not receive or could not print off
8 electronically your information for the
9 session tomorrow, please contact me or Nick.
10 I guess we're the point persons on this if
11 you need to get information for review for
12 the meeting tomorrow. Now I will turn it
13 over --

14 GERALD MOSSINGHOFF: Madam Chair?

15 MARGARET BOULWARE: Yes?

16 GERALD MOSSINGHOFF: I probably
17 have a feeble over AOL. Their capability
18 doesn't quite match their heart rate well,
19 but nevertheless, 100 pages is a lot to
20 e-mail. I would really urge that it be put
21 in a binder and FedExed or somehow express

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1 mail gotten to us earlier in the future.

2 MARGARET BOULWARE: Yeah; and let
3 me mention something about the timing on this
4 apropos of your -- the distribution of the
5 materials. We originally had anticipated
6 that the budget meeting would be much later
7 in the year, and the timing on the submission
8 of the budget has caught everybody under a
9 very short time frame and we had to compress
10 things and unfortunately our budgetiers were
11 working very quickly to get something to us,
12 and instead of having an e-mail and a FedEx
13 capability, we ended up with an e-mail.
14 Obviously we could have put something in
15 FedEx on Friday, but hopefully we will get
16 things out to everybody a little bit sooner
17 and people will at least have some time after
18 this meeting to get copies of material and
19 get a chance to look at it tomorrow.

20 Also I'll just mention as we've
21 mentioned a number of times the fact that

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1 this is confidential material. I'll also
2 mention that there's to be no distribution of
3 the material, no reproduction, that sort of
4 thing. You can keep your own copy and make
5 notes on it. We will be having another
6 meeting by teleconference, an executive
7 session by teleconference on May 14th is my
8 understanding that's now scheduled at 4 p.m.
9 eastern daylight time. Is Bo here? Okay.
10 Bo, if I'm right on that. And I would like
11 to vote that we have an executive session to
12 follow up on May 14th by conference call
13 eastern daylight time. All in favor?

14 MEMBERS: Aye.

15 MARGARET BOULWARE: Opposed? Thank
16 you. And the good thing about this
17 scheduling now, Jerry, we're going to have
18 the luxury of the fact that you didn't get it
19 or couldn't, you know, download it from AOL
20 that we will have about 10 days to digest the
21 material in paper form and get all of our

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1 comments back. So I think we've got a little
2 bit better schedule than we had last year.

3 GERALD MOSSINGHOFF: I'm thinking
4 more on AOL than I am PTO.

5 MARGARET BOULWARE: Oh, I know, I
6 know. I think one of the things we're
7 learning is how to handle these budget
8 meetings since the committee has only been in
9 existence for less than a year. Yes, Ron?

10 RONALD STERN: I was interested in
11 alerting a number of people to the existence
12 of a public meeting of the Public Advisory
13 Committee and I found it very difficult this
14 time. I would recommend that the committee
15 and that you ask the staff to in essence put
16 out a notice to the public about two weeks in
17 advance. I wasn't able to find the notice on
18 the PTO web site. It's really very tough to
19 find. I didn't even know about it myself
20 until late Friday night when I was e-mailed
21 something because I'm a member of the

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1 committee, and I strongly recommend that we
2 publicize our public meetings so as to let
3 more people have an opportunity to attend.

4 MARGARET BOULWARE: Well, can I
5 respond to that?

6 RONALD STERN: Sure.

7 MARGARET BOULWARE: First of all,
8 everybody was noticed about this meeting long
9 in advance. And I'm not sure, you know, what
10 the situation was because you're on all the
11 distribution lists. So I don't -- you know,
12 that's something we can talk about off-line,
13 your problem with getting your information
14 because I saw you on the distribution list
15 for weeks.

16 RONALD STERN: Yes; I'm on the
17 distribution list.

18 MARGARET BOULWARE: And we have
19 procedures that we do follow to publicize the
20 public meetings, and it's my understanding
21 that we complied with those rules. And you

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1 know, if we need to look into that further,
2 I'll be happy to take that up at a later
3 public meeting. It's my understanding that
4 it is on the web site, and you know, if
5 people are looking for it, they will find it,
6 but it certainly wasn't a secret meeting.

7 RONALD MYRICK: Just as an aside,
8 we at IPO are going to start including the
9 public meetings in our field publications to
10 aid in the process of getting it out to the
11 public. Yesterday I was at USCID who I know
12 some people there who might be interested in
13 such meetings. They weren't aware of it. So
14 we're going to help at IPO by publicizing an
15 IPO daily newsletter.

16 RONALD STERN: I probably would
17 volunteer my own web site to do that, and
18 perhaps some of the other panel members would
19 volunteer their web sites to do the same
20 thing and we'll be happy to be cooperative in
21 that regard. We'd also be happy to be

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1 cooperative in getting the transcripts up for
2 public scrutiny. The transcript from our
3 last meeting, although I know has been
4 circulating has not been published yet, at
5 least I haven't been able to find it on the
6 PTO web site.

7 MARGARET BOULWARE: One of the
8 things -- and I'd like to address that and
9 then I'd like to get on to the body of this
10 meeting. All of these procedures are very
11 good. The members of the committee after the
12 first public meeting did not have an
13 opportunity to go through and make just
14 simple corrections to inaccuracies in the
15 transcript and we had a transcript published
16 that although I don't think it was
17 embarrassing to the committee, there were
18 some errors in it that should have been
19 corrected. And I was very sensitive to that
20 and wanted to have it -- you know, have it
21 circulated for review.

1 Now, I will say this. We're having
2 a public meeting on a rather short cycle this
3 time because we had a budget meeting
4 scheduled for tomorrow that had to be
5 scheduled at a particular time because of
6 submission. And to conserve resources and
7 also to keep our initiative on E-Government
8 on a fairly smooth track, we decided to have
9 a public meeting today which I think makes
10 sense. So we had a little bit of a shorter
11 period of time for transcript review, but the
12 transcript also is public and it can go up --
13 it can be uploaded on other web sites also
14 and disseminated.

15 And as a matter of fact, I just
16 spoke with Nick about having summaries of the
17 Public Advisory Committee meetings published
18 in the PTO publications that go out. There's
19 the newsletters that go out, and trying to
20 facilitate the information about what the
21 P-PAC is doing because I don't think people

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1 are going to spend a lot of time reading 150
2 pages of transcript, but they might be
3 interested in a summary. And if they have an
4 interest in something specific, then they
5 could jump to the transcript. And so I think
6 it's a great idea for -- we've got a lot of
7 constituencies represented at this table. We
8 can get the word out. That's a good idea.
9 Okay. Now, are you ready to launch into your
10 report? Great. Thank you.

11 NICHOLAS GODICI: Well, I just want
12 to welcome everyone. I want to thank you for
13 being here. I also want to maybe apologize
14 first for having such a small room. I guess
15 we didn't realize we were going to have such
16 a large crowd here, and we'll have to take
17 that into consideration when we schedule the
18 next one and book the room. I just want to
19 -- as Meg said, it was not too long ago that
20 we had our last public meeting, so kind of
21 just talking about what's going on between

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1 then and now. You know, the position I'm in
2 right now, I wanted to let everyone know that
3 we've been very engaged, and I think our
4 relationship with the Department and with the
5 new Secretary of Commerce is one that's been
6 very productive. He's well aware of our
7 issues.

8 As a matter of fact, I just left a
9 meeting this morning. We're at the table at
10 staff meetings that are now on a biweekly
11 basis and we report out the process with the
12 Secretary as each of the agencies reporting
13 out on issues and so on and so forth. So I'm
14 happy to announce that the Secretary was
15 informed this morning that we are meeting,
16 the Public Advisory Committee is meeting
17 today and along with Trademark Public
18 Advisory Committee tomorrow, and he's well
19 aware of the existence of the group and very
20 happy that we have the opportunity to meet.

21 Also I had the opportunity to meet

1 with the person who will be designated as the
2 Deputy Secretary, Sam Bodman from the Boston
3 area and had the opportunity to talk to him
4 about some of the PTO issues. He's an
5 engineer like many of us in the room. And
6 just a funny story, he leaned over and he
7 said, "So you're a patent attorney over at
8 the Patent and Trademark Office?" And I
9 said, "No, actually, no, I'm an engineer, not
10 an attorney." And he said, "Me too." So we
11 got off to a good start.

12 But his company Cabot Corporation
13 holds about 450 active patents in the
14 chemical engineering field and he is very
15 interested in intellectual property and I see
16 him as being a spokesman and very involved in
17 PTO operations and so on and so forth when he
18 does eventually come to the Department. So
19 on top of that we have met with the Secretary
20 and discussed issues at the PTO. We've done
21 separate briefings with him a couple of times

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1 and he's well aware of the issues and he's in
2 the midst of testifying on the Hill on '02
3 budget.

4 He testified yesterday in front of
5 the Senate, he will be testifying tomorrow at
6 the House, and we've been briefing him with
7 respect to PTO '02 budget. He's well aware
8 of the issues, he's well aware of the
9 circumstances that we've got. He's keenly
10 aware of the issue of workload and pendency,
11 and he's made statements that he's committed
12 to funding the PTO, to set goals and fund the
13 PTO to get the job done and so that's very
14 encouraging there.

15 On top of that, it's been pretty
16 busy over on the Hill. Ron Myrick and I had
17 the opportunity to testify about two or three
18 weeks ago on business method patents on the
19 House side in front of the subcommittee. I
20 think it went very well. And we will hear
21 from John Love a little later on in the

1 program, kind of an update where we stand
2 with respect to -- on the operations side
3 with respect to business about the patents
4 and how our initiatives are going and so on
5 and so forth.

6 There are some hearings scheduled
7 for the future and we don't know exactly
8 where we stand in terms of being invited, but
9 there's a hearing next week on the Senate
10 side with respect to biotech and gene
11 patenting on May 8th. We're told we may be
12 invited to testify, but we haven't gotten the
13 official word. At least as far as I know as
14 of this morning we had not gotten the
15 official word. So we're prepared and ready
16 to go when that comes along.

17 And then on the 15th of May on the
18 Senate side we'll do another hearing with
19 respect to business measures, patent hearings
20 and patents. So there has been a lot of
21 interest on the Hill. And those of us who

1 were at the meeting -- or the hearing about
2 two weeks ago on business methods know that
3 Congressman Berman and Boucher have
4 introduced two new bills. One of them
5 specifically relating to business method
6 patents similar to one that they introduced
7 last year, and another broader bill that's
8 been introduced by them having to do with
9 post-grant opposition process.

10 A little while later Esther will
11 help us out in terms of going over the
12 operations of the patent side and a midyear
13 update -- we call it our score card for
14 patents. So Esther will help out doing that.
15 And I'm very pleased that the subcommittees
16 that you have started up have become very
17 active and working. We've had some meetings,
18 some of them via televideo, some of them by
19 telephone and so on and so forth, but I think
20 that that process is working very well for us
21 and I'm very happy.

1 Overall I wanted to mention the
2 fact that we did go under some controls for
3 the new administration. One would be a
4 hiring freeze or hiring controls as of
5 January 20th. We've been working with the
6 Department to ask for some waivers with
7 respect to those controls, and within the
8 last hour or so we've apparently gotten a
9 memo that's freed us up from some of those
10 hiring controls and we'll be able to move
11 forward.

12 But prior to that overall memo that
13 just came out, and I really haven't had a
14 chance to study it, but we did get a waiver
15 to hire some more patent examiners and we
16 just got that from the Department of Commerce
17 last week or so. So we're just in the
18 process of gearing up to bring on -- they
19 allowed us another 150 patent examiners so we
20 will be doing that. So I think that
21 indicates that the Department's well aware of

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1 our issues with respect to workload and
2 pendency and allowing us to bring some more
3 folks on.

4 And last before I turn it over to
5 Esther to go over operations, we talked about
6 last time the fact that we had a request in
7 to OPM for special pay rate for our patent
8 examiner series and related series. We're
9 still working with OPM on that. We haven't
10 gotten a final decision yet. We've
11 supplemented the original package that went
12 over in January two or three times now with
13 respect to additional information. We've
14 been working with Ron Stern and POPA in
15 helping us putting together the additional
16 information.

17 Another package just went over this
18 week, a supplement went over this week, and
19 we will be immediately beginning with it, go
20 over it and so on. So we're in the process.
21 We're still working with that request to OPM,

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1 but we haven't gotten any final decision. So
2 with that as a backdrop, maybe I'd ask Esther
3 to go ahead and maybe go over the patent
4 score card and talk about operations in more
5 detail.

6 ESTHER KEPPLINGER: Okay. As Nick
7 indicated, we have a score card which we
8 report out on quarterly and follow up on how
9 we're doing in the various areas. With
10 respect to hiring as Nick indicated, we have
11 had a hiring freeze that had been put in
12 place by the Bush Administration. We had
13 requested and received a waiver to hire up to
14 150 more examiners, so we've been moving
15 forward. The hiring coordinators and all the
16 Tech Centers have been starting to work again
17 this last week and a half on identifying
18 additional hires.

19 So we plan to hire at this point --
20 before we just received additional word that
21 they've raised the cap even further, our

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1 plans were to hire about 350. To date we
2 have on board about 180 examiners this year
3 with 30 offers confirmed with actual EOD
4 dates and a few offers outstanding. So we
5 plan to end this year with about 2,935
6 examiners unless of course we make additional
7 changes and hire some more and we'll have to
8 talk about the funding for that.

9 When I gave the report at the last
10 P-PAC meeting there were some questions. I
11 had talked a little about attrition and there
12 had been some questions then about exactly
13 how the percentages fall in different years
14 so we've prepared this slide. If you look
15 for example in fiscal year '99, we had 375
16 attritions. Of that 375, about 51 percent of
17 them left before they completed their first
18 anniversary.

19 Now, one thing -- that doesn't mean
20 that 51 percent of all the people we hired
21 left before their first year, but 51 percent

1 of that 375 represented people that had been
2 here less than a year. Now, we have to
3 remember that in fiscal year '98 we hired 728
4 people and in '99 we hired 799 people. So
5 when you do hire a large number of people,
6 you do get some mismatches between the
7 employee and this job because the patent
8 examining job is a very difficult job and it
9 isn't -- not everybody is cut out to do it.

10 Some people come and decide that
11 they really don't like a lot of the paperwork
12 or whatever. So there are a variety of
13 reasons why people leave. The people that
14 left in fiscal year '99 may have been hired
15 in '98 or they might have been hired in '99,
16 but at the point in which they left during
17 the fiscal year '99 they had less than a year
18 of service. We had about 10 percent that
19 left between one and two years and 4.3 from
20 two to three years.

21 You can see in fiscal year '00 we

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1 lost 437 people. Of that about 36 percent
2 were in their first year and 26 from one to
3 two years. So you can see the percentage has
4 actually gone down a little bit for that
5 first year loss. This year so far in '01
6 we've lost 137 people and the percentage has
7 gone down even a little more, it's 24.

8 However, it's a bit premature to say where
9 we'll end up through the year because we have
10 our largest hires and our largest number of
11 attritions in the summer, so this summer will
12 tell how we come out.

13 But so far this year you will see
14 that we have a greater loss of people at the
15 higher grades, two to three years, 16
16 percent. And as a matter of fact, we have a
17 slight increase in the people at grades 14
18 and 15 that are leaving this year which was
19 part of the submission we've given to OPM.
20 It's not a huge number, but it is a definite
21 trend up in that area.

1 With respect to timeliness, as you
2 know, we track the 14/4/4/4/36 that was
3 mandated by AIPA. If we fail to achieve the
4 -- get the cases completed within these time
5 frames, then we're obligated to give patent
6 term adjustment. So clearly our goal is to
7 minimize any patent term adjustment wherever
8 possible and to try to achieve these goals.

9 You'll see there for each of the
10 goals what our results were at the end of
11 fiscal year '00, what our targets are for
12 '01. These are at the Corps level and where
13 we were at the end of the second quarter for
14 '01. And we are close to our targets in most
15 of the areas, slightly above in a few of
16 them, but I think overall we've been
17 achieving very well towards the targets that
18 we set for this year considering that a
19 number of these, particularly 14 months is
20 really a resource issue. We have a huge
21 volume of cases coming in and only a limited

1 number -- a certain number of examiners
2 processing cases so it is a resource issue.

3 On the next page you'll see that
4 the core goal, what we did was we took the
5 core goal or targets in each of these areas
6 and we had broken them down across the Tech
7 Centers so that if each tech center achieves
8 their targets, we would achieve the core
9 goal. And these are the actual achievements
10 of each of the Technology Centers at the end
11 of the second quarter, and you can see vastly
12 different achievements.

13 You can readily identify the areas
14 of most challenge that we have. TC 2100 and
15 2600 are electrical/computer, business
16 methods and software, and telecommunications
17 are the areas in which we have experienced
18 the greatest growth, and so the biggest
19 challenge in achieving the time frames that
20 we have had set forth in AIPA.

21 But on the whole, most of the Tech

1 Centers are doing pretty well. We are
2 achieving close to the target that we set for
3 the entire Corp recognizing that we have
4 greater challenges in 2100 and 2600. With
5 respect to the applications that are issued
6 after 36 months, I think in the last meeting,
7 Ron, you had a question about how this would
8 break down specifically for those cases that
9 were over 36 months when we issued them. The
10 total percentage that aren't issued within 36
11 months is about 11.8 percent, and this is how
12 it breaks down after the 36 months, the time
13 frames beyond 36 months at which the patents
14 issue.

15 About 33 percent are one to three
16 months after 36 months, and you can see we
17 also have a large number that are over 12
18 months, 29 percent. However, the thing to
19 recognize from this is that this does include
20 those cases that have gone to the Board of
21 Appeals and Interferences. So there is a

1 significant time delay there in getting those
2 cases done, but if applicants are successful
3 at the Board of Appeals, they would be
4 entitled to a patent term adjustment for that
5 period of time for cases that have gone to
6 the Board of Appeals.

7 RONALD MYRICK: I don't know if
8 we're going to discuss this today or not, but
9 my question would be, do you have -- I know
10 there's been some recent information at least
11 from the public about protections on pendency
12 issue. Do you have any projections about how
13 this is going to go in the next two or three
14 years?

15 ESTHER KEPPLINGER: You mean the
16 percentage that will be over 36 months?

17 RONALD MYRICK: Right.

18 ESTHER KEPPLINGER: We've been
19 trying to make those projections -- actually,
20 the place where we really go up is 14 months.
21 We'll go up in achieving the first action

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1 within 14 months before we can bring it down
2 because we have a large number of cases
3 already sitting there in backlog, and we
4 expect a large number to come in before we're
5 able to turn the corner. However, 36 months,
6 once we get a first action done, we've got
7 statutory time frames set out there for
8 getting the second action and getting
9 completion of the case. So on those cases
10 which we fail to achieve 14 months, we'll
11 have some of those move over. I don't have
12 the projections right here in front of me as
13 to what we expect that to go to, but we are
14 working to try to minimize that wherever
15 possible.

16 RONALD MYRICK: I understand that.
17 I think in some point in this session perhaps
18 we'll have a discussion about the pendency
19 projections that were released not that long
20 ago.

21 NICHOLAS GODICI: Right; actually

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1 part of the '02 corporate plan which is a
2 public document which is -- it was sent out
3 as part of the package and I think is or will
4 be on our web site, you know, you look at the
5 projections through '06. Now, it's an
6 estimate and there's a lot of assumptions
7 that are taken into account when we modeled
8 this in terms of level of hiring and so on
9 and so forth. But I think the number you're
10 talking about, Ron, is the fact that there's
11 under certain scenarios in this corporate
12 plan, our first action pendency could arise
13 to 28 months.

14 RONALD MYRICK: That's what I'm
15 trying to get at. This could get a whole lot
16 worse.

17 ESTHER KEPPLINGER: Right; and
18 that's correct based on the workload that
19 we've been getting. Now, that is an average.
20 So some of the cases we'll get done sooner,
21 some are longer, and clearly 2100 and 2600

1 are our largest challenges. And to the
2 extent that they represent a large proportion
3 of the filings that we've been receiving,
4 they can weight the average so that it pulls
5 them in that direction.

6 RONALD MYRICK: Do you have any
7 indication, the percentage that they
8 represent in terms of filing to receipt that
9 you're perceiving is going to go down?

10 ESTHER KEPPLINGER: At this point
11 we don't really have any indication, however,
12 we're hopeful that they will. I mean, part
13 of it also is 2100 has been receiving a huge
14 growth. Although if you have a smaller
15 number, the percentage is larger. As it goes
16 out, that percentage increase may go down
17 even though the number continues to rise --
18 the overall number of applications continues
19 to rise. We have been working on the
20 projections that we see, but we don't -- it's
21 kind of hard to know what they're going to do

1 in the future.

2 RONALD MYRICK: Just to make a
3 conclusion, I would draw from this that based
4 upon the other data that we're going to see
5 and we have seen and we will see discussed,
6 it looks like to me the number that's going
7 to be over 12 months is going to go
8 substantially up in the outer years; is that
9 a correct conclusion?

10 ESTHER KEPPLINGER: Potentially. I
11 would say that the percentage over 36 months
12 is going to go up before it goes down. Now,
13 whether it will be all the way down to the 12
14 months, I'm not certain because the ones that
15 are over 12 months may be a large proportion
16 of the ones that are at the Board of Appeals.

17 RONALD MYRICK: Or we could just
18 say the overall percentage above 36 months
19 would be 12?

20 ESTHER KEPPLINGER: Yes.

21 RONALD MYRICK: Whether it will be

1 over 12 months we're still trying to
2 determine.

3 ESTHER KEPPLINGER: Not certain. A
4 certain percentage will be.

5 AUDIENCE MEMBER: I was going to
6 say, Ron, I think that if you just focus on
7 this information, it's not very helpful
8 because we don't know what the implications
9 of Festo will be with respect to increase in
10 number of appeals. This doesn't really have
11 a bearing on patent term adjustment because
12 these numbers if you notice relate to cases
13 that aren't subject to the new term
14 adjustment because those cases are only after
15 May 29, 2000, and these don't have any of the
16 back hours in terms of reductions and there's
17 no double counting.

18 So for the ones that have the
19 longest time periods that might include
20 appeals, all of those would ultimately be
21 backed out. So I think as Esther pointed

1 out, I think the most significant thing to
2 focus on will be the number of cases where
3 first actions are not done in 14 months
4 because you'll find that all the other time
5 frames in turn of turnaround are very tight,
6 and therefore, the driver will be on first
7 action as opposed to the 36 months.

8 RONALD MYRICK: Are we to draw the
9 conclusion then that first action will be the
10 place where all the -- where the expansion
11 and time will take place so that the other
12 dates can be met?

13 ESTHER KEPPLINGER: Well, we're
14 certainly hiring and addressing first office
15 actions. We are utilizing that as the driver
16 for how we hire and how we -- the initiatives
17 that we put forward. Obviously we have to
18 continue to have everybody work on the cases
19 subsequent to that, but we are utilizing the
20 time to first action as a measurement.

21 NICHOLAS GODICI: I would say yes.

1 You know, simple answer would be yes. You
2 know, as our inventory grows and we don't
3 have the capability of examining that first
4 action, that time to first action is going to
5 grow.

6 RONALD MYRICK: That's where the --
7 (inaudible)

8 MARGARET BOULWARE: Jerry's been
9 very patient here.

10 GERALD MOSSINGHOFF: An analogy I
11 used to use and I think it's kind of helpful
12 is that you have a huge flywheel and the
13 flywheel is going against us right now.
14 You've got the flywheel cranking increased
15 time to pendency. To decrease that time you
16 don't just say let's decrease it. First you
17 have to stop the flywheel going in the bad
18 direction and then turn it back around. And
19 there's an inherent bureaucratic lag and it's
20 probably 18 months or something before you
21 can really recover the fact that the

1 flywheel's going in the wrong direction. And
2 I'm sure you have an analysis like that, but
3 that is a very problematic thing for the PTO
4 because you don't control the flywheel.

5 NICHOLAS GODICI: You're absolutely
6 correct. Once we get into a mode of having
7 resources to begin to address the issue, it's
8 going to take us 18 to 24 months just to slow
9 down the momentum, and it's going to take you
10 that long before you can turn the curve.

11 GERALD MOSSINGHOFF: Right.

12 MARGARET BOULWARE: I have a
13 question about the attrition since we're kind
14 of getting around to that point of it now.
15 Does the PTO utilize exit interviews to
16 determine the dissatisfaction of the folks
17 who are leaving or why they are leaving? If
18 it's not a dissatisfaction, what they're
19 going to that's better?

20 ESTHER KEPPLINGER: We have not
21 necessarily consistently done that. We had

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1 last year done some exit interviews, gotten
2 interviews from some employees and also from
3 the supervisors to get ideas for why the
4 people were leaving and we have some
5 statistics on that, but the most common
6 reason for them leaving was for more money,
7 but there are a number of other reasons.
8 Some of them didn't like the job or they went
9 to -- you know, they had family reasons for
10 leaving. There are a number of ones that
11 come up, but --

12 MARGARET BOULWARE: Because at
13 least I would think that having those data
14 points would be very helpful, particularly
15 since we're trying to justify why we need to
16 have a pay increase for the examiners when
17 you've got good people who are leaving. And
18 if it's predominantly for more money, you
19 know, I think that's something that you could
20 show somebody. And the other thing too I
21 found with exit interviews is sometimes some

1 things come up in exit interviews that are
2 surprising and helpful. So and, you know,
3 it's something that you might want to think
4 about not having some big elaborate day long
5 deal, but you know, a fairly simple
6 checklist.

7 ESTHER KEPPLINGER: Right; and
8 that's a good point. Actually, we did
9 include the information about why people are
10 leaving in our request to OPM, so. Okay.
11 And then with respect to quality, last year
12 we were at a 6.6 percent reopening rate. The
13 Office of Quality Review reviews a certain
14 percentage of the cases that are allowed and
15 looks to see if the patentability
16 determinations made by the examiner were the
17 correct ones, and this is the number that was
18 reported. So last year we were at 6.6
19 percent. Our target for this year is 5.5,
20 and I'm happy to say that at midyear this
21 year so far we're at 4.5 percent. So we are

1 down and on target for making our goal or
2 hopefully exceeding our goal for this year.

3 The other thing that we looked at
4 in terms of the QR reviews, we look at other
5 types of errors like that we have the wrong
6 dependency of claims or the claims are
7 misnumbered or things of that sort that don't
8 necessarily affect the patentability
9 determinations, but should have been
10 corrected in the application. And last year
11 we were at 7.7 percent, our target is 7 and
12 we're also down in that. We were at 4.8
13 percent. So those are good news.

14 The other things that we focus on
15 in our score card for measuring the quality
16 of our work product are things that we
17 utilize from our annual customer satisfaction
18 survey looking at the satisfaction with the
19 communications that are sent out by
20 examiners, the satisfaction with the quality
21 of the searches that are done, and overall

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1 customer satisfaction. So at midyear we
2 don't have those number because we'll be
3 getting them at the end of the year from the
4 customer satisfaction survey. That survey is
5 being mailed out this month I believe and so
6 we'll get those results for the end of the
7 year. Yes, Ron?

8 RONALD MYRICK: If you were to plot
9 those first two items over a period of say
10 two years or so by quarter, would the line be
11 monotonically decreasing so it's always
12 getting better or has it had some hills and
13 valleys?

14 ESTHER KEPPLINGER: It's up and
15 down. Looking at them over quarters, it goes
16 up and down. Looking at the quality review
17 for the reopening rate over a 20-year period,
18 I actually had that also reported in the
19 later quality one. But we've been around 5
20 percent since '83, slightly up or slightly
21 below. We've been as low as 3.7 for an

1 annual number and as high as 7 percent, but
2 it's not a huge deviation from around 5. We
3 had gone down and then we started going up
4 over the last three years. Hopefully we're
5 turning it around this year, but we had been
6 on a slight incline.

7 I think one of the things that you
8 can link that to is hires. That we have seen
9 that when we have large numbers of hires, we
10 will have a slight delay, but we'll have an
11 upswing in the QR reopening. It's a training
12 issue that when we are hiring a significant
13 number of examiners, it is something of a
14 challenge on us to make sure that we have
15 trained adequately all of the new employees.

16 RONALD MYRICK: I would just
17 recommend that you do publicize that chart
18 because I think that's a very good indicator
19 of whether or not the quality is basically on
20 a flat level, up and down; the ultimate
21 solution is to improve quality consistently

1 over time because that's got to be our goal.
2 It cannot be to stay flat on balance. It's
3 got to be constant to drive quality.

4 At any rate, my suggestion would be
5 you plot that data so that you can in fact
6 publish the very objective standard as to
7 whether or not the office is constantly
8 improving. And I think as soon as you see
9 that first change in inflection or you see
10 that slope going up, there needs to be an
11 immediate attention to why that's happening.
12 So that if it is training, the emphasis goes
13 to the right salable and we get training in
14 the emphasis for that quarter and bring that
15 curve right back down and back on the slope
16 we want.

17 ESTHER KEPPLINGER: Right. One
18 thing that I would indicate, we also have
19 what we call In-Process Reviews where we have
20 internally within the Tech Centers reviews
21 done of first actions, first office actions.

1 We look at the same sorts of things. We look
2 at the quality of the written communications
3 and the quality of the search that's being
4 done in an effort to identify challenges that
5 we have, areas for improvement and provide
6 the necessary training back to the examiners
7 and identify areas in which we aren't
8 performing as well as we should.

9 So, in addition to QR, we have the
10 process reviews that look at the same type of
11 criteria. And from those end process
12 reviews, we have the quality assurance
13 specialists review them, then we send a
14 certain percentage of those cases to QR and
15 have the QR reviewers review them, and then a
16 certain percentage of those also go to the
17 customer. We'll call the customer and ask
18 them what they thought about this action
19 based on this criteria to try to ensure that
20 we're all looking at the quality of our
21 products in a similar manner.

1 And the final one is employee
2 satisfaction. This year we included employee
3 satisfaction as one of the goals of USPTO,
4 and there will be a survey done later in the
5 summer which will report out the overall
6 employee satisfaction which is a part of
7 this.

8 PATRICIA INGRAHAM: Could I just
9 ask, what were the targets for FY '00 for
10 customer service and employee satisfaction?

11 ESTHER KEPPLINGER: The targets for
12 '00, they were lower than this. We went up
13 seven percent in overall customer
14 satisfaction this last year and five percent
15 the year before. So overall customer
16 satisfaction we went up 12 percent in two
17 years. I think the goal was only about 57 or
18 something like that. So we have actually
19 achieved more than we expected because the
20 Center for Quality Services, that we have
21 here, estimates that about a three percent

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1 rise a year is reasonable. Admittedly 64
2 percent isn't very high and we're hoping to
3 get much, much higher and our targets out to
4 '06 take us up significantly higher, and we
5 have achieved higher than we expected in the
6 last two years. Yes, Jerry?

7 GERALD MOSSINGHOFF: Is the patent
8 employee satisfaction, that includes a mix of
9 people in Ron's unit and in addition to that
10 use AFGE as the other unit.

11 ESTHER KEPPLINGER: NTEU.

12 GERALD MOSSINGHOFF: NTEU?

13 ESTHER KEPPLINGER: Right.

14 GERALD MOSSINGHOFF: Is it a mix of
15 those two?

16 ESTHER KEPPLINGER: It is. The
17 survey is available for all employees to
18 take, managers, bargaining unit members,
19 everyone. And we look to see, you know,
20 whoever fills out the form. I think we had
21 41 percent return I think on the employee

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1 satisfaction survey last year which is a
2 fairly good result as surveys go. Any other
3 questions? Okay. Thanks.

4 MARGARET BOULWARE: Thank you,
5 Esther. One of the items we're trying to do
6 is continue to look at issues that come up
7 from meeting to meeting so that we can
8 develop a more in-depth review of the issues
9 that are important to the members on the
10 Public Advisory Committee. And I want to
11 thank Esther and Nick for going through and
12 digging deeper on some of the issues that
13 we're interested in in doing further
14 follow-up on that. I really appreciate that.
15 One of the issues that I asked for follow-up
16 on was the fiscal year 2002 budget and its
17 effects on our agenda. We have Clarence
18 Crawford listed, our Chief Financial Officer,
19 and Nick Godici. I don't know who's going to
20 take the lead on this.

21 CLARENCE CRAWFORD: Nick is going

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1 to do it.

2 NICHOLAS GODICI: I can't get out,
3 Clarence, so.

4 CLARENCE CRAWFORD: Well, your mike
5 works. Okay. Happy to be here. I wanted to
6 just go over the 2002 budget and talk a
7 little about it and to let you know where we
8 stand in the process. The two main things
9 that we want to mention here is an overview.
10 As it stands right now, our request is still
11 at the \$1,139 million level, and that
12 represents about a 10 percent increase over
13 fiscal year 2001 in terms of spending
14 authority.

15 As you'll see from the next slides
16 that the majority of that money is going
17 cover mandatory costs and also money to pay
18 for the patent pay raise, special pay raise
19 that we have requested from OPM. This budget
20 essentially allows us to maintain current
21 levels of staffing. I know we'll be talking

1 later about some other options. But the way
2 the budget is currently configured, we
3 anticipate in large measure attrition hiring
4 only for 2002.

5 I want to mention that where we
6 stand right now in the process, the Secretary
7 testified yesterday before the Senate and
8 will testify tomorrow before the House. The
9 House always tends to be a fun place to
10 testify and to work with. They're far more
11 energetic and animated. The House will mark
12 up our budget. They're behind schedule
13 because the President was given additional
14 time with the new administration.

15 My guess is we'll get an indication
16 from the House about our mark towards the
17 middle or the end of June. And it is
18 unlikely that the Senate will be able to pick
19 up the appropriation and issue a mark before
20 the July 4th recess.

21 GERALD MOSSINGHOFF: I heard you

1 had new personnel on your committee, your
2 House subcommittee?

3 CLARENCE CRAWFORD: Yes; we have a
4 new chair, Congressman Wolf. He's local.
5 His district is the high-tech corridor in
6 Northern Virginia. Projects that are of
7 particular interest to him are projects like
8 telecommuting, work at home projects. He's
9 aware of what we're doing. That's a bonus
10 for us that we're actively doing those
11 things. But as a practical matter for
12 Congressman Wolf, he inherits a subcommittee
13 like all the other subcommittee chairs where
14 the priority's are up and their dollars are
15 down in relative terms. And they will
16 struggle to try to fund their priorities and
17 be supportive of the President.

18 If the Congress goes close to form,
19 it wouldn't surprise me to see them actually
20 take some additional money. We won't get an
21 indication of that before the House mark. I

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1 think the House mark will be probably the
2 first mark. My guess is it will be the one
3 that would propose to take money. And then
4 if we're fortunate like we were in 2001, the
5 Senate will work and try to get most if not
6 all of that restored. But there's a very
7 good chance that we could actually lose
8 additional money and not see \$100 million
9 increase. Okay. Next.

10 NICHOLAS GODICI: I'll kind of
11 chime in.

12 CLARENCE CRAWFORD: Please.

13 NICHOLAS GODICI: Because part of
14 this was what would the impact be, you know,
15 when we see these kinds of numbers.

16 Clarence's point was that if his prediction
17 is true and that the House comes in with a
18 mark, let me just talk about what the impact
19 of that was last year.

20 CLARENCE CRAWFORD: Absolutely.

21 NICHOLAS GODICI: You all remember

1 the situation last year where we got a House
2 mark that was very low, it impacted our
3 programs and that we immediately stopped
4 hiring because we weren't sure we were going
5 to have enough money the following year to
6 pay the folks that we might hire during that
7 year. So this situation we're looking at,
8 you know, first the President's budget, and
9 then what comes from the House side and the
10 Senate side sometimes causes us to have to
11 start and stop and readjust and so on and so
12 forth as we go through the year. So there
13 could be some impacts depending upon what we
14 actually do see from the House side.

15 CLARENCE CRAWFORD: Nick makes a
16 very good point. It affects us --
17 technology, for example, as I mentioned,
18 we're going to reprogram some money from
19 within base to continue efforts in E-Commerce
20 both in the patents and in the trademark
21 arenas, but it's a relatively small amount of

1 money. The flat budgets and the up budgets,
2 you hire contractors, you get them on board,
3 you get them trained, you get them
4 experienced, the next year you get a flat
5 budget. You end up having to let the
6 contractors go. The companies let the
7 contractors go. You get money the following
8 year. All of the people that had any
9 experience in what you did and if you had a
10 good group of contractors are most likely
11 gone. So it's more than just losing a year.

12 The same is also true with respect
13 to hiring patent examiners in our
14 organization. We're going to have -- we will
15 probably have another situation like we had
16 last year where the House will probably give
17 us a mark lower. And depending upon how much
18 below the President's requested level, we're
19 going to have a decision to make this summer.
20 As you heard Esther say, we got the authority
21 to hire an additional 150 patent examiners.

1 We're doing that and we're moving out smartly
2 in making those commitments, but we also have
3 to sort of keep an eye to the congressional
4 scene because depending upon what kinds of
5 signals we get from the Hill, it may affect
6 our decisions. Probably will affect what we
7 do and how we will progress.

8 ROGER MAY: Clarence, I want to ask
9 you a question. When Esther made her report,
10 she projected that the examining corp would
11 be at 2935 at the end of this year. Even if
12 we got the administration request at 1.139
13 you're projecting 2800 examiners.

14 CLARENCE CRAWFORD: I think that
15 the major difference was more of a matter of
16 timing when we put together the
17 presentations. We just got -- as Nick said,
18 the approval last week, I believe it was a
19 week before last from the Secretary to hire
20 150. We just haven't cranked in a year, so.

21 ROGER MAY: It's fair to say though

1 that if the administration's requested
2 number, we would have the money to hire the
3 additional 135?

4 CLARENCE CRAWFORD: We will be able
5 to hire -- if we get the President's request,
6 we can hire the 150 additional examiners this
7 year and we'll be able to pay for them next
8 year. Where we potentially would run into a
9 problem is if we get less or significantly
10 less than what the President has requested,
11 it could then affect how many people we can
12 hire and how many people we can have on
13 board. Nick?

14 NICHOLAS GODICI: Going one step
15 further, Roger, under the President's budget,
16 next year our plan is to maintain the staff
17 level that we have at the end of this year.
18 In other words, next year's hiring will be
19 just to replace attritions.

20 ROGER MAY: No; I understood that.
21 The number you have listed for the end of

1 this year was 135 greater than what the
2 budget projection showed you had money. The
3 situation may be worse than what I understood
4 it to be, Esther, in your presentation.

5 CLARENCE CRAWFORD: No; I don't
6 think the situation's worse. I believe
7 that's the difference, wouldn't you say
8 Esther?

9 ESTHER KEPPLINGER: Yes; because we
10 only recently got the authority last week to
11 hire another 150.

12 RONALD STERN: Clarence, can I ask
13 you a question? Sometimes I lose track of
14 what's happening, and this year we have
15 roughly a 20 percent increase in our budget,
16 yet we don't have 20 percent more examiners.
17 Shouldn't that leave lots of money left over?

18 CLARENCE CRAWFORD: Twenty percent
19 increase in our budget?

20 RONALD STERN: Between fiscal 2001
21 and fiscal 2000. There's a huge, huge

1 increase this year over last year. We don't
2 have 20 percent more examiners than we had
3 last year so there should be lots of money in
4 the agency.

5 CLARENCE CRAWFORD: Let me come to
6 2001 and we'll show you where we are on that.
7 It takes a lot of money to run a billion
8 dollar enterprise. I think a lot of people
9 lose sight of that when you look at the
10 dollars. You'll see when we get to '01 is
11 because of the downturn in the economy, we've
12 actually lost money, especially on the
13 trademark side and had to ratchet back
14 hiring. While there is a distinction between
15 the two organizations, you still have to take
16 all of these things into account and we'll
17 talk about that when we get to '01.

18 AUDIENCE MEMBER: You might also
19 want to mention as you have on this slide is
20 that while we have implemented AIPA, we had
21 no money in '01.

1 CLARENCE CRAWFORD: We're putting
2 together a number. I've got my folks looking
3 at it. We've had no money to implement AIPA.
4 We started implementing it in 2000 with no
5 money, we continue to implement in 2001. In
6 2002 we've requested some additional money
7 for AIPA, but we will have spent a
8 significant amount of money. And at the same
9 time what we have found in despite our best
10 efforts at even discussing it with the P-PAC,
11 we -- hard to anticipate what people's
12 behaviors will be with respect to new pieces
13 of legislation. We've anticipated a heavier
14 filing rate and what we're finding is that
15 it's down considerably, and we can talk a
16 little bit more about that.

17 The adjustments here, I'll just
18 quickly walk through them. I want to clear
19 up one thing. The first one, of the 700
20 reduction in positions, that's an inside
21 Washington beltway accounting thing that we

1 must do. It has no effect on our operations.
2 The short story is this. In the Federal
3 Government a few years ago, positions what we
4 call FTE were more valuable than dollars.
5 Agencies had more money than they could
6 spend. They didn't have the authorized
7 positions to hire people. When we got cut in
8 the 90s what we did like everyone else in
9 Washington, we took the reductions. Rarely
10 did the reductions ever say cut FTE.

11 So what we did knowing the value of
12 holding on to these positions, we held on to
13 the positions because we kept seeing that our
14 workload would increase and that there would
15 be a point in time we would need those
16 positions. What has changed is that now with
17 the American Inventors Protection Act, we're
18 free from government-wide FTE ceiling. So
19 what we want to do is reduce the number of
20 positions and bring that more in line with
21 the actual numbers of people that we have on

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1 board. So that's what we're doing. It's an
2 accounting maneuver. It's something we've
3 got to do here in Washington. It has no
4 effect on the program, so I just want to
5 highlight that.

6 GERALD MOSSINGHOFF: Clarence, if
7 you get a lot less applications, that means
8 you have less fee income. Is the amount of
9 your budget still fixed and that means that
10 there's less in the reserve? Or you've got
11 two pots of money. It's the money you get
12 and it's the money in the reserve. If you
13 get less money in -- let's say dramatically
14 less money coming in, which of those two pots
15 does the money come out of, does it come out
16 of the budget or does it come out of the
17 reserve?

18 CLARENCE CRAWFORD: Well, one, we
19 don't have a reserve. We would love to have
20 one. If you're talking about the carry-over,
21 is that what you're referring to?

1 GERALD MOSSINGHOFF: Well, what the
2 bad guys take away from us.

3 CLARENCE CRAWFORD: Yes. Just as
4 this is an accounting maneuver. By the time
5 they give us the money in carry-over, it's
6 already scored and it was spent. You see if
7 we have a billion dollar budget and \$700
8 million comes from current year's receipts.

9 But you also see \$300 million let's
10 say carry-over from prior years. What that
11 \$300 million really represents is no reserve.
12 We went back and checked to see whether there
13 was really any money associated with the
14 surcharge, the fees, the portion of the
15 surcharge that was withheld. And as best we
16 can tell, those surcharge funds were used for
17 -- were deficit reduction. And again,
18 there's an account in the Treasury Department
19 that has carry-over and probably right next
20 to it is our surcharge.

21 GERALD MOSSINGHOFF: So if you get

1 less applications, you get less money?

2 CLARENCE CRAWFORD: Yes; and you'll
3 see that when we talk about Trademarks where
4 we've actually seen that in the Fiscal Year
5 2001 and we're actually projecting a reduced
6 level of trademark filings into '02 which
7 impacts then our money. It causes us to have
8 to rethink some things and to not do some
9 things. Now, Trademarks has a little
10 different story to add to it, but, yes, if we
11 get less income, because we have to generate
12 at least enough income the statutes typically
13 say to cover our costs. That's the way
14 they've been written in the past. So if we
15 get less, we spend less. Fortunately on the
16 patent side the filing rates continue to be
17 pretty good and they're bringing in the
18 income from filings. We have our reduced --
19 our estimates I believe beginning in '02,
20 Kaz, to 10 percent. Was it 10 percent in
21 '02?

1 EDWARD KAZENSKE: '03.

2 CLARENCE CRAWFORD: It's '03. Just
3 in anticipation of seeing the lag effect of
4 the economic slowdown assuming that maybe
5 there will be some reduction in R&D spending,
6 we're trying to adjust two years, a couple
7 years out into the future what the likely
8 impact would be.

9 RONALD MYRICK: Clarence, if I may
10 ask a question just to clarify. What I think
11 I'm hearing you say even with regard to the
12 surcharge or any putative carry-over, is that
13 it's a bookkeeping entry only, but there's
14 really no money there?

15 CLARENCE CRAWFORD: That's correct.

16 RONALD MYRICK: It's gone?

17 CLARENCE CRAWFORD: Gone;
18 absolutely.

19 ROGER MAY: I need to clarify
20 further. If we project that we were going to
21 collect \$200 million more than what our

1 budget was, but we collect only \$100 million,
2 now, we won't have covered all of the costs
3 that we incurred for the budget, but we will
4 be down \$100 million in collection, will that
5 impact our budget? That's the question that
6 needs to be answered.

7 CLARENCE CRAWFORD: There are two
8 ways that that would affect us. If as we're
9 projecting right now -- why don't we go to
10 the 2001 slide advance, advance beyond that
11 -- no, let's stay there, 2001. I want to
12 show you the two illustrations of that
13 because depending upon when you find out --
14 when you learn that there's a reduction,
15 there's a different set of consequences that
16 come into play. In 2001 we've updated it
17 largely to account for the reduction in
18 trademark filing levels. Based on the best
19 information we had at the time, we were
20 looking at a filing level of about 470,000,
21 and we talked to the T-PAC about this. All

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1 of the economics, whether you looked at the
2 OMB reports or the blue chip indicators or
3 CDO all said that 2001 would be a good year
4 and we would see -- it wouldn't be five
5 percent GDP growth, but it would be in the
6 two, three percent. Everything would be
7 fine. Even OMB issued its economic report in
8 January and completely missed the extent of
9 this downturn.

10 We're now into the year -- what
11 we've now had to do is to bring down
12 Trademark operations by that \$45 million to
13 make sure that we don't exceed our funding
14 level. Each year the appropriation language
15 changes somewhat. Some years they've said
16 you can't spend more than you collect and
17 that has to be in an offset. So what we're
18 doing here with Trademarks is we're bringing
19 down their spending. Their filings are down
20 and we'll talk a little about that. Let's go
21 to the next slide.

1 Fiscal year 2002. President
2 submits a budget to the Hill. We're
3 continuing to watch Trademark filings.
4 Trademark filings are cyclical. They
5 typically fall in the latter part of the
6 year. Into the fall and December they're
7 down, they're down and they start to pick up
8 about February. March is usually the first
9 really good indication you get about trends
10 for Trademarks. March was about the same
11 time when we had -- we had the lock on the
12 numbers for the budget for the President's
13 budget before we actually had as the data
14 points that we wanted to have for Trademarks.

15 We go into the 2002 situation and
16 as you recall, the Administration was
17 proposing a carry-over of about \$282 million.
18 That assumed an income level of \$1.346
19 billion and that assumed that we would have a
20 funding level of about \$1.139. How this will
21 play out this year I think as a practical

1 matter, Roger, what will happen is the fact
2 that we have reduced our fee income is
3 probably going to affect what they ultimately
4 give us.

5 RONALD MYRICK: Let me make sure I
6 understand. You're still going to collect
7 more than what you get --

8 CLARENCE CRAWFORD: Yes.

9 RONALD MYRICK: -- from the
10 appropriation?

11 CLARENCE CRAWFORD: It is not that,
12 it is how much --

13 RONALD MYRICK: You're just saying
14 that because you're going to collect less,
15 you will probably get less from the
16 appropriation.

17 CLARENCE CRAWFORD: That's
18 possible.

19 RONALD MYRICK: But the
20 differential will still be positive. You
21 will still collect more than you get?

1 CLARENCE CRAWFORD: Yes, yes, yes.
2 And there's one other organization that plays
3 in this as well and I hesitate to mention is
4 the Congressional Budget Office. They are
5 the official scorekeepers on costs and
6 receipts for the Federal Government. If you
7 remember last year, last spring when the
8 questions were raised about what was the
9 PTO's income, is it the \$1.2 or is it the
10 \$1.152 billion, the CBO makes its own
11 estimates of costs and revenue for the
12 Federal Government. Those numbers -- Jerry,
13 you remember that. Those numbers are the
14 numbers that control. So I think that as a
15 practical matter, they'll probably -- if I
16 had to hazard a guess, Roger, I think that it
17 will affect us. I think we'll get a lower
18 spending level, but there's no --

19 ROGER MAY: That was my
20 understanding. I think we can -- from what
21 I've heard in the last year, if we don't

1 collect as much as we said we're going to
2 collect, it's going to hit us in the budget.

3 CLARENCE CRAWFORD: Yes.

4 ROGER MAY: Regardless of whether
5 we collect -- (inaudible)

6 CLARENCE CRAWFORD: Yes; that's
7 correct. Especially when you look at the
8 portion that is taken off the top.

9 PATRICIA INGRAHAM: I'm sorry, I
10 know I should understand this better. The
11 question though is, does it hit us twice?
12 Because if you project a certain level, does
13 a certain amount of the level you project get
14 taken away in any case to go to the general
15 funding? And then if we don't collect what
16 we said we would, we've lost short one more
17 time because we don't have the internal
18 operating expenditures. So is it a double
19 whammy or is it a simple front-end cut that
20 you have some ability to plan for?

21 CLARENCE CRAWFORD: It's a

1 front-end cut, but it also has a follow-on
2 affect. We have adjusted to the President's
3 mark of the \$1,139 million. If we get a
4 further reduction, that's going to affect
5 what we're going to be able to do in 2002.
6 And then obviously we're assuming that
7 Trademark filings will begin to pick up in
8 '02. We're assuming about the second or
9 third quarter we'll start to see Trademark
10 filings increase and we're expecting about a
11 10 percent increase.

12 The major portion of their filings,
13 of their major growth area has been in the
14 computer, computer services and the internet
15 related, and that's been the piece that's
16 been hit the most by the economic slowdown.
17 We're assuming by about January or so of next
18 year that that portion of the economy looking
19 at what the economists are recommending are
20 saying will probably pick up.

21 MARGARET BOULWARE: But we're still

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1 looking at about a \$50 million shortfall in
2 what was estimated of the collections for the
3 current fiscal year, around \$50 million
4 shortfall?

5 CLARENCE CRAWFORD: Right; about
6 four, five percent. That's right.

7 MARGARET BOULWARE: And then would
8 that shortfall, is that brought into account
9 with the carry-over for the next year?
10 Because if you had -- if your carry-over was
11 less, then there is a possibility you could
12 swap an I owe you for less money for one that
13 was more money. I don't know if that factors
14 into a carry-over issue or not.

15 CLARENCE CRAWFORD: It does. What
16 we did was we worked with OMB to -- actually
17 the amount of carry-over that should of -- if
18 we had continued at the same rate, the amount
19 of carry-over that should have gone into '02
20 should have been in the \$360, \$370 million
21 range, and we worked out an arrangement at

1 OMB to reduce it by \$282 million. To make it
2 actually \$282 million and it pushes money
3 into '03.

4 The reality on the -- another
5 unknown force in fiscal year 2002, the
6 Congress made a conscious decision to
7 eliminate carry-over when they passed the
8 2001 cut. They made a conscious decision not
9 to have carry-over show and just drop it.
10 Not that we won't still be tracking the total
11 amount of money that's been diverted from
12 PTO, but I believe it was so problematic for
13 them last year in part, they decided not to
14 have carry-over and not to have advanced
15 appropriation.

16 The administration decided they
17 wanted to continue carry-over. There was no
18 -- I don't believe there's really any
19 consultation between the administration and
20 the Hill on this issue. We have talked to
21 the Hill. The Hill is not tipping their hat.

1 We talked to them once or twice a week.

2 ROGER MAY: Does it really make any
3 difference if you do it?

4 CLARENCE CRAWFORD: It doesn't.

5 ROGER MAY: Because from our
6 standpoint we're trying to staunch the flow
7 each year about what the Patent Office
8 collects. The carry-over is a joke because
9 it doesn't exist. They use it for other
10 programs.

11 CLARENCE CRAWFORD: It doesn't make
12 a practical difference. What it does do
13 having carry-over and these other kinds of
14 things that you have to explain, it make the
15 process even more complicated than it
16 normally would be. It's hard for them to
17 understand us, it's hard for us to explain it
18 to you. Believe me, it's even harder for us
19 to explain it to each other and to understand
20 it.

21 RONALD MYRICK: Madam Chairman if I

1 may, it may be the appropriate time for me to
2 make a comment in regard to a study that I'm
3 aware of that's been conducted by an
4 organization using a very high quality law
5 firm that was asked to look at the question
6 whether or not such diversions, withholdings
7 that have no prospects of ever being refunded
8 to the operating department is
9 constitutional.

10 And there are two challenges that
11 we're aware of, that I've been made aware of
12 in regard to that Constitutional issue. One
13 is under the takings clause; the other is
14 under the direct tax clause of the
15 Constitution. Under the takings clause, the
16 fifth amendment says, "Nor shall private
17 property be taken for public use without just
18 compensation."

19 The two relevant cases that I'd
20 like to put in the record are Webb's Fabulous
21 Pharmacies vs. Beckwith, 449 U.S. 155 (1980)

1 and the United States vs. Sperry Corp., 493
2 U.S. 52 (1989).

3 And under the direct tax clause:
4 Article I, Section 9, Clause 4 of the
5 Constitution says, "No capitation or other
6 direct tax shall be laid unless in proportion
7 to the census." Citing the cases of Hylton
8 vs. United States 3 U.S. 171 (1796), Pollock
9 vs. Farmers' Loan and Trust Company, 157 U.S.
10 429 (1895); and Eric M. Jensen, a scholar at
11 a university law school has written a very
12 interesting article about direct taxes in 97
13 Columbia Law Review number 2334 (1997).

14 I would just like to observe: I
15 think there is a concern about the
16 constitutionality of permanently withholding
17 without prospect for ever refunding to the
18 agency, funds that are being paid by agency
19 users for the services of that agency, both
20 as a direct tax and as an unconstitutional
21 taking. Thank you.

1 MARGARET BOULWARE: Thank you, Mr.
2 Myrick.

3 RONALD STERN: Can I just ask Ron a
4 question? Is there anyone who stands ready
5 to fund such a suit?

6 RONALD MYRICK: I didn't mention
7 any lawsuit. What I am saying is there's a
8 serious question being raised and that
9 question is being explored by other groups.
10 I'm just aware of it and wanted to bring it
11 to the attention of this body so that it's in
12 the record and we can consider it when we
13 write our report at the end of the year.

14 MARGARET BOULWARE: Guys, I think
15 this is indicative of the serious nature of
16 the funding crisis that this committee has
17 been reviewing since its inception, and I
18 appreciate Ron bringing it to our attention.
19 Thank you.

20 CLARENCE CRAWFORD: I think that
21 this administration is taking a slightly

1 different perspective. They're looking more
2 from what we hear from OMB and from Commerce
3 and others that as they look at the fee
4 issue, they're going to be more inclined to
5 approach the fee issue from first a business
6 requirement standpoint, what are the business
7 requirements, what are the goals for the
8 business requirement and what will it take to
9 close the gap. We'll see how that plays out.
10 We're getting a signal very clearly from OMB.
11 We're getting it indirectly from Commerce so
12 I think that's how this administration will
13 address the issue and we're hopeful that
14 we'll have a good outcome. Let me see if
15 there's anything else on here.

16 GERALD MOSSINGHOFF: Before we
17 leave the -- somebody is still keeping track
18 of the historic amount we haven't received
19 even though they don't call it a carry-over
20 anymore. That is not -- I don't think it's a
21 real number, it's not a real fiscal number,

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1 but it's a political number that over the
2 last tax years more than \$1 billion has been
3 diverted. That's a nice press conference
4 kind of number to have so I assume someone's
5 going to still answer that question?

6 CLARENCE CRAWFORD: Yes, sir; as it
7 gets closer. I think it's closer to what
8 about an eighth. '02 is where it stands now
9 in the \$800 million range.

10 KATHERINE WHITE: I just wanted to
11 make a comment. It is my understanding that
12 Congressman Berman's staff wrote a bipartisan
13 letter about PTO retaining funds. Have you
14 seen that letter?

15 CLARENCE CRAWFORD: Yes; we have.
16 We've seen that letter. There have been a
17 number of members that have written. I think
18 one of the most recent pieces of information
19 we picked up the other day was that the
20 republican high-tech conference Senate side
21 has indicated fee retention for PTO. I think

1 they talk about adequate funding, I believe,
2 instead of full funding, but at least they're
3 on record as well on this issue, so more
4 groups are coming forward.

5 Again, for 2002 there are two
6 adjustments there. They equate to about nine
7 percent or so. The first one is under PG-Pub
8 estimates on the income side. And the
9 smaller increases is due primarily to a
10 slight increase in maintenance fee renewal
11 rates, the \$3 million on the Patent side. On
12 the Trademark side it's just a continuation
13 of the effects of the economic slowdown on
14 the Trademarks, and we have come with a
15 conservative estimate of about a 10 percent
16 increase for Trademarks that would take them
17 to the 360,000 level for '02. Let's go to
18 the next slide.

19 Again, just parts of the income so
20 that you can see the different sources. Next
21 slide. One of the things that we'll be

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1 interested in hearing from you will be what
2 are you seeing in the way of R&D. R&D
3 spending seems to not necessarily correlate,
4 but there seems to be some connection between
5 R&D spending and patent applications. The
6 most recent we have on R&D spending only
7 takes us to the end of fiscal year 2000, and
8 it still continues to be up. So it will be
9 interesting over the next day or so if you
10 can help us with what you're seeing coming
11 into your firms and what your companies are
12 doing to help us figure out filing levels,
13 but so far Patents is right on target. In
14 fact, they're a little bit ahead of target in
15 2000.

16 NICHOLAS GODICI: Yeah; I was just
17 going to make the comment and Clarence has
18 made it that we had projected about a 12
19 percent growth rate in patents this year. We
20 are actually ahead. It's 13 or 14 percent.
21 We've seen no corresponding drop-off in

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1 patent filings as we've seen on the trademark
2 side. The only indication that I've gotten
3 is some anecdotal information that just now,
4 just within the last couple of months some
5 people are telling us that their filing rate
6 -- you know, the rate of filing of
7 applications is starting to dip because
8 they're seeing some effect of the economy.
9 So I don't know whether we'll see that start
10 now and that we'll get some, you know,
11 decrease in anything included in the rate of
12 filings, but we're just starting to hear some
13 noise that there may actually be some.
14 Roger's nodding his head so he may agree.

15 MARGARET BOULWARE: Yeah; I was
16 wondering if you'd like to get some other
17 input from folks around the table. If
18 anybody's got any comments they can make from
19 their own experience.

20 VERNON NORVIEL: I don't think the
21 biopharmaceutical and biotech industries have

1 been affected that much by the downturn of
2 the economy. And I guess, but I'm not sure,
3 that biotech and gene sequences and so forth
4 and those filing rates have persisted, and
5 probably will escalate even in the next few
6 months or so.

7 MARGARET BOULWARE: Yeah; I'll
8 speak from Houston, the energy center of the
9 country. Now, we're not the most liked
10 people, however, I have not seen a slowdown
11 from Houston and we're, of course, in an
12 energy sector economy primarily.

13 RONALD MYRICK: Speaking from a
14 perspective of a relatively large company, we
15 see no present indication.

16 ROGER MAY: My nodding was that I
17 think there will be some corporate areas,
18 some slowdowns. I'm no longer -- (inaudible)
19 -- but expect there will be some slowdown and
20 filings there, but my experience from the law
21 firm side is that there's no slowdown at all.

1 GERALD MOSSINGHOFF: It's the same.
2 We're limited only by the number of attorneys
3 we can put on filings.

4 CLARENCE CRAWFORD: We'll go to the
5 next slide. Again, some more information.
6 What we're starting to see as I mentioned to
7 you before that the Trademark filings we're
8 tracking more or less along the lines of the
9 NASDAQ. What we're starting to see now and
10 we're seeing in the March, April preliminary
11 April figures are that we're no longer
12 declining. It's now seeming to sort of
13 plateau and we're not sure how much of an
14 increase, or for the first time we're
15 starting to see March, April flattening out.

16 GERALD MOSSINGHOFF: A word about
17 seasonally adjusted, I think I will talk to
18 you off-line about that. I don't know what
19 that means. You've got quarters down there,
20 there's data put down for the various
21 quarters of the fiscal years.

1 CLARENCE CRAWFORD: When we talk
2 about seasonally adjusted, we're trying to
3 normalize the filing. In this case, filing
4 patterns over the 12-month period. Here we
5 show it in quarters. So what you will see is
6 what we try to do is to look at -- when you
7 look at trademark filings, you don't just
8 look at trademark filings this year, but
9 you're also sort of looking at what the trend
10 is for trademark filings over time.

11 So when we saw a reduction in the
12 fall of trademark filings, it was a little
13 steeper than normal, but for the past five,
14 ten years they've always gone down. What
15 didn't happen was in that February time
16 frame, there didn't seem to be any end to the
17 downward trend. It continued not quite as
18 steep in February, but it was still downward.

19 When we look at this and we're
20 doing it on a quarter, what you'll probably
21 see is that I think the NASDAQ hit the --

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1 when you do it on quarters, it sort of levels
2 -- NASDAQ did hit 5,000 I think last year,
3 but it was only for a short period of time.
4 So when you look at this spike, you're not
5 going to see the NASDAQ up at the 5,000 level
6 because it's a quarterly average when you --
7 that quarterly average so the norm brings it
8 down. Otherwise, if we did it monthly, you'd
9 probably see a spike that would actually
10 touch the 5,000.

11 So it's an attempt in short to be
12 able to look at filing rates in our case,
13 filing rates and income and trying to
14 determine from sort of basic patterns of
15 filing, what do we have? How are we doing?
16 How does it look compared to last year and
17 the prior years? If we could guess the
18 movement of the stock market, I would imagine
19 that there would be one or two of us probably
20 not here for subsequent meetings. But that's
21 part of the problem of trying to estimate

1 filings and the filings that are affected by
2 things that happen in the economy.

3 But overall this year is going to
4 be -- this year '01 and '02 from an
5 estimating standpoint are going to be by our
6 standards a disaster typically within four
7 percentage points of error. '02 already
8 looks like it's at least nine percent and '01
9 could be in that same by the time it's all
10 said and done. But we've been pretty good.
11 It's just the problems with projecting this
12 as many of, you know, the economic models and
13 the regression models are very good as long
14 as the future looks like the past. When the
15 future starts to look different than the
16 past, those models become a heck of a lot
17 less reliable.

18 On the next, if we go to the next
19 slide. What you will see here is again in
20 terms of workload as Nick and Esther pointed
21 out, you see a steady growth in patent

1 workload through '02. The one spike you'll
2 see there is the Trademark when it went up
3 and came back down on the Trademark side.
4 Let's go to the next slide. I think the
5 thing to talk about, a number of things have
6 happened. I know this is the P-PAC so I
7 don't want to say much about Trademark, but a
8 number of things that have happened on the
9 Trademark side that are worthy of mention,
10 this is a pendency chart to first action.

11 At the end of fiscal year 2000, we
12 hired an additional 50 trademark examining
13 attorneys. The filing rates start to fall
14 and are falling. Trademark introduces a new
15 productivity program to increase the
16 productivity of their examiners. We just
17 completed -- we have preliminary results from
18 that. They just signed the agreement in
19 December, I believe, and they've had about a
20 quarter of actual work experience, but it
21 seems to be having a positive effect in terms

1 of increased productivity. We're working
2 with them to try to sort through all of these
3 things.

4 The other phenomena that's in the
5 trademark area is that they also had the Work
6 At Home program and they're seeing an
7 increase in productivity. Not productivity
8 with respect to the amount of production per
9 hour, but productivity with respect to the
10 amount of direct time, time that people
11 actually spend examining versus spending on
12 other time. So they're seeing an increase.
13 So all of these things are converging.

14 They're further along with the
15 technology investments. They're a smaller
16 organization. We're watching them and
17 working with them very closely. The patent
18 organization is working with them very
19 closely, but what they are showing is they
20 ended Fiscal Year 2000 with about a 5.7%
21 first action pendency, 5.7% per month. They

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1 think they'll probably be at about 4.8% to
2 first action by the end of the fiscal year.
3 Again, assuming that the filing rates stay at
4 about this level, they don't spike, they
5 don't go through the floor and that in Fiscal
6 Year 2000 with a 10 percent increase that
7 we're projecting now, they believe that
8 they'll be close to perhaps a four-month
9 pendency to first action. So a number of
10 things have come together to help them in
11 this picture. Let's go to the next slide.

12 RONALD MYRICK: If you could go
13 back to that for a moment. The Patent side
14 was very interesting despite the amount. And
15 one of the things that's been interesting is
16 I've been getting e-mails from various
17 sources, people telling horror stories about
18 being notified that their patent applications
19 will not get examined, first office action,
20 until some exorbitant amount of time beyond
21 the kind of numbers we're seeing up there.

1 So I think there is a growing body of
2 folklore that's developing in the user
3 community of the PTO that says that pendency
4 is going through the roof in certain areas.
5 Particularly I'm sure it's going on --
6 (inaudible). I think that gets masked and
7 massive numbers don't -- (inaudible). It
8 looks bad, but in certainly these classes
9 it's horrendous, and I think that's something
10 that perhaps you should break down to show
11 that slope in those classes as much as Esther
12 did a while ago to see what really is going
13 on for much of American industry.

14 CLARENCE CRAWFORD: Agreed.

15 NICHOLAS GODICI: We can do that.

16 I mean, Esther showed the numbers with
17 respect to the percent over 14 months, but
18 this is another measure and this is the
19 average time it took for applications that we
20 acted on, and you're right, Ron. Despite 14
21 months where we are today to 16 or 17 in '02

1 reflects the assumptions that Clarence put on
2 the table which were 12 percent growth rate
3 in '02 and only holding our examiners at a
4 constant so that by the end of '02 we're
5 looking at that jump. That's only average.
6 And remember before we were doing very well
7 in the chemical and mechanical areas in terms
8 of this, but we're well below that, but
9 certainly way above that.

10 GERALD MOSSINGHOFF: And in some
11 ways those are the most critical ones because
12 the life cycle of inventions are less in
13 those areas than they are say in biotech and
14 pharmaceuticals where life cycles are
15 relatively long.

16 RONALD MYRICK: I couldn't agree
17 with you more.

18 GERALD MOSSINGHOFF: Particularly
19 the ones you're talking about where there's
20 real problems, the problem's really serious.

21 RONALD MYRICK: Right. And the

1 fact is that in some of the areas where we
2 have short pendency, there's really no great
3 harm in having a little longer pendency. But
4 as Jerry is alluding to in the electronics
5 business, the pendency is that people are
6 hearing about from their examiners, giving
7 them notices saying we're not going to take
8 your case until -- you know, till a long
9 time. Excuse the colloquial expression.

10 GERALD MOSSINGHOFF: Less frozen.

11 RONALD MYRICK: Those are the very
12 technologies that need the turnaround are
13 getting exactly the opposite.

14 VERNON NORVIEL: Just a bit of a
15 speech here. When I look at what Clarence
16 has presented here and I hear about these
17 pendencies in 2006, compared to the kind of
18 numbers that we've heard, and I hear what
19 Esther has said, I would sort of glean the
20 following from all that. It looks like, if
21 things don't change dramatically, that we'll

1 be looking at two or three years to get a
2 first action by 2006. And as you point out,
3 for the high-tech and biotech companies, and
4 I would segregate biotech from
5 biopharmaceutical, that would probably mean
6 three to five years. Add a year or two onto
7 prosecution and you're talking about five to
8 seven years to get a patent. That's sort of
9 frightening I would say.

10 For a new company going in to get a
11 venture capital firm to fund them, telling
12 them they won't have a patent for seven
13 years, is virtually unacceptable. It means
14 the patent is not really terribly meaningful.
15 Combining that with the fact that I still
16 believe that high-tech and biotech companies
17 play an important part in the economy and the
18 expansion of our economy and our
19 competitiveness in the world, I conclude from
20 that that really something significant has to
21 be done.

1 Clarence I think made a really
2 important point is that all models assume
3 that the past dictates what happens in the
4 future. And, I would assert from all that,
5 that we can't let the past continue. Some
6 significant things have to change, and I
7 would say much more dramatic, certainly in
8 addition to, budget changes from the
9 Congress. Things like going to a request for
10 examination process for cases that are never
11 really going to matter so they don't bog down
12 the system. Where we say large entities have
13 to file electronically to get the paper out
14 of the system and move through more
15 efficiently. Things like these 10,000 or
16 100,000 page patent applications costing more
17 than a patent application that is 10 pages.
18 The current price scheme just doesn't make
19 good sense and it's bogging the system down
20 dramatically.

21 I think we've also got to somehow

1 find a way to engage external business and
2 the software businesses to help get the
3 government and the Patent Office more into
4 the E-business world and increase
5 efficiencies there. So I would assert that
6 from what Jerry says, at least from the
7 high-tech and biotech point of view that we
8 really just can't complete the task in any
9 other way. Otherwise, we're going to find
10 ourselves in a very dangerous situation.

11 ANDY GIBBS: I have a quick
12 question, Clarence. Is there a difference in
13 the attrition rate in the examiners in the
14 Patent and Trademark side? And if so, what
15 would the attrition be?

16 CLARENCE CRAWFORD: Let me get
17 that. There is a difference. The Trademark
18 side is lower. I can get that and I'll have
19 that for you tomorrow. I just don't -- it
20 just escapes me.

21 ANDY GIBBS: When we see these

1 diverging paths here if we have the
2 significant hiring attrition rate -- filing
3 and decline in Trademark with a low attrition
4 rate, clearly suggests that these trends are
5 being somewhat predictable.

6 CLARENCE CRAWFORD: What we've seen
7 -- and I'll get the data. We have it, it
8 just escapes me right now. What Trademarks
9 has seen, for example, with their Work at
10 Home program, they've got -- they will soon
11 have 100 examiners working at home, and I
12 don't believe we've lost anyone from the work
13 at home program. Nick?

14 NICHOLAS GODICI: Andy makes a good
15 point with respect to attritions and its
16 impact on pendency. And part of the
17 information that we put together and sent to
18 OPM just this week and Esther has been
19 working on it is pretty dramatic. If we can
20 bring the attrition rate down and model that
21 out for several years, a big benefit you get

1 is you grow the experienced staff. And the
2 bottom line there is that if we can -- you
3 know, if we're just treading water with
4 respect to, you know, the same experienced
5 staff, you know, roughly 1,100 or 1,200 what
6 we call primary examiners and they're leaving
7 as quickly as we can get them up through the
8 ranks, then we really are treading water. If
9 we can bring down the attrition rate through
10 the package we put through OPM, we show that
11 by year 2007 that we could have 2,000 primary
12 examiners. And correct me if I'm wrong,
13 Esther, but the number of work units balance
14 disposals goes up by --

15 ESTHER KEPPLINGER: Half a million.

16 ANDY GIBBS: \$500 would be used
17 more.

18 ROGER MAY: That was by what year?

19 ANDY GIBBS: '07. So a big part of
20 a plan to attack pendency and bring pendency
21 down is to communicate with OPM, is to bring

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1 our attrition rate down, keep people on board
2 because they really help us and become very
3 productive after about five years when
4 they're primary examiners.

5 CLARENCE CRAWFORD: Next slide.
6 This is just again, just a look at grants and
7 registrations. For 2002 you're looking at
8 Patents with 166,500 and Trademarks at
9 147,600. Nothing more than just again
10 another way to look at workload and
11 production.

12 RONALD MYRICK: Well, this is a
13 very significant slide. The projections that
14 you've been discussing with us show patent
15 filings increasing at 12 to 14 percent.

16 CLARENCE CRAWFORD: Yes.

17 RONALD MYRICK: But there you have
18 for 2002 flat output.

19 CLARENCE CRAWFORD: That's correct.

20 RONALD MYRICK: So either your
21 rejection rate is going up substantially or

1 there's a tremendous backlog build in which
2 again I think is a -- a very clear indicator
3 of a growing problem. My question is, what
4 is the basis for -- what determines the flat
5 output? What is the reason why it's
6 absolutely flat from 2000 to 2002? Is that
7 the forced attrition only hiring? In other
8 words, because you can only hire for
9 attrition, are you forced then to have a
10 maximum output from the system, even though
11 the input changes?

12 ESTHER KEPPLINGER: Yes; it's
13 dependent on the staff involvement.

14 MARGARET BOULWARE: One of the
15 things that I'd like to -- Ron's probably
16 seen it, but just point out that the Patent
17 Office has done, not only the pendency
18 estimates projected through fiscal year 2006
19 under current modeling, but also the pending
20 applications, you know, the numbers and the
21 disposals, et cetera, et cetera, and it

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1 really is dramatic as we're all coming to
2 understand and it's a very -- the numbers get
3 pretty big, pretty fast.

4 RONALD MYRICK: Yes. So we can
5 expect that on attrition hiring only, the
6 number is going to stay roughly flat out
7 beyond 2002 in terms of issuances and grants
8 impact; is that a reasonable assumption?

9 NICHOLAS GODICI: Yeah; that's
10 reasonable. And what you see then is the
11 growth in the backlog or the inventory on
12 unexamined application and corresponding
13 growth in pendency to first action.

14 CLARENCE CRAWFORD: Yes. Move to
15 the next. Just to give you a snapshot of the
16 funding level comparing the '02 President's
17 budget to the current level, and just to
18 again to remind you of that \$100 million
19 increase, approximately \$60, \$65 million of
20 that is salary related. It is either pay or
21 special pay package or the annual pay

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1 adjustments that we make or the Trademark
2 bonus program.

3 GERALD MOSSINGHOFF: Well,
4 Clarence, to respond to Ron's question, the
5 Commissioner for Patents goes up about --
6 almost 80 percent of the increase goes in the
7 Commissioner for Patents as I read that.

8 CLARENCE CRAWFORD: Yes; it also
9 has I believe we would show --

10 GERALD MOSSINGHOFF: So you're not
11 -- in other areas you're not a wash with
12 money.

13 RONALD STERN: You misunderstood,
14 Jerry. What I was talking about was the
15 difference between 2001 and 2000. These are
16 for the next year. In other words, this is
17 the -- the 2001 currently available funds is
18 20 percent higher overall than we had in
19 fiscal year 2000.

20 CLARENCE CRAWFORD: I'll have to go
21 look at that. I don't think it's that. We

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1 can talk about that tomorrow. I just didn't
2 bring it today.

3 GERALD MOSSINGHOFF: I should say
4 that this shows a healthy increase from 552
5 to 631, healthy increase for the Patent side
6 of the operation.

7 CLARENCE CRAWFORD: Yes. One of
8 the problems that we have is with the
9 technology we've been trying to convince
10 people of is that just because they choose
11 not to give us money for technology, we still
12 have to handle paper. And what you see then
13 are the contracts that go along with handling
14 paper. Whether it's moving the files or
15 providing storage for those files, we still
16 have to pay for that. So part of that
17 increase will be some of the contracts that
18 are related to just handling paper. It's a
19 hard thing for people to understand at first
20 blush. The paper doesn't go away. The money
21 -- they can take the money, but we still have

1 to do something with the paper.

2 GERALD MOSSINGHOFF: Just so I'm
3 not misunderstood, I don't think the increase
4 is anywhere near what it has to be. But in
5 terms of where you allocated the \$100 million
6 you got looks like almost \$80 million of that
7 went into the Patent -- Commissioner of
8 Patents operation, still not enough to handle
9 the alarming growth in pendency.

10 CLARENCE CRAWFORD: Absolutely,
11 absolutely. Let's go to the next slide.
12 This one is just to give you the snapshot of
13 approximately the FTEs, nothing more than
14 just to give you rough orders of magnitude as
15 you look at the organization, you look at the
16 different elements within the organization.

17 GERALD MOSSINGHOFF: But you are
18 not under an FTE ceiling?

19 CLARENCE CRAWFORD: We're not under
20 an FTE ceiling, but as a practical matter
21 there are a lot of ways you can control that.

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1 Just say don't hire or you just don't get the
2 money. There are a lot of ways to manage
3 that role and still be free from
4 government-wide FTE ceiling. Okay, next.
5 The last slide we just wanted to give you
6 sort of a sense when you look at the Chief
7 Information Officer's budget, roughly how the
8 money is allocated. And as I mentioned, we
9 are planning to within the base make some
10 adjustments to continue some E-Government
11 initiatives, but this budget also has been
12 relatively flat over the years as well.

13 You'll see that the productivity,
14 things that we get out of technology have
15 grown considerably. The number of
16 transactions, yet the budget is flat. When
17 you compare us to other companies that are
18 more or less in the intellectual business,
19 our IT spending is probably low and we've
20 been low for years. It's a very easy target.
21 It's one of the easy targets that just

1 somehow doesn't seem to get funded as you
2 work your way through the process, yet the
3 paper continues to come in. Goodness, I've
4 taken more time -- Madam Chair, I apologize
5 for taking more than my allotted time. I'm
6 happy to answer any questions.

7 ANDY GIBBS: Just on dissemination,
8 is that primarily the pre-grant --

9 CLARENCE CRAWFORD: No; that's --
10 Ron, can you help me on that?

11 RON HACK: Yeah; that's the selling
12 of certified documents. It's the cost of
13 putting things on the web site and it's the
14 selling of products like CD-ROM to both
15 businesses and private individuals.

16 ANDY GIBBS: Product -- (inaudible)

17 RON HACK: Mostly -- (inaudible)

18 MARGARET BOULWARE: I think this
19 discussion has been a good run up for the
20 meeting tomorrow so that hopefully our
21 meeting tomorrow will really hit the ground

1 running. If there are any other questions
2 for Clarence -- we'll be meeting with him
3 probably all day tomorrow so maybe we can
4 move on. We've got some other important
5 items. First of all, I'd like to publically
6 thank Clarence for his patience in explaining
7 the intricacies of the budget process one
8 more time and for bringing it to a better
9 understanding so we can better act in our
10 roles as advisors to the Patent and Trademark
11 Office.

12 Right now if there are anything
13 else that Nick and Clarence want to add to
14 the discussion, and I think we did have a
15 very good discussion on this. I'd like to
16 take our break right now and then come back
17 to the E-Government. We'll be taking a break
18 a little bit sooner, but I think that makes
19 more sense logically right now, and
20 everybody's nodding their head so I think we
21 have agreement on that and we will come back

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1 in 10 minutes and so I've got that about 5
2 after 3, thereabouts.

3 (Brief break.)

4 MARGARET BOULWARE: Okay. I'd like
5 to ask everybody to come back into the room
6 because it's air-conditioned now. It's much
7 better. For any of the Public Advisory
8 Committee members who did not get their
9 materials via e-mail -- Bo, raise your hand.
10 Bo has the confidential materials for your
11 review. And I think she's distributed it to
12 just about everyone, but if anybody needs
13 some materials, please contact Bo.

14 The other request that we've had
15 from our stenographer is for everyone to keep
16 their voices up and hopefully we've got
17 microphones that are working properly so we
18 can have the appropriate transcription of
19 these discussions that are very, very
20 important. And one of our important
21 initiatives that the committee has been

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1 looking at since its inception is the
2 E-Government initiatives that are going on in
3 the Patent Office. And we have a
4 subcommittee that is working with PTO
5 personnel on a number of the initiatives, and
6 I'd like to turn the program over to Ron
7 Myrick who is coordinating the subcommittee
8 group from the Patent Advisory. Ron?

9 RONALD MYRICK: Thank you very
10 much, Madam Chairman. First, our
11 E-Government subcommittee has had two
12 different meetings with representatives of
13 the Office to bring us up to speed on more of
14 the E-Government issues inside the office,
15 and I want to commend the Office on their
16 cooperation and appreciate their answering
17 our questions and so forth.

18 I would also say that for the
19 record, both of these meetings were conducted
20 with -- including confidential information
21 and were thus executive session meetings. At

1 the beginning of each meeting we established
2 that what we were going to talk about did
3 include confidential information, that it
4 would be appropriate that we conduct the
5 meetings in executive session so that's how
6 we did it.

7 There was a good deal of material
8 that was provided to us by the Office, and
9 what I've asked Fred to do and he'll be
10 speaking for us from the Office's perspective
11 today is to summarize for us all of the
12 information that was presented to us in our
13 two meetings that is open to public
14 disclosure. Now, there will be other
15 materials which we perhaps will talk about
16 tomorrow which were not open to public
17 disclosure, but Fred will summarize for us
18 all the materials that were open to public
19 disclosure, and I think you're going find
20 some good news in some of the things he's
21 going to tell us.

1 So with that we'll have some
2 discussion after Fred's report, but I think
3 we should realize too, I'm sure Madam
4 Chairman would like us to be as brief as we
5 can in view of the hour and the grilling we
6 gave Clarence. So perhaps we should try to
7 make our reports as succinct as possible.
8 And I think Fred, however, I don't want you
9 to give up on some of the good news you've
10 got tell us about. Thank you.

11 FREDERICK SCHMIDT: Absolutely.
12 Thanks very much, Ron. Let's go to the first
13 slide right off the bat. One of the things
14 we did in our first meeting was to just go
15 over the history of IT development. I won't
16 belabor these slides, but the thing I wanted
17 to point out is that one of the things that
18 the PTO has seen as a long felt need is the
19 need for the development of an electronic
20 patent application. See back in 1987 our
21 DIOS, our data input-output system was

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1 already in the thoughts of the planners of
2 automation development for the Patent and
3 Trademark Office. Next slide, please.

4 1990 we took another look at the
5 electronic patent application as surfaced in
6 the PAM system, Patent Application Management
7 System. If you look at these milestones you
8 can see that PAM ran into some difficulties.
9 And moving on to the third slide, basically
10 PAM development was stopped in '94 and '95.
11 We had a GSA imposed time-out and then we got
12 back on track in 1997. And since that time
13 we've had considerable success building
14 components of an electronic patent
15 application, and I'll talk more about that
16 and also about our near term plans right now
17 to move ahead on that front. Next slide.

18 Now, this is a very important slide
19 to focus on. This builds right on what
20 Clarence was talking about. This goes to the
21 heart of the funding for automation

1 development in the Patent and Trademark
2 Office. And I'd like you to focus on, this
3 is the patent business portion of the OCIO
4 budget. This shows the total budget allotted
5 for the patent business area. And if you
6 look at the middle column, those are the
7 dollars that are needed to keep the trains
8 running, maintenance and operations.

9 And you can see as we've become
10 more and more automated, the cost to keep the
11 trains running, all the electronic tools that
12 we offer has gone steadily up. Now, the hard
13 part of the story is the development column.
14 As our need has done nothing but increase as
15 you've heard Clarence and Esther talk about
16 the tremendous building of the paper backlog,
17 the actual development dollars available to
18 the patent business for IT development has
19 actually gone down over the years. It is an
20 important thing to keep in mind as we see
21 budgets going up, we see that the actual

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1 development dollars for critical E-Government
2 initiatives has gone down. Next slide.

3 RONALD STERN: Fred, what does that
4 actually cover? Does that cover the PTO
5 network or is that in corporate
6 infrastructure the \$85 million we saw in the
7 other slide? I mean, this is on top of that
8 \$85 million?

9 FREDERICK SCHMIDT: Yes;
10 infrastructure's on top. We also looked at a
11 number of modeling scenarios sort of covering
12 the tracks that Esther talked about this
13 morning. Basically we presented the case
14 that workload's growing. They were looking
15 at a 12 to 13 percent growth this year and
16 we're modeling 10 percent growth after that.
17 That our backlogs are continuing to grow,
18 that hiring freezes and budget cuts have
19 really hurt us with respect to pendency and
20 the buildup of inventory. And really the way
21 we feel we need to address this is through a

1 combination of process changes, system
2 changes, E-Government initiatives and
3 organizational structure changes. We need a
4 whole variety of ways to deal with this
5 backlog and pendency issue. Next slide.

6 An important point to make as we
7 look at IT development throughout the patent
8 business is that, you know, throughput is a
9 function of examining hours per application.
10 IT development is not like ratcheting up the
11 speed on an assembly line of Model Ts. You
12 know, you're not automatically going to get
13 an increase in output just because you employ
14 an automated system. So that's an important
15 thing to note. In our current business
16 structure, throughput is clearly a function
17 of examining hours, perhaps application.
18 There are significant benefits to IT
19 developments, and it clearly is going to
20 improve our efficiency, customer service and
21 file integrity, process quality will all

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1 benefit, raw output, and there are many other
2 factors involved in that besides simple
3 employment of IT systems. Next slide.

4 So faced with a budget situation
5 that Clarence has described so clearly, the
6 Patent Business has really chosen to focus
7 our development efforts in three primary
8 areas. The first is to maintain our current
9 operational levels for all our existing IT
10 systems, and IT is essential to the way we do
11 business now. We've got to keep those
12 systems up and running. We can't afford down
13 time in those systems. Second and which
14 we're going to talk about primarily this
15 morning -- I guess this is this afternoon,
16 isn't it? Is to deliver by FY '06 an
17 electronic patent application system.

18 Again, this is something that we've
19 been talking about, planning for since the
20 80s. We'll talk about our current round of
21 plans and how we think we can make this

1 happen in the near term. The other
2 initiative that we're really going to focus
3 on is to develop systems to deal with our
4 mega applications. These huge files that are
5 coming into the office now. Whether they be
6 sequenced listings, computer programs or
7 applications with large tables, whatever. We
8 have to have a mechanism to deal with this
9 huge amount of paper and data that's rolling
10 into the office. So those are the patent
11 business IT E-Government goals that we're
12 going to be focusing on. Next slide.

13 Let's take more look in detail at
14 our electronic patent application system.
15 Two key components of this. The first is our
16 electronic filing system. Electronic filing
17 has been around since October 2000. That's a
18 system that's up and running. That's a
19 system that's going to have to undergo much
20 enhancement to meet the needs of our
21 customers, and we'll talk more about that and

1 what's upcoming in the near term. Let's talk
2 more in detail about TEAM, our Tools for
3 Electronic Application Management.

4 The TEAM system basically has a
5 very broad and encompassing goal. It's to
6 provide a complete processing, electronic
7 processing of patent applications throughout
8 the prosecution in the Corps from the receipt
9 in the door throughout all prosecution in the
10 Tech Centers. Now, we've set up two key
11 milestones in the TEAM project. By Fiscal
12 Year '04 we want to deploy to all examiners,
13 all employees in the Tech Centers the images
14 of complete patent applications. By complete
15 I mean not only the application is filed, but
16 all bio one papers, all amendments that would
17 come in, and all communications, all office
18 actions from the office going out to our
19 customers. So that's our FY '04 milestone
20 for TEAM.

21 By FY '06 we want the full TEAM

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1 system to be deployed to the Technology
2 Centers. This would involve manipulation of
3 text, automated formalities review, automated
4 version control where you'd be able to go
5 back and electronically look at each stage of
6 the application throughout prosecution and be
7 able to flip from diversion as filed, go back
8 to the first office action, the first
9 amendment throughout the entire chain of
10 prosecution. So that's the full TEAM
11 deployment goal for FY '06. Next slide.

12 We see real benefits with patent
13 business for our FY '04 milestone. We're
14 calling this deployment our AIM system. AIM
15 is an acronym for Application Image
16 Management System. That's the name we have
17 for it right now. The idea is to capture the
18 full image for all our employees. With the
19 paper backlog that you've seen and heard
20 described this afternoon, we feel there's
21 real benefits to reduce the logistic and

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1 storage costs of maintaining this large
2 number of unexamined paper applications.
3 This would reduce the lost files that we have
4 right now, it would give improved access to
5 files for all our employees when they could
6 call on-line all the applications as they
7 came into the office. This would support
8 Work at Home efforts. For examiners at home
9 they could on-line get access to patent
10 applications, and it would clearly ease the
11 logistics for us as the PTO plans to move to
12 a new facility where we're going to have
13 operations in two sites, where we are now in
14 Crystal City and the Carlyle. Rather than
15 carting paper back and forth, it would be
16 nice to have those applications
17 electronically. So we see real business
18 benefits for this system in fiscal year '04.
19 Next slide, please.

20 FY '06, the full TEAM system is
21 basically a builds on AIM, the Image

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1 Management System, and an acronym that Jerry
2 Mossinghoff I'm sure is familiar with, the
3 old EFW, electronic file wrapper, something
4 we talked about early in the 80s. The EFW
5 really has all those document management
6 features I talked about where you can control
7 and manipulate the text to do automatic
8 formalities checking of the text of the
9 application.

10 Full TEAM we anticipate would
11 really help us in the contracting costs that
12 we have with paper manipulation. It would
13 give us much better work flow tracking down
14 to a finer granularity than we have in our
15 current PALM system, and again, the automated
16 processing and improved quality steps I've
17 already talked about. So those are the real
18 business benefits that we see in our full
19 TEAM system for fiscal '06. Next slide.

20 Let's go back to EFS. EFS is up
21 and running. We've had about 600

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1 applications filed in the electronic filing
2 system since its deployment end of October.
3 And I do want to mention that we are having a
4 focus session for all EFS users on May 23rd
5 here in the USPTO where we hope to gather a
6 lot of comments from the users and
7 suggestions, but we have already in the works
8 planned a major enhancement to the EFS system
9 this September. You can see that the number
10 one enhancement we're rolling out is this EFS
11 server version, and what do I mean by that?

12 Basically this means that you'll be
13 able to have different people access the
14 electronically authored application that can
15 be stored on a server at a law firm. So for
16 example, you can have a paralegal author an
17 application, store it on a server and then at
18 his or her leisure the patent attorney can
19 draw that down and review it and do whatever
20 work they want on it. This is something that
21 we've heard quite a bit of customer demand

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1 for and this is going to be in our September
2 release.

3 The second bullet is something that
4 we hope will be a hook to get more people to
5 use EFS because it will be really the first
6 of our follow-on papers that people can use
7 this electronic filing system for to submit
8 to the PTO. IDS submissions will be able to
9 be submitted to the PTO and assignment
10 information. And significantly they'll be
11 able to submit IDSs or assignment data for
12 any application, not necessarily just an EFS
13 filed application, but any application in the
14 PTO. We also are going to address upwards of
15 50 improvements that we've heard from our
16 customers to date and that we've been aware
17 of in our own testing internally. So we
18 except the September release to be a
19 significant improvement in addressing our
20 customers' needs and concerns.

21 RONALD MYRICK: This is one area

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1 where I think we would like to comment.
2 We're very pleased that the Office has
3 listened so intently to the user base. As
4 you recall we had a discussion about EFS --
5 (inaudible) and EFS at a previous meeting of
6 this group, this subcommittee and we were
7 presented with the fact that the office has
8 heard us and has heard also the user
9 community that's using EFS and is moving in
10 September to address at least 50 of the
11 outstanding issues. And Fred is smiling
12 because there's a story behind that. Fred,
13 are you at liberty to say how many requests
14 or how many specific areas for improvement
15 have been received?

16 FREDERICK SCHMIDT: Actually, we've
17 targeted over 100 quite frankly and we feel
18 very confident that we'll make at least 50 of
19 them. Our goal is quite frankly to get all
20 100 out there.

21 RONALD MYRICK: That's what I

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1 wanted you to say. I wasn't going to force
2 you to say it, but that's the story. But the
3 point is this Office has listened to us in
4 this area, and I think it's so fundamental to
5 everything the Office wants to do in the
6 future. This is very important for everyone.
7 By the way, other members of the committee
8 will have a chance to discuss these issues
9 when Fred finishes, and each of our members
10 of the committee has some thoughts and views
11 and further suggestions. We're by no means
12 through as a subcommittee in working these
13 issues, but I think we've made serious
14 progress.

15 FREDERICK SCHMIDT: Great, thanks.
16 We also are planning another major release of
17 EFS in September 2002. The reason why we're
18 waiting a year is because this is going to be
19 basically a rewrite of EFS so that you can
20 accommodate both national and international
21 filings with our electronic filing system.

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1 Again, this is one of the major things that
2 our customers have told us they want. And as
3 I'll describe more in a few minutes, we've
4 made significant progress with our trilateral
5 partners to come to this agreement. So
6 again, there will be a major new release in
7 September '02.

8 Also with that new release we will
9 begin to tie together the pieces of our
10 existing automated infrastructure by feeding
11 EFS data into our PALM system. Our PALM
12 system, of course, tracks the status and
13 location of our applications, and we will be
14 feeding directly from EFS the BIB data that
15 creates our filing receipts into PALM.
16 Again, should give us much better quality in
17 our filing receipts which is again a
18 long-standing concern of our customers. Next
19 slide, please.

20 Then after that new release in
21 September 2002, throughout fiscal year '03

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1 we've got a number of enhancements and we're
2 going to move to address the other major
3 concern we've heard our customer talk about
4 and that's total electronic communication
5 back and forth between the PTO and our
6 customers. We will be able to support
7 incoming and outgoing follow-on papers. What
8 do I mean by that? Basically amendments,
9 papers coming in for the application and
10 office actions going back to our customers.
11 So that's the plan for the near term EFS
12 enhancements. Next slide.

13 I'm going to elaborate a little bit
14 on our harmonization efforts to get just one
15 standard filing for U.S. national and
16 international filings. Now, this really was
17 first broached in our April trilateral
18 working group meeting. All the trilateral
19 offices saw the need to move in this
20 direction. We just had some PTO folks attend
21 a meeting over in Geneva April 23 through 27.

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1 Had great success working with our trilateral
2 partners and we agreed on common document
3 standards and filing protocols. Then the
4 other bullets really talk about WIPO taking
5 this information and publishing it to member
6 states. Next slide, please.

7 This summer we're going to continue
8 our work, and then if you look at the middle
9 slide on this page you see that by December
10 of this year we expect WIPO to publish this
11 information. And again, this is going to be
12 what we're using for that redesign of EFS
13 throughout this upcoming fiscal year. So
14 again, a lot of work behind the scenes on
15 making that happen.

16 RONALD MYRICK: On that point too
17 I'd like to mention that this is another area
18 where the committee focused in a previous
19 meeting and the office has heard us and gone
20 back and done what appears to be very
21 promising in coming up with a common approach

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1 to three major bases of filing, EPO, WIPO,
2 PCT and -- (inaudible)

3 GERALD MOSSINGHOFF: Fred, could
4 you run down very quickly the status -- JPO
5 is way ahead of us in electronic filing from
6 what I hear. Where are we, EPO, JPO and
7 USPTO?

8 FREDERICK SCHMIDT: JPO has had
9 electronic filing for some time, but their
10 system is much different. It's not filing
11 over the internet, it's filing via dedicated
12 lines in Japan. Japan significantly does
13 agree with the approach that the USPTO and
14 EPO is taking as far as internet filing and
15 has made a commitment to move to that in the
16 future. So they will be converging on our
17 approach.

18 However, as you can imagine, the
19 JPO has a considerable investment in their
20 current infrastructure as well as political
21 realities that they have to deal with with

1 respect to changing their system. So you
2 know, they're ahead, but they're a system
3 that does not accommodate internet worldwide
4 filing. They see they have to move that way,
5 they've agreed to move that way. I think
6 they're going to probably keep an eye on
7 either the USPTO and the EPO in that regard.

8 GERALD MOSSINGHOFF: How about EPO,
9 where are they? They were always somewhat
10 disdainful of this idea.

11 FREDERICK SCHMIDT: No; EPO and
12 USPTO like I say, after this April meeting we
13 both heard from our customers that they don't
14 want to have to file separately to, you know,
15 the European Patent Office, the U.S. Patent
16 Office and WIPO. So we've heard the common
17 message, and that's a good motivator when
18 your common customer base says, we want you
19 to get together and talk. Well, we're doing
20 it. We're getting together to talk and our
21 systems will be able to converse with each

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1 other. So great, great progress. We're
2 very, very pleased with this.

3 RONALD MYRICK: I can say that
4 there have been a number of agencies in
5 Europe who have been working the issue.

6 FREDERICK SCHMIDT: Thanks. Next
7 slide. Now, it's important to note that as
8 PTO moves ahead in developing our electronic
9 filing system, we are also reaching out to
10 public business concerns to build their own
11 software so that they can offer a product to
12 any customer who wants it to file
13 applications electronically in the USPTO.
14 This effort is called our Request for
15 Agreement.

16 Back in October we opened this up
17 and we've been inviting folks to join in a
18 partnership with us to develop electronic
19 filing software. Of course it must integrate
20 with our internal systems. It has to have
21 the tagging, the extensible markup language

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1 tagging that we require, as well as our
2 security, our public infrastructure, PKI
3 security has to meet those requirements.

4 However, they can put all sorts of
5 new and different features that particular
6 customer base may want, and so we are going
7 to be moving ahead. We've had a lot of
8 interest. We've had over 40 different
9 customers express interest in this type of
10 partnership in developing their own
11 electronic filing software. So again, this
12 is very good news for us that there does seem
13 to be a public interest in developing other
14 modes of submitting patent applications to
15 the USPTO electronically. So we'll be moving
16 ahead and keeping you posted on this progress
17 as the RFA process continues. Next slide.

18 Let's go back to TEAM because TEAM
19 is a major, major system. As I said, it's
20 got two key components. The application
21 image manager providing the images of the

1 file wrapper. Basically this would provide
2 our employees the ability to view documents,
3 to navigate, flip through pages of the
4 document and locally print in their offices
5 components of the patent application. Next
6 slide.

7 The other major piece is the EFW.
8 This provides not only the images, but the
9 text and the textual manipulation with the
10 same features. You navigate text searching
11 within a document and local printing. Next
12 slide. This slide is up here not to dazzle
13 everyone with the alphabet soup of automated
14 system acronyms, but merely to show you the
15 vast number of systems that need to be
16 developed in order to have TEAM come to
17 fruition.

18 We tried to make it a building
19 block approach showing you that there's an
20 AIM system for images and EFW for the text.
21 Behind both AIM and EFW, each one of these

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1 systems will require automation, development
2 and work over the coming years. So there's a
3 lot of work to be done in this regard, and I
4 would refer you to the SITP for further
5 elaboration. I'm not going to go through
6 these systems now, but that's where the
7 details are. Yes?

8 PATRICIA INGRAHAM: These assume
9 additional acquisition?

10 FREDERICK SCHMIDT: Yes; to develop
11 TEAM, right, we're going to have to have --
12 yes; we're going to have to have substantial
13 development, yes, we are. Next slide. This
14 is a good graphic to sort of put together
15 what we're really planning to accommodate in
16 the USPTO for our electronic patent
17 application processing. If you look at the
18 flow from the applicant in the upper left
19 across the top, that's the flow of a paper
20 application. And our operating business
21 assumption right now is that we are going to

1 continue to have to accommodate paper filings
2 for the foreseeable future.

3 When paper applications come in,
4 they will go through our scanning system, our
5 PACR system that scans and provides optical
6 character recognition of that to get the text
7 for manipulation. That system is up and
8 running now. It will have to be, of course,
9 further enhanced as we move ahead. So we
10 have that line for paper processing. For the
11 applicants that choose to use the electronic
12 filing system, it gives us the application
13 information in a much more usable form. We
14 can do a lot more electronic automated
15 manipulation of that data that will feed
16 through formalities review and then both be
17 ultimately to our TEAM system where all our
18 employees have access to this electronic text
19 and image file that they can do a lot of
20 manipulation with.

21 Underlying these systems of course

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1 is PALM which gives our work flow tracking
2 and PAIR is shown. You also want to provide
3 customer access, increasing levels of
4 customer access to information about the
5 whereabouts of their patent application in
6 the USPTO. This sort of graphically ties
7 together the paper flow processing and the
8 electronic filing processing issue. So that
9 in a nutshell is some of the things we've
10 been talking about in our E-Government
11 meetings with the subcommittee. I'd be happy
12 to take any questions. Ron?

13 RONALD MYRICK: What I suggest we
14 do is entertain any immediate questions on
15 your presentation, but then I'd like to turn
16 it over to the other members of the
17 subcommittee for each of their thoughts. And
18 many good ideas have come out that you
19 weren't able to summarize because perhaps
20 some of them have to be discussed in
21 executive session. I'll just leave that up

1 to each of the individual members.

2 But I think one of the major points
3 I would make is that the funding for this is
4 something we have to find and for that we
5 have to turn it over to our budget
6 subcommittee which we have not had a chance
7 to talk to about this, but there are a lot of
8 underlying assumptions and reasons for having
9 to require these tools which we can't go into
10 in public session, but are absolutely
11 compelling. So the money for this has to be
12 found. Let's turn it over to Andy. Andy,
13 you had a thought in our meeting earlier this
14 week. Would you like to explore that thought
15 or would you like to hold that for executive
16 session?

17 ANDY GIBBS: I think that we can
18 kind of lay the ground work. On one of the
19 slides -- let me see if I can tell you which
20 number it is here. Slide nine. Fred, you
21 have the -- that was the slide Total

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1 Electronic Patent Application System. In
2 fiscal '04 you have the milestone deployment
3 of images of complete patent application.

4 FREDERICK SCHMIDT: Yes.

5 ANDY GIBBS: Can you describe a
6 little bit more precisely what that is and
7 what you anticipate the development being?

8 FREDERICK SCHMIDT: Sure.

9 Basically for the FY '04 milestone of
10 deployment of images of a complete patent
11 application to all Technology Centers, this
12 involves basically the scanning of paper
13 submissions as we had expected would have to
14 do, scanning of all the paper submissions as
15 they come in the office, scanning of paper
16 submitted amendments to the office, scanning
17 of paper outgoing office actions.

18 ANDY GIBBS: And the primary reason
19 for this is for paper management?

20 FREDERICK SCHMIDT: This is for
21 paper management. Again, if we had everyone

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1 filing electronically, we wouldn't have to go
2 through the root of all this image capture of
3 paper.

4 ANDY GIBBS: By the time we get to
5 '06 where we hope to deploy the actual text
6 readable full electronic file wrapper, the
7 development effort that we put into the '04
8 milestone is at that point fundamentally
9 thrown away as the transition to full
10 electronic system that's phased in.

11 FREDERICK SCHMIDT: Actually, it
12 wouldn't be thrown away because again,
13 assuming that there still are paper
14 applications being submitted to the Office,
15 we still have to go through the scanning and
16 the optical character recognition of those
17 paper submissions to the Office. It would be
18 a different story if we had 100 percent
19 electronic filing. Then we would have tagged
20 electronic text coming in, but we're
21 operating under the business assumption that

1 we will have to accommodate paper application
2 filings for the foreseeable future, and
3 that's why we have that two flow track in
4 that flowchart at the end of my presentation.

5 ANDY GIBBS: Ron, I don't know if
6 we want to go into more detail at this point
7 in the public session to elaborate on that.

8 RONALD MYRICK: Well, I tell you
9 what, let's turn it over to Vern because he's
10 going to bring up an issue I think that
11 follows on in some respects to your issue.
12 Also Julie Watson, another member of our
13 subcommittee, if she has anything that she
14 would like to bring up, everybody has the
15 floor and then what we'll do is prepare to
16 the executive session tomorrow.

17 ANDY GIBBS: This falls sort of
18 specific --

19 RONALD MYRICK: Right. So there's
20 much more discussion to be had on that. We
21 will have more meetings in the subcommittee,

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1 so let's turn it over now to Vern and let him
2 bring up the issue he had in mind.

3 VERNON NORVIEL: So I think the
4 gist of what you're driving at is some
5 questioning of whether it's worthwhile to
6 build a big OCR based system. I think it is
7 not. When you step back one step, I think to
8 restate what is happening here from a
9 layman's point of view is you get a paper
10 application in which a law firm or a company
11 has had in electronic form, they've printed
12 it out. They send you the paper copy, you
13 reconvert it back to an electronic digital
14 binary image form, and then you try your best
15 to OCR to get it back to where it was at the
16 law firm to start with on their desk. When
17 you think about it is peculiar.

18 So I think that we do have a
19 question about whether that's -- if there's a
20 way to avoid or minimize that system, we
21 wonder if maybe that might be evaluated. And

1 one of the pieces of that might be helping to
2 push the electronic filing more, and maybe
3 getting yourself comfortable that you could
4 do without the OCR based system at all in the
5 extreme and just move right away. Admittedly
6 there's going to be small inventors and so
7 forth that aren't going to be able to deal
8 with this, so you'll also have to deal with a
9 certain amount of paper, but I think we need
10 to look at ways to get rid of this system --
11 this OCR system.

12 It seems that to me that there
13 might be some ways of pushing that issue
14 about -- for example, I understand that
15 you're limited by a treaty of some sort that
16 you can't mandate non-U.S. people to file
17 electronically right now. But there's
18 nothing to stop you from mandating U.S.
19 filers to file electronically right now. I
20 also think there would be a political fallout
21 if you mandated all U.S. filers to file, and

1 I don't think it would be fair to small
2 inventors. But I don't think that there's
3 anything unfair about making large entities,
4 like some of them here in the room, file
5 electronically or companies that are smaller
6 but are well funded and using very expensive
7 law firms.

8 It doesn't make sense to me that
9 somebody should be paying \$20,000 for a
10 patent at one of these fine law firms and
11 then not be required to go ahead and have the
12 law firm spend \$20 to make an electronic file
13 that's appropriate for the Patent Office. So
14 I do think that there might be some ways we
15 could look at pushing electronic filing and
16 then reevaluating the OCR system and seeing
17 to what extent it's valuable and so forth.

18 So I think that's my general
19 thought. I would like to add one more thing
20 if I could which is, I'm not convinced yet
21 that the Patent Office is sufficiently user

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1 friendly to the community of the developers.
2 I've looked over the RFA and so forth and I'm
3 still questioning in my mind why it's not a
4 more conventional system where specs are
5 published, you click, you see them and people
6 can run off and do what they would like to
7 do.

8 I understand that there's some
9 issues about encryption and so forth and that
10 would have to be worked out, but my sense of
11 the people that I talked to that would
12 potentially be interested in that is that
13 they do feel some level of a barrier there to
14 going ahead and developing systems that build
15 on yours.

16 RONALD MYRICK: Thank you very
17 much. As you can see we've had a free field
18 of fire in our discussions and the comments
19 that were just made aren't new to Fred, they
20 were made before. So they're still in
21 discussion. Let me ask Julie, is there

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1 anything you'd like to add at this time?

2 JULIE WATSON: Not at this time.

3 RONALD MYRICK: Okay. Fine. Thank
4 you very much, Julie. One of the things we
5 also talked about as a follow-on part to a
6 discussion of what Andy and Vern said was
7 that the electronic filing system seems to be
8 fundamental to everything; but still we would
9 rather not have it imposed upon people.

10 Rather have them want to use it, and that's
11 why it's been so critical that all 104 of the
12 outstanding concerns be addressed as quickly
13 as possible so that in fact people will be
14 asking to use it, asking for more of the
15 same.

16 Certainly in my own company, we're
17 mandating its use as much as possible in
18 spite of the fact that we get a lot of
19 push-back because it's not so friendly yet.
20 So I think in referring Vern's comments and
21 referring to the fact that the FDA is not as

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1 friendly as possible to the developer
2 community, EFS has not yet been as friendly
3 as possible to the user community and you're
4 focusing on that. And I think once you've
5 got that fixed, an awful lot of the problems
6 with these other issues may begin to resolve
7 themselves because people will want to use it
8 and not be forced to.

9 That's not to say that a little bit
10 of economic incentive or some other kind of
11 approach shouldn't be used, but certainly
12 everything begins with making your user
13 community desirous of the product you're
14 producing. And I think if there's one thing
15 that this subcommittee is focused on is
16 saying that that's where the Office should
17 focus itself, make it user friendly for
18 everybody so that they demand the product
19 rather than have the product shoved down
20 their throats.

21 With that, Madam Chairman, we'll

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1 turn the meeting back to you. And as you can
2 see, we've got a lot more to do in our
3 subcommittee, but I commend the Office on the
4 receptivity they've given us to our ideas.
5 Some of them were somewhat radical perhaps,
6 but at the same time they're the exact kind
7 of things we have to address to make sure
8 that we're looking at all parts of the
9 envelope as to solutions that can be
10 achieved. So with that, the budget is the
11 key.

12 MARGARET BOULWARE: Thank you. I'd
13 like to recognize our committee as I
14 announced at our last meeting, Ron Myrick,
15 Vern Norviel, Andy Gibbs and Julie Watson,
16 and I'd like to thank them on behalf of the
17 entire committee for the work that they're
18 doing and that I assume that they will
19 continue to do. I know Jerry had some
20 questions and I'll open it up for discussion,
21 but I want to get the chance to ask the first

1 couple of questions.

2 First of all, the thing that
3 appealed to me coming from the environment
4 that I come from is having the initiative of
5 the IDSs and the assignments so people can
6 start taking part in EFS in bite-size pieces.
7 I think once you start getting people
8 comfortable with doing something that's not
9 filing a big application where they're
10 confused about the XML language or whatever,
11 and I'm not a computer scientist at all, that
12 I think that that is quite commendable. And
13 as fast as you can roll out something that's
14 not the big enchilada, but people can do in
15 bite-size pieces, I think that is going to be
16 a huge help.

17 The other issue that Ron just
18 mentioned that I'd like to find out what the
19 subcommittee and the rest of the group around
20 the table thinks about is the incentivizing
21 of EFS. I mean, right now apparently you get

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1 a better filing receipt. Now, that's good,
2 but you know, what else can you get, and I'd
3 like to have that discussed. The other thing
4 too that I brought up on a number of times to
5 folks is, look, we've been filing sequences
6 on disks for a long time in the PTO, and so
7 far I hadn't heard of the entire PTO system
8 being brought down by a virus on a disk.
9 Although they might have been filing a disk
10 on a virus, but at any rate, the -- that's
11 bad pun. But one of the things I think we
12 really have to get to is this anathema that
13 you can't send anything in on a disk because
14 we've been doing it for years and years and
15 years.

16 And like Ron said, everything's on
17 a disk, and you know, those are kind of my
18 comments that I'd like to put out on the
19 table for a discussion and response. They
20 have been responded to to some degree. I
21 really would like to discuss the

1 incentivizing of electronic filing because in
2 Japan there's a high incentive for electronic
3 filing because as I understand it, the cost
4 is stupendous. And is Japan not the same
5 member of a treatise as we are? I mean, I
6 thought everybody was having to file in
7 Japan. If somebody can explain that, you
8 know, that little -- that issue, maybe this
9 is something, you know, I wasn't aware of.
10 But the incentivizing I think we really need
11 to get with and provide some good counsel to
12 the Patent Office on how we can do that in a
13 commercially feasible manner.

14 VERNON NORVIEL: To take your disk
15 analogy one step further, every public
16 company now files their SEC filings
17 electronically. And there was a great
18 brouhaha at the general counsel of our
19 company and there was a great brouhaha and
20 the law firms were all sweating bullets and
21 so forth, but folks got over it. And I think

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1 that if a company can file their SEC filings,
2 I really do think that they probably can file
3 a patent application electronically. So I
4 think that your analogy taken one step
5 further is probably more broadly applicable,
6 and I don't know how to address the Japanese
7 situation.

8 MARGARET BOULWARE: Oh, that's
9 mainly more of an incentivizing situation
10 because in Japan, oh, gosh, what percentage
11 is filed electronically? 90s, that's what I
12 thought. I was going to say 98, but 90
13 percent is filed electronically, but the
14 incentive there is the filing costs.

15 ANDY GIBBS: If I can address some
16 of the incentives, one of the driving goals
17 of the P-PAC in the first place is quality.
18 And the faster we move to a system that
19 allows better, more precise handling of the
20 increased filings of data that are coming in,
21 the better we're going to have a handle on

1 the quality. So that's one of the throw-off
2 incentives.

3 The other is the issue of pendency
4 moving out. And unless we get the process
5 under control -- right now we have a runaway
6 situation that we will see some incredible
7 pendency moving out, the quality going in two
8 years from now, three years from now. We're
9 going to be so far behind the power curve
10 that regardless of how much of this budget
11 diversion we end up seeing three years or
12 four years hence, it still may not be enough
13 to catch up.

14 Right now we're behind the power
15 curve, and the real concern is to implement
16 as quickly as possible the electronic filing
17 wrapper and to address your bite-size pieces.
18 Even a development process at breakneck speed
19 will produce components of that system in
20 essentially bite-size pieces. You're not
21 going to get the whole enchilada in 24 months

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1 if you started today. You'll get pieces of
2 it 18 months, 24, 36 months from now as the
3 pieces are beta tested, integrated. So by
4 the nature of software development as a
5 complex system, there will be bite-size
6 pieces.

7 The real question though in looking
8 at the development schedule of the '04 goals
9 and the '06 goals is to question whether we
10 divert the attention to the '04 goals or
11 possibly set the '04 goals aside and move
12 straight to the '06. As Vern was suggesting,
13 accelerate the '06, to accelerate development
14 of the electronic filing wrapper, accelerate
15 and clean up the RFAs to get more software --
16 third-party software providers to have a
17 realistic chance of coming in with a very
18 clean system.

19 There's been a lot of development
20 at the enterprise technology level, there's a
21 lot of off the shelf development that can be

1 leveraged if it's done smartly, but it's
2 going to take a concerted effort. So again,
3 the incentives, quality of pendency
4 reduction, better management of the -- there
5 is a potential throwback though, a potential
6 problem that trying to accelerate the
7 electronic filing wrapper throws off, and
8 that is if the Office decides to not proceed
9 with the scanning for the sheer paperwork
10 reduction, then we're going to have mounting
11 paper that's going to have to be handled and
12 there's a significant cost with the mounting
13 paper handling.

14 And in the event that electronic
15 filing wrapper doesn't come on, we've taken
16 out an insurance policy. We've taken the
17 insurance policy out of the loop. So it
18 increases the exposure, it increases the risk
19 for the promise of better paper handling
20 three, four years from now with the help of
21 moving it closer to us so we can get a better

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1 hand faster.

2 MARGARET BOULWARE: One of the
3 things as Chair of the Budget Committee that
4 I'd like to ask Fred and also probably
5 interacting with the E-Government committee
6 is on the Strategic Information Technology
7 Plan. It's a plan through 2005 and it
8 incorporates a number of these initiatives
9 that you have. Although it seems that on the
10 budget numbers that we're looking at that
11 we're having to deal with, the numbers are
12 staying pretty flat for IT and resource
13 management. And one of the things we're
14 going to need to talk about in executive
15 session or later is how this plan fits in
16 with flat numbers, and you know, what's going
17 to fall off the table, and that's a pretty
18 critical situation for us.

19 RONALD MYRICK: Madam Chairman, let
20 me say that the subcommittee will likely meet
21 again in late May or June, early June. I

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1 haven't discussed that with the subcommittee
2 members yet, but we have to start scheduling
3 it. But the issues that you raise very
4 wisely will be taken up and I think added to
5 the set of issues that are still open with
6 the committee and the PTO staff for that
7 further discussion.

8 I think there's one observation
9 that we should make and I think both Vern's
10 and Andy's comments lead to it and that is
11 that our first reaction to 2006 for the
12 electronic file wrapper, is that it's way too
13 far out and that's why the question began to
14 be asked, well, how do we pull that in? And
15 certain EFS improvement is the fundamental
16 for that, to possibly eliminate image as an
17 intermediate step is another possibility.
18 Whether or not that effort really works or
19 not we've not had enough time to work out
20 with the PTO's staff, but it's something
21 we're looking at because that has an impact

1 on the budget.

2 Because the money we spend on that
3 is diverted away from -- (inaudible) --
4 electronic file wrapper. Just allowing
5 people to do what all of our law firms do
6 anyway, and all of our law firms for GE would
7 supply all of their applications to us on
8 disk already for our own records. Perhaps an
9 intermediate step is just to have those disks
10 sent on to the office. I don't know. We
11 haven't discussed that within the committee
12 yet with the PTO.

13 But there's a wealth of things that
14 we will discuss and hopefully will be taken
15 into account in the improvements that are
16 made in EFS in September and beyond that.
17 But ultimately what we're going to try to do
18 is deliver to the budget subcommittee what
19 our recommendations are in terms of a refined
20 maybe somewhat pared down approach to this
21 that pulls the data in and keeps the cost

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1 down so that you can in fact budget it.
2 Right now the budget is not in the plan for
3 all this stuff.

4 NICHOLAS GODICI: Yeah; I just want
5 to comment on something that Andy and then
6 Ron said. You know, looking at history and
7 looking back and looking at what we've seen
8 with respect to the acceptance of change
9 within either a corporation or a law firm to
10 move their business to electronic filing in
11 the trademark area which is a lot simpler
12 area, we've got it up to about 20 percent or
13 so in terms of the percent filed.

14 Obviously on the patent side, you
15 know, we haven't even cracked the door open
16 yet, and you know, you're talking about
17 incentive. I think if we're going to jump to
18 this step and bypass, you know, the step that
19 Vern's talking about, we're going to have to
20 get a very large percentage of our applicants
21 filing using the electronic software in EFS

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1 and we really need to work on how we're going
2 to do that. Because what we've seen and I
3 know we've just started to dabble and I know
4 it's very early, but there is some reluctance
5 to grab on to this and move it and invest the
6 time and the effort and dollars to change the
7 business process within either the
8 corporation or the law firm. Now, part of it
9 is our fault, part of it is maybe the
10 software isn't what it should be. But when
11 we make that change, we're still probably
12 going to face something that's going to have
13 to be done to make that happen.

14 VERNON NORVIEL: This sounds
15 coarse, but to be brutally honest, Affymetrix
16 would have never gone to the Edgar filing
17 system in the SEC unless the SEC said you
18 must do this. They said we must do this and
19 now we don't think a thing of it. In fact,
20 it seems in retrospect odd that we were
21 filing these papers in paper form before and

1 now everything's on the internet and no one
2 would think of looking something up in paper
3 form anymore. It's been one year since they
4 started doing it.

5 MARGARET BOULWARE: Jerry, you've
6 been waiting very patiently.

7 GERALD MOSSINGHOFF: First,
8 compliments to the subcommittee and there's a
9 little deja vu here. I saw very early data
10 up there and may be too I had something to do
11 with that. I agree totally with Vern as far
12 as any idea of going to OCR at this point
13 when everybody -- you might have a small
14 inventor that writes the application out in
15 hand, but that's the only person not using
16 either one or two or three of the word
17 processing.

18 And you might take a look very
19 quickly at FDA, Food & Drug Administration.
20 They were literally bringing applications on
21 over -- you know, over in moving vans,

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1 unloading them in pallets. Now it's all done
2 on CD-ROM. And so there's a real
3 intermediate between internet with all of the
4 encryption and everything else you need and
5 just delivering a CD-ROM or a floppy disk
6 when you file your application. I think
7 there's no question law firms and
8 corporations do the latter and that gets you
9 going anyway.

10 It doesn't have all the bells and
11 whistles of an internet related system, but
12 it sure does let the office do an awful lot.
13 And my second comment would be, I don't think
14 we're going to get anywhere if we say here's
15 a great system. Let's find out how much more
16 money we're going to get. I think we ought
17 to say, here's a great system, how do you do
18 it within the existing projections. And I
19 think 2006 is far too long a time. I think
20 we ought to do it a lot faster than that and
21 we ought to get our acting director working

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1 on, what are you going to do in the real
2 world because you're not going to get more
3 money. I really don't believe you're going
4 to get it. If you're going to get it, I
5 think you're going to get it for pendency. I
6 think pendency is going to start scaring some
7 of the people in the Bush Administration.
8 Make it as honest because it's scary, it's
9 alarming and I don't think you're going to
10 get a lot of new money for internet type
11 filings because the next question is, all
12 right, let's do it. Now, how do you do it
13 with an existing resources.

14 MARGARET BOULWARE: Any other
15 comments?

16 RONALD MYRICK: Thank you, Madam
17 Chairman. I think that concludes our report.

18 MARGARET BOULWARE: Okay. Thank
19 you very much. I appreciate that. Well,
20 moving from electronic filing and all of its
21 ramifications onto another one of the very

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1 important initiatives of the Public Advisory
2 Committee and of the Patent and Trademark
3 Office, quality issues. I have asked
4 Katherine White and Roger May to serve on
5 this committee with Melvin White and also Jim
6 Ferguson, who is not here, is on the
7 committee, and I've asked them to have a
8 presentation for the entire committee, and I
9 guess Esther is going to participate in that
10 also. I'll turn the program over to Kathy.
11 Thank you.

12 KATHERINE WHITE: Esther is going
13 to go through what the existing quality
14 initiatives are in place, and Roger and I are
15 going to put forth some of our suggestions
16 and open it up for other comments. Esther?

17 ESTHER KEPPLINGER: We had one
18 meeting, we had a telephone conference.
19 Melvin White wasn't available, but Roger and
20 Kathy and I spoke over the phone. I'd also
21 like to introduce Mary Lee who is the

1 Director of the Office of Quality Management
2 and Training. She has oversight of the
3 Office of Patent Quality Review and also the
4 Center for Quality Services, as well as some
5 of our training facilities, notably the
6 Patent Academy which does the training of our
7 new examiners during the first year so I
8 thought I would introduce her.

9 I was just going to touch on some
10 of the aspects of quality. Well, our
11 committee as was mentioned so far, we have
12 Roger May, Kathy White, Melvin White and
13 myself. With respect to quality, quality has
14 been and continues to be a top priority at
15 the USPTO. As I mentioned earlier, the
16 reopening rate from quality review has been
17 around five percent over the last two
18 decades. It went up to a high in 1987 of
19 about 7.4 and then we brought it down to '96
20 to a low of 3.7. It's been going back up
21 since then. '97 was 4.0, '98, 4.7, '99, 5.5

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1 and '00 it was 6.6. Our target for this year
2 is 5.5 and as I indicated earlier, we believe
3 that we're on target. At midyear we were at
4 4.5 percent.

5 In addition to looking at QR, we
6 have as I've mentioned earlier end process
7 reviews which identify trends in quality of
8 our products and look at ways in which we can
9 correct that through training and feedback to
10 the examining corp. Some of what we talked
11 about in the committee are some of the
12 objectives of the quality committee. We
13 talked about where we are currently with
14 quality and we talked about some of the
15 initiatives for the future. But I think to
16 capsulize the objectives are that we want to
17 continue to enhance and improve the quality
18 of both our products and our services. And
19 with the growing workload that we have, we
20 need to address that workload, but continue
21 to maintain and even improve the quality of

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1 the products, and paramount is to identify
2 cost effective ways of improving quality.
3 Because with all of the other budget items
4 that we have, we need to figure out how we
5 can do this in the most effective and
6 efficient manner.

7 That sort of summarizes some of the
8 discussions we had for the executive session
9 which we'll have tomorrow, but I wanted to
10 open the floor up to Roger and Kathy to talk
11 about their perceptions of quality,
12 suggestions, and also what they view the
13 objectives to be.

14 KATHERINE WHITE: Well, some of the
15 discussions we had with quality review
16 concern looking at patents that get issued
17 that shouldn't have, right? And this is of
18 course an incredibly important concern, but
19 we also have to start looking at the
20 applications that should have been issued or
21 ones that should have been issued earlier.

1 And you mentioned that there is a procedure
2 in the appeal or the appeal conference. Can
3 you discuss a little bit about that?

4 ESTHER KEPPLINGER: Right.

5 Currently within the last about year and a
6 half it has been mandatory in the patent corp
7 to have an appeal conference which means that
8 when an examiner gets a brief from an
9 applicant, if they want to go forward with
10 writing an examiner's answer and sending the
11 case to the Board of Appeals, they have to
12 have a conference with two other people,
13 typically managers that discuss the issues,
14 look at the file, look at the brief that's
15 come in and the proposal that the examiner
16 has for going forward.

17 With that initiative we have
18 reduced the number of cases going to the
19 Board of Appeals by about 20 to 25 percent
20 over the last year and a half. I think that
21 that is -- has been an important mechanism in

1 identifying or only getting those cases to
2 the board which should go there.

3 KATHERINE WHITE: Also there were
4 some discussions I had with practitioners in
5 the field in my capacity here on the
6 subcommittee, and there was some concern I
7 found by a number of people concerning how
8 examiners get points or counts I guess we
9 call them in the Patent Office for the work
10 that they do. And I wanted to kind of
11 clarify what that system is because there was
12 a perception that there were points or counts
13 for every single action that the examiner
14 took and this hasn't been true for almost 30
15 years I think.

16 ESTHER KEPPLINGER: In the 60s it
17 was true that examiners got credits or counts
18 for every action that was done, but since
19 then the system was changed so that every
20 case gets two counts or one balance disposal.
21 We also call that a production unit, the two

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1 counts that are given in each case. The
2 counts are given for first action. First
3 office action are when the examiner first
4 reviews the case and writes up an action
5 after searching the case. An additional
6 count is given for a disposal. Those things
7 that count as disposals are an abandonment,
8 an allowance or an examiner's answer. Other
9 than that the examiners don't get any
10 additional credit. For example, for final
11 rejections they don't get anything. They
12 have to do the case, but the eventual counts
13 come later.

14 KATHERINE WHITE: You'd also talked
15 a little bit about -- I think it was called
16 the re-engineering pilot that had taken
17 place?

18 ESTHER KEPPLINGER: Well, we have a
19 re-engineering pilot which is looking at
20 whether or not we can strip away tasks from
21 the examiner and give those to some of the

1 other employees that we have here. Actually,
2 Bo oversees that project and we had a pilot
3 running last year that looked at this. They
4 had a couple of different groups and at least
5 one of the groups did not have a production
6 goal. They were just asked to do the cases
7 as they saw fit, and the result was that
8 actually the productivity was very low. And
9 so I think that the message here is that we
10 do need a productivity system.

11 I'm sure that Ron would have some
12 comments as to whether or not it's the
13 appropriate one, but we feel that it is and
14 it's been working well. And as a matter of
15 fact, 78 percent of the examiners achieve at
16 least 110 percent of their goal or greater so
17 that 78 percent of the examiners received
18 bonuses for more than 110 percent of their
19 goal last fiscal year.

20 KATHERINE WHITE: And so what we
21 really have to start addressing is what type

1 of production goals we have. We clearly need
2 them, but exactly where we need to go, we
3 still have to continue to hammer that out.
4 There was one other particular point that had
5 -- that some practitioners had commented on
6 which was they felt that if they had a 103
7 rejection, that it was fairly easy to
8 overcome it by saying there was no suggestion
9 or teaching on prior art to combine. And I
10 was just wondering if we could come up with
11 more standards or more clearer standards as
12 to how to handle those type of rejections.
13 Clearly we know the law on that issue is not
14 as hashed out as in other areas, but we may
15 very well need some standards in place for
16 what kind of questions to ask with that
17 respect.

18 ESTHER KEPPLINGER: That was a very
19 surprising thing for me to hear and I know
20 for Steve as well. Certainly we hope that
21 the examiners know how to respond to that,

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1 but that's something that was interesting
2 here and we'll look into to see if there's
3 some additional training or guidance that we
4 need to provide to the examiners to ensure
5 that they are maintaining those rejections
6 which are appropriate and changing their mind
7 in situations where it's appropriate. But
8 clearly the ultimate goal is to maintain the
9 right approach and the right decision in each
10 and every case. And it's difficult to get it
11 all right, but that is our goal.

12 ROGER MAY: I'd like to start by
13 just saying -- and I'm speaking for myself.
14 I don't believe that I have spent a
15 sufficient amount of time on this project
16 given the fact that I probably 10, 15 years
17 ago met at the Patent Office regarding
18 quality and expressed my great concern about
19 it then, and I still have a great concern
20 about quality and I don't profess to
21 understand all of the initiatives the Patent

1 Office has undertaken over the years well
2 enough and I want to understand them better
3 as a part of this process as we move forward.

4 I don't believe we spent nearly as
5 much time as the subcommittee on E-business
6 to this date and we certainly do understand
7 the importance of this issue. Quality is of
8 paramount importance to P-PAC and to all of
9 us who are concerned about having a good
10 patent system. It's pretty obvious there's a
11 tremendous tension, a dynamic tension in
12 dealing with quality between quality and
13 other initiatives, and one certainly is
14 budget. But, you know, budget set aside you
15 still have issues of what kind of processes
16 do you have in place which goes back to my
17 need to understand that better.

18 We also have a tension with
19 pendency. Jerry mentioned that the Bush
20 Administration is probably going to be very
21 concerned about pendency as it starts to

1 creep up, and I would say that's probably
2 about 100 percent true, they will be. And
3 the concern I have is that we will be forced
4 to sacrifice quality in order to meet
5 pendency goals. I have a very big concern
6 about that and that takes us exactly in the
7 wrong direction.

8 Because when I look at the numbers
9 that we have on quality, it's not what we
10 would call a Q1 performance and it's just not
11 where we want to be. Five to seven percent
12 of quality problems in applications over a
13 long period of time is just not an acceptable
14 performance when you look at the implications
15 of those kinds of errors. Because what we're
16 talking about is imposing upon the society
17 that funds this process tremendous burdens
18 and huge litigation costs and uncertainty, et
19 cetera, et cetera.

20 So we've got to do something about
21 it and we've got to pull it down and we've

1 got to hammer very clearly on this point and
2 make it clear to the administration and
3 everybody else as well as inside and outside
4 the Patent Office. I think the E-business
5 initiatives are a very key part of this so
6 this is another part of this dynamic web that
7 we have because I think the E-business
8 initiatives will help us to meet our quality
9 goals and we need to take some bold steps and
10 perhaps overcome that natural reluctance that
11 we have to do some things that are different
12 than what we did before and we've just got to
13 get on with it.

14 And, you know, Jerry talks about
15 this stuff. Back in the 80s I remember
16 sending people from Ford down to Washington
17 to talk to the Patent Office in the 80s about
18 what we could do. They came away and threw
19 their arms up in the air and said we can't
20 seem to move this organization. Now we're
21 2001 and we really are a long way like I say

1 from achieving those goals which are set down
2 for 2006, a long way from achieving. So I
3 think we need to do something there.

4 Attrition is a huge problem. This
5 is another part of the dynamics of this whole
6 thing. How do we get quality up if we have
7 to have our senior examiners sitting around
8 training 400 or 500 new examiners every year
9 only to have in some cases 50 percent of them
10 leave after one year in the office. Just
11 hard to believe. So I'm expressing a lot of
12 concerns and not too many solutions because I
13 haven't gotten deeply enough into the
14 processes, but I will say that I know the
15 Patent Office has been working very hard on
16 it and they've got a lot of very good
17 processes. So I'm not trying to denigrate
18 the efforts, I'm just saying that I myself
19 need to do a little more homework and more
20 work in order to contribute more to this, and
21 that we will welcome any suggestions that

1 anyone has on what we ought to do.

2 RONALD STERN: Madam Chairman, if I
3 could have a minute or two.

4 MARGARET BOULWARE: Sure.

5 RONALD STERN: One thing, I have
6 personally been involved in the measurement
7 of the examiner performance for at least the
8 past 30 years, deeply involved in discussions
9 with management, how it ought to be done,
10 when it ought to be done, under what
11 circumstances, and I really would like to
12 offer whatever I can in terms of history to
13 the members of the subcommittee and I'd be
14 happy to meet with any of you at any time.
15 There's just more than can be put into a
16 minute here in a public meeting.

17 However, there is one item that
18 overrides all else and that is as I
19 understand it, the principal complaint about
20 the quality of the Patent Office from the
21 inventor community is that we don't find

1 correct art. It's not a bunch of technical
2 stuff, it's really a very fundamental issue
3 of finding the relevant art and making sure
4 that we are complete with respect to that.

5 And everyone I have talked to in
6 the field, all the professional searchers,
7 examiners who do this for a living say that
8 they currently do not have enough time to do
9 a complete search. And the number one item
10 that all the members of my organization would
11 say is the best way you can increase quality
12 is to give folks a little bit more time for
13 doing a better search.

14 We'd love to do it -- even those
15 people as Esther said, most of the people do
16 110 percent of what they're required to do
17 because that is what the office encourages
18 and that is what is necessary in order to
19 gain respect in the culture that we have at
20 the Patent Office. Those folks themselves
21 say they are cutting corners in order to make

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1 those numbers. And that in order to do a
2 good job, they really would like to do more
3 searching.

4 All other organizations that are
5 like us such as the EPO for example get more
6 time. And as a matter of fact, and I think
7 it's an interesting fact, they are going on
8 strike tomorrow. They feel that they are
9 underpaid and don't have enough time to do
10 the work. They get twice as much time and
11 higher salaries than U.S. examiners get.
12 Time is a critical issue.

13 ROGER MAY: Can I just respond?

14 RONALD STERN: Certainly.

15 ROGER MAY: First of all, I would
16 agree that finding the right prior art is
17 absolutely paramount. The second element to
18 that is having the knowledge of how to
19 interpret claims so you can apply the prior
20 art properly in rejection and that's very
21 key, and all the more reason why we have to

1 have a more experienced examining corp and
2 not have this turnover.

3 But I think time may be an issue
4 that I believe put in place in the examining
5 processes that we have for searching and
6 finding the art and applying it, whatever
7 those might be. So I'm not sure it's time
8 necessarily, but it needs to be considered.
9 We need to figure out how to do that and I'm
10 sure there are processes underway to look at
11 that we need to go further into.

12 RONALD STERN: If there are any
13 suggestions at all as to how we can better do
14 our search and do it more efficiently, I'm
15 sure whether it is done officially or
16 unofficially, everyone will be eager to adopt
17 something that will make us more efficient.

18 ESTHER KEPPLINGER: If I could make
19 one comment on that. I think one of the
20 things that Nick and I have been pushing and
21 addressing because of the results that we see

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1 from quality review, the numbers that come
2 back Ron is correct. I mean, I think that
3 the biggest problem that we've identified in
4 the QR returns is that we haven't identified
5 the best prior art.

6 It's interesting to note that QR
7 uses only automated tools to do the searches
8 and so that's one of the reasons that Nick
9 and I had been pressing in trying to push
10 towards more use of the automated tools with
11 respect to the millennium agreement that we
12 signed with POPA. Because we feel that a
13 combination of tools utilizing both an image
14 and a text search, it certainly doesn't work
15 -- neither one alone will be effective in
16 every single case, but together sometimes one
17 will be effective in a case alone, but using
18 them together we think optimizes the ability
19 of the examiners to find the best prior art,
20 and so that is one of the things.

21 And I think the other thing, Ron,

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1 while I think we need to talk and we have
2 been talking for a great number of years
3 about time, but the issue is not only giving
4 time, but ensuring that it is dedicated to
5 quality. And at this point in time it's not
6 completely clear that that's what would
7 happen since we're doing it already more than
8 the expected goal, and there's very little
9 assurance that if there is more time that it
10 will go into quality as opposed to more.

11 RONALD STERN: We'd be happy to
12 engage in discussions and provide systems if
13 it is possible to make sure that the extra
14 time that is spent, is spent on enhancing the
15 quality, especially the search. If there's a
16 way of doing that and people have a
17 suggestion, I think people are eager to go
18 down that line.

19 KATHERINE WHITE: We should
20 definitely look towards training for using
21 the new tools. Of course that's back to

1 budget.

2 ESTHER KEPPLINGER: As a matter of
3 fact, we have in place this year mandatory
4 searching, mandatory training in the use of
5 search tools. 20 hours plus 15 hours of
6 practice time, 20 hours in the classroom, 15
7 hours of practice time on the use of East,
8 West, a variety. We have an automated
9 catalog on-line for the examiners to go and
10 sign up for the classes. Through Mary Lee's
11 area and Fred Schmidt, you can sign up for
12 the classes. There are some that are
13 required and then there are some that are
14 discretionary. There are classes on how to
15 do better searches, how to make better use of
16 the tool. So we have been providing and
17 continue to provide the training on the use
18 of the tools in order to encourage more use
19 of them and better, more efficient use.

20 MARGARET BOULWARE: If I could just
21 interject at this point. One of the things

1 that the committee has discussed in the past
2 and I think we need to continue to look into
3 it and work with the Patent Office and the
4 various people inside the Patent Office is
5 the tremendous explosion of prior art.

6 There's just so much more out there than when
7 I started practicing law 25 years ago that
8 getting a handle on how to search the prior
9 art is going to take all of us contributing
10 to figure out the best system knowing that
11 that system may change in five years. And
12 because it's just exploded, goes up
13 logarithmically and I think this is a real
14 challenge.

15 The other thing too with quality
16 that I think makes it very difficult to get
17 your arms around, particularly to capture in
18 a report as we have to do at the end of the
19 year, pendency is very objective. Quite
20 frankly you just look at the numbers and you
21 break it down into different classifications

1 and you go there. Very objective.

2 E-Government too. We can parse that down
3 pretty well in electronic filings and who's
4 going to file their assignments and blah,
5 blah, blah.

6 But when you get down to your
7 quality review, that's a very subjective,
8 difficult item to get your arms around. And
9 I think that this particular subcommittee, my
10 hats off to you folks that I appointed
11 because this is a very difficult job to do
12 any kind of metric to. And I think one of
13 the things that I am very concerned about is
14 the resolution that this committee has that
15 quality was our number one objective. And if
16 quality is our top objective, we're going to
17 have to make everything else work and funnel
18 into the quality objective, get the quality
19 product, use the electronic tools as we've
20 all said. I just think this is a really very
21 difficult issue to get our arms around, but I

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1 didn't mean to interrupt, but I did want to
2 just throw that comment in.

3 RONALD STERN: If I may take one
4 more second and that is, the agency does
5 deserve some coodos every once in a while,
6 and I wanted to reinforce what Esther said.
7 The training has -- the availability of
8 training has improved measurably in the past
9 year and hopefully it will do some good in
10 the long run.

11 MARGARET BOULWARE: Well, just from
12 my perspective it seems like the training on
13 searching electronic files is the only way
14 we're going to go with the explosion of
15 information.

16 ROGER MAY: We had some discussion
17 earlier on that in the previous report about
18 things happening. Ron mentioned GE, they
19 made the law firms submit electronically and
20 Ford made the law firms submit
21 electronically. If there's no other way to

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1 do it than to do it electronically, you'll do
2 it. I can't tell you how much training I
3 took at Ford on doing things electronically
4 and I didn't use it and I lost the ability to
5 do it.

6 If you've got to do it, you'll use
7 it. We can just train and train and train.
8 Some people will never use it because they're
9 reluctant to do it or they won't use it as
10 much as they should. So I think that's
11 something we might want to talk about when we
12 get together to have more in-depth
13 conversations.

14 MARGARET BOULWARE: Thank you very
15 much. I would now like to ask for our report
16 on business method action plan. John Love
17 here is patiently waiting.

18 JOHN LOVE: I have a one-page
19 handout here. This is a brief summary of the
20 action plan that we've implemented in March
21 of 2000. It would be helpful to refer to as

1 we go along. Just to introduce myself, my
2 name is John Love. I'm one of the Directors
3 in Technology Center 2100 that was recently
4 formed in October of last year. One of the
5 reasons for forming the technology center was
6 to deal with software and business
7 applications and we also have the technology
8 involving computer architecture and data
9 structures.

10 Before I get into the plan itself,
11 I'd like to give you a little background on
12 what we mean by business methods and how
13 we're organized in the PTO to deal with it
14 and to try to put it in some kind of context
15 as to what exactly we're talking about. I
16 guess the first question that comes up is,
17 what is a business method? And I can say I
18 spent one of my most unproductive days over
19 in D.C. one Friday discussing with 15 or 16
20 experts from patent law firms, from industry
21 and from academia trying to come up with a

1 definition of what exactly is a business
2 method patent. And after the day ended we
3 were no closer to reaching consensus on that
4 question than we were when we started. So
5 the first bullet is there is no clear
6 consensus or no clear concise definition of
7 what a business method is.

8 I think we're going to find out as
9 a result of the AIPA first inventor defense
10 there's going to be some court decisions on
11 that for purposes of applying that, and there
12 is talk of legislation that's been introduced
13 that has some business methods definition in
14 there of what would be covered by the terms
15 of that proposed legislation. But it
16 certainly could be -- some of the definitions
17 would be broad enough to include just
18 manufacturing of products itself, something
19 that we wouldn't heretofore think would be
20 quote, "a business method."

21 A computer implemented business

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1 method along with the financial and data
2 processing lines, we formed a new class
3 called 705 which is the home for computer
4 implemented business methods as we define
5 them in the past definitions of 705. And the
6 initiatives that I'm going to talk about are
7 just limited to the applications that we
8 examined in Class 705. But we need to keep
9 in mind that there are other business methods
10 that don't necessarily rely upon or use
11 computer technology to implement, and there
12 are other areas of the office. For example,
13 education, methods of teaching, methods of
14 teaching athletic skills, methods of
15 preparing and distributing food are some
16 examples of other areas of the office that
17 would come under potentially a legislative or
18 other type of legislation of what a business
19 method is.

20 So moving on to 705, next slide.

21 Now, the operative -- did we miss one? The

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1 two key phrases here are of course data
2 processing or calculation operations, and the
3 practice of a business or the processing of
4 financial data and the determination of the
5 charge for goods or services. And these are
6 the main areas we're talking about with
7 respect to our initiatives in Class 705. And
8 the next slide will just give you a summary
9 of the types of activities that we have in
10 705 that are covered by this class.

11 Everything from redemption of coupons to
12 point of sale systems, tax processing,
13 clearinghouses and investment planning. So
14 it's quite a wide spectrum of business
15 activities as you can see, and also it
16 includes the internal operations of each one
17 of these businesses. Human resource
18 management, inventory control, those type of
19 topics are also included in Class 705. Next
20 slide.

21 Just to give you an idea of who the

1 main players are at least to date in the
2 industry. Before E-Commerce the types of
3 companies that were big in this area were the
4 ones that were into cash registers and
5 utility and postage metering and so forth.
6 And you can see that IBM and Pitney-Bowes and
7 NCR were the type of companies that were.
8 Those companies have also started to get into
9 the E-Commerce area, but you can see by
10 looking at the S&Es of the last few years
11 that companies like Microsoft, EDS, Citibank
12 and AT&T are also now becoming major players
13 in this whole area of electronic commerce and
14 business.

15 The filing data for Class 705 of
16 course has experienced a tremendous increase
17 in recent years. If you look in 1998 we had
18 approximately 1,400 patent applications in
19 that class, then came the State Street and
20 AT&T decisions which sensitized these
21 industries in my opinion to the availability

1 of this type of patent protection. And in
2 '99 we received approximately 2,800
3 applications, and the year 2000 it jumped up
4 to three times that to roughly 7,800 patent
5 applications.

6 Now, of course that represents a
7 rather small percentage of the total workload
8 in the PTO, but yet its never increasing
9 amount of cases that we have to deal with in
10 this area. The filings for the first quarter
11 of '01 were roughly -- and they're a little
12 bit raw because not all the information is
13 final or complete, but we received about
14 2,200 applications in the first quarter
15 ending December '00. And using the term
16 seasonally adjusted, Jerry, we think that may
17 work out to be around 10,000 to 12,000
18 applications for '01, but that's a
19 guesstimate at this point.

20 Certainly though we're not seeing
21 the triple increase that we did from '99 to

1 '00. Okay. So that's the background that --
2 and of course there was no secret that there
3 was some public concern about the quality of
4 the applications, at least technology as they
5 were coming out after State Street and the
6 public attention, and it was an emerging
7 technology. The main difficulty that's been
8 discussed here prior to my coming up here is
9 the identification of the prior art, getting
10 the best art in the case.

11 And like any emerging technology,
12 the best art is not in the patent files, it's
13 in the nonpatent literature, it's in the
14 master's thesis, it's in our brochures,
15 training manuals, a whole bunch of other
16 places other than the patent shoes that
17 contain the classified patents. So that was
18 one area that we knew we had to address. And
19 the other area was to work more closely with
20 our customers and get their input and get
21 their help in this mutual problem of

1 examining the patent applications.

2 So what I handed out there was a
3 one-page summary of what the plan was back in
4 March of '00 to address some of these
5 concerns. And some of them, interestingly
6 enough, are I think generic to the questions
7 that I've just heard discussed about filing
8 in general and searching and how do you --
9 you know, in an electronic environment, how
10 do you find the best prior art. But our
11 problem was compound by the fact that like I
12 said, it's not namely the patent literature,
13 it's elsewhere that we have to go find it.

14 So the first initiative was to form
15 a customer partnership with industry, and we
16 have since this initiative increased a number
17 of industry organizations and companies and
18 firms that we are having discussions with and
19 have met with to over 20 industry
20 organizations. Examples of those are BITS,
21 NACHA, the Securities Industry Association,

1 the American Council of Life Insurers and the
2 American Banking Association.

3 We have as far as the round table
4 forum goes -- that was held in July of last
5 year. Some of you may have attended that.
6 It was a rather high level discussion on the
7 pros and cons of patenting this subject
8 matter in the first place and trying to move
9 on from that to the reality of what the law
10 says and what the standards are for
11 patentability in this area, and there was an
12 opportunity for a lot of people to express
13 their opinions about the whole area of
14 business methods.

15 We have formed a partnership
16 council with the organizations that I
17 mentioned and we just had our inaugural
18 meeting on March 1 of 2001 and we're in the
19 process of planning our next meeting which
20 will be held somewhere around the middle of
21 September, but I'll show you some of the

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1 results of these meetings and partnership
2 efforts that we've had with prior art, the
3 people that we've been meeting with. Okay.
4 Next slide.

5 One of the purposes as I mentioned
6 of the whole initiative was to get feedback
7 from our customers asking them to identify
8 potential sources of prior art that we can
9 search, that they know about. And we have
10 prepared an OG Notice that's been signed and
11 is awaiting publication which will invite our
12 customers to tell us about these types of
13 prior art sources.

14 Now, in going out and I've talked
15 with or met with and given presentations with
16 NACHA and BITS and had some interchange with
17 their members and they're in the same boat we
18 are for two reasons. I mean, they're
19 concerned that we're granting patents on
20 activities and techniques that have been, you
21 know, sort of well known in their particular

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1 industries, but aren't documented. So
2 they're very interested in from their own
3 point of view of finding out what's
4 documented out there that they can use as a
5 basis. For example, defending against an
6 infringement suit, and they want to bring
7 that to our attention also to help us in the
8 first place for not issuing patents that
9 shouldn't have been patented.

10 But there's a great deal of
11 interest in what constitutes prior art and
12 what they can do to protect themselves in
13 this whole area. Next slide. As I say, the
14 OG Notice has been signed and we hope will
15 come out shortly and we hope to get a great
16 deal of valuable information from that
17 notice. Technical training. Yes?

18 RONALD MYRICK: We have discussed
19 in this body before an issue which you may be
20 addressing later on and if so, I'll stand
21 down. The question of what happens to art

1 that comes in from one applicant and goes
2 only into his file. It doesn't get into the
3 general art database that's available to
4 other examiners for other applications. Have
5 you addressed that issue at all?

6 JOHN LOVE: That's in our next step
7 slide; yes.

8 RONALD MYRICK: Very good.

9 JOHN LOVE: As I mentioned, in
10 working with these groups, we're constantly
11 asking them for help and support not only in
12 identifying prior art databases, but also in
13 giving us technical lectures in areas of
14 their expertise. And there are several
15 examples here of seminars that
16 representatives from these organizations that
17 actually come to the PTO and have presented a
18 two or three hour seminar to the examiners on
19 these particular topics. They're very, very
20 well received by the examiners. It makes
21 them feel more professional, gives them an

1 idea of the real importance of patents and it
2 really does enhance their knowledge of the
3 industry. So that's something we certainly
4 want to continue.

5 Just an interesting aside on some
6 of these, Mr. Rick Eddelman (ph) who's got
7 some local TV shows and may be known to some
8 of you. He came in and talked about his --
9 he has a new trust product. He calls it the
10 Ricky Trust Product. And one of the
11 examiners asked him, well, why did you seek
12 to get a patent on this? And his answers
13 were very interesting. First he said, well,
14 he felt that it gave him some credibility
15 that he could have this trust that he was
16 selling on the street, and that if he had a
17 patent number on it that he felt that gave
18 him some credibility. And then also he said
19 he got some comfort from the fact that he
20 could exclude others from stealing his
21 product.

1 So even in the ares of business
2 methods we have the typical responses and the
3 reasons why people want to get patent
4 protection for their ideas. So I thought
5 that was interesting. From Marcada (ph) Tom
6 Van Dorn came in and gave us a talk on
7 aggregate auction sites and it was just two
8 weeks after his Board of Directors had
9 decided to yank the funding for the web site
10 that did the aggregate auctions to the
11 consumer side. And that was right during the
12 time period when Priceline.COM was scaling
13 back on their supermarket activities and some
14 of their other types of services that they
15 provided and they went back to their main
16 business of airline tickets. But it's really
17 -- to have people like that in the industry
18 know the details, it's really a tremendous
19 plus and we certainly ought to pursue that.

20 Again, in the area of enhancing
21 technical training, the initiative called for

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1 the creation of business practice
2 specialists. These individuals hopefully are
3 individuals who have a very detailed working
4 knowledge in particular businesses and
5 particular industries. They would know where
6 to look and dig in for information, they
7 would have a great deal of the common
8 knowledge and the -- just the practices that
9 are unwritten so that they'd have a good feel
10 for what has been known or practice in the
11 technologies.

12 But we have received authority from
13 our executive resources board to hire the
14 first of these individuals. And
15 unfortunately now though that's on hold until
16 we get the government-wide freeze lifted on
17 senior level positions. So we're looking
18 forward though to pursue that. We've put up
19 on our web page a listing of the training
20 needs that we are inviting organizations to
21 come in and talk to us about this. We have

1 invitation on topics like smart cards,
2 trusts, wills and a whole array of activities
3 that we're seeking actively people again to
4 come in and talk to our examiners about these
5 technologies.

6 We also have a generic after-hour
7 technical training program that traditionally
8 had been utilized primarily for the
9 traditional engineering type of courses with
10 a circuit design and that sort of thing or
11 new technology. And so what we did was said,
12 well, the technology now includes insurance
13 policies, it includes sales techniques, it
14 includes auction techniques. So we're
15 offering the examiners the ability to take
16 these courses at PTO expense after hours
17 because it does relate in a sense to
18 technology. Any questions?

19 Revising the examination
20 guidelines. The manual section dealing with
21 the guidelines for computer implemented

1 inventions 2106 has been rewritten to
2 incorporate the rationale, the State Street
3 Bank and the AT&T decision, so that has been
4 implemented. Okay. This relates to
5 something that was talked about earlier and
6 that is the searching, how you search and
7 what do you search. And you know, the PTO
8 now, different examiners depending on the
9 technology that they're in use various tools
10 more or less than others do.

11 Certainly before this initiative
12 came into being the examiners in 2700 at that
13 time were utilizing text and automated
14 searches and NPL searches to a great degree.
15 What this did was just mandate four types of
16 searches for every application that was filed
17 in 705. The examiners are required to do a
18 classification search and most of the times
19 they're do that electronically and go through
20 the images. They're required to do a text
21 search which they can do through our

1 automated system east and west.

2 They're required to do an automated
3 search of the foreign patent abstracts to the
4 extent they're available in English and then
5 also to do a nonpatent literature search.
6 Now, to help them do that we've done several
7 things. We have professional searches in
8 what we call our electronic information
9 center that the examiners can go to, explain
10 the invention and the searches will take it
11 on from there and search all the databases
12 that they feel might be relevant. We also
13 have the -- the examiners have access from
14 their desktops to over 900 databases. They
15 use dialogue and SCN primarily to access what
16 we call the core grouping of databases that
17 they're required to search. And then
18 depending upon which particular industry
19 they're dealing with, it's banking,
20 insurance, health, we have a supplemental
21 listing of core databases that they're

1 required then to go into also and do an
2 electronic search. So it's quite an
3 aggressive and thorough mandate that we've
4 given to these examiners and they've taken to
5 it very well.

6 The crosswalk between the
7 corporation data bases and the auxiliary
8 databases and the technologies are all on a
9 web page. It's an internet web page that the
10 examiners can consult with and they can also
11 add materials to that web page. If they find
12 a reference or an article, they can add that
13 to that web page so that other examiners who
14 are searching there can at least see the
15 title of it. They can't search it -- or they
16 have to go somewhere else at this point to
17 get the actual document, but they can go to
18 the EIC and get a copy of the document.

19 RONALD STERN: John, if I can just
20 say one thing here. On the mandatory search
21 part especially you have not heard one word

1 of complaint from examiners about the
2 institution of the mandatory search in this
3 area and there's a good reason for it. It
4 came with additional time. Management in
5 essence asked us to do more and they said
6 they were going to provide us the time to do
7 it and so of course people are happy to do
8 that. And when you make it possible to do
9 it, it gets done.

10 And as a matter of fact, not only
11 have we not objected to the institution of
12 these additional searches, I think we use
13 this as the poster child for the rest of the
14 agency is that this is what needs to be done
15 is that you need to give examiners an
16 opportunity. Meaning, you need to give them
17 more time in order to find better art.

18 JOHN LOVE: Thank you. Okay. Next
19 slide, please. This is another main stay of
20 the initiative from the procedural point of
21 view and it has some dramatic results, the

1 interpretation of which may be open to
2 discussion. But every application that is
3 allowed in Class 705 receives what we call a
4 second level review or a second pair of eyes,
5 and that's currently done by our quality
6 assurance examiners in the technology center.

7 They will review the application
8 for compliance with the template to make sure
9 that all the search and areas were in fact
10 looked at. And the examiners are required to
11 cite records from each one of those areas so
12 that we know that -- it's a check on whether
13 or not they in fact are doing all the
14 searching. But they will cite nonpatent
15 literature or foreign patent and U.S. patent
16 from each that they consider to be the most
17 relevant.

18 The second pair of eyes also
19 reviews the statements for reasons for
20 allowance. We have a requirement in Class
21 705 that every application have a reasons for

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1 allowance in it irrespective of -- for the
2 office there are guidelines as to whether or
3 not the case you have a reason for allowance
4 in it. Not every case does get it, but in
5 705 it does and a second pair of eyes to make
6 sure that's the case.

7 And then the third thing that's
8 looked at is a scope of a claims review.
9 It's not an intense review, but it's kind of
10 the, you know, let me read this claim and the
11 abstract, and if the class is of the opinion
12 that there may be something out there that
13 happens that's closed that should be
14 considered or they can look through the file
15 and if they see a reference that appears to
16 be close to that claim or would render it
17 unpatentable, then that case is also sent
18 back to the technology center SPE and the
19 examiner can take a second look at it and a
20 -- (inaudible) -- assuming that the cost may
21 have about the patentability of the claims.

1 We're also working with the Office
2 of Quality Review to increase the sampling
3 sizes. There's been a discussion about our
4 quality review program that's been going on
5 over the years. What we did for '01 is
6 quality review. In addition to their normal
7 percentage of sampling, they're going to take
8 a look at an additional 50 of our
9 applications and they're also going to help
10 us out with what was referred to earlier as
11 the in-process review applications where
12 we're looking at the cases before they get
13 allowed, just reviewing the rejections with
14 the clients with law on policy making sure
15 that they are valid. So we're getting some
16 additional help in both of those areas from
17 the Office of Quality and Review.

18 We have some preliminary numbers
19 and as I said, some may debate about what the
20 significance of this is, but we talked about
21 the slowing of the allowance rate. I heard

1 that term -- I think Roger you mentioned that
2 earlier. Yes; if you take a look at the
3 second quarter which would be from January
4 till the end of March in '00, at the time the
5 initiatives were implemented -- or at the
6 time the initiative came out before
7 implementation, the allowance rate for that
8 period was 57 percent in Class 705. If you
9 look at the same period between January 1st
10 and March 30th of this year, our allowance
11 rate went down to 47 percent.

12 RONALD MYRICK: That's however, a
13 different number than has been published
14 previously. In the preceding quarter I had
15 understood the rate was down to 35 percent.

16 JOHN LOVE: Yes; that was a --
17 these numbers are for a quarter. Now, if you
18 want to look at -- what was happening is
19 numbers were being quoted in the press for
20 different time beings. If you want to look
21 at the same --

1 RONALD MYRICK: I think Nick even
2 testified.

3 JOHN LOVE: The rate for the first
4 quarter was 33 percent; yes.

5 ESTHER KEPPLINGER: 36 percent.

6 JOHN LOVE: Or 36 percent. But the
7 rate for first quarter, I forget what that
8 is. I don't know if we have it for the
9 quarter prior to the quarter that it was
10 first announced.

11 RONALD MYRICK: Well, what I'm
12 trying to get at is 36 percent versus 47
13 percent is a big difference. So what's the
14 difference? I don't understand that.

15 JOHN LOVE: Well, first of all,
16 that quarter is not a very good quarter to
17 use because there's far fewer examining times
18 that's recorded between October 1 and
19 December. Examiners tend to concentrate on
20 cases that won't necessarily leave themselves
21 allowances. There's a lot of PCT work that

1 has to be done, carry-over from the year
2 before, and it's just not a very good
3 representative quarter to use to compare the
4 same thing. We thought that the second
5 quarter was a more -- and there's a lot more
6 work done just because the amount of time
7 that's available. Examination time is
8 typically done in the second quarter.

9 RONALD MYRICK: Well, I'm not
10 suggesting that one should be concerned just
11 because the number has gone up, and I think
12 frankly spoken, a lot of people took a lot of
13 solace from the fact that the number was 35
14 percent as opposed to 57 percent for the
15 general population because they were saying,
16 all right, it really has paid off and we will
17 get valid business methods patents -- we will
18 not get patents on dusting rooms and stuff
19 like that.

20 And I've been advising people in
21 Europe frankly that the PTO has really got

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1 its act together in bringing the rate down so
2 that we are assured that you won't see the
3 kind of patents again which some Europeans
4 automatically latch onto as perfect examples
5 of why business method patents should not be
6 issuing in the first place.

7 So my question is, if it was 35
8 percent and that was artificially low, where
9 does 47 percent stand? Is that where it's
10 going to sit now for a while or what does
11 that represent to us? Does that represent a
12 truly heightened level of quality or is that
13 just a transition back up to 57 percent just
14 like everybody else?

15 NICHOLAS GODICI: These are numbers
16 and these are the numbers that we -- you're
17 right, the first quarter was 36 or whatever
18 it was and then it went up to 47. You know,
19 a couple of comments. Overall allowance rate
20 across the PTO is 70 percent. So on average,
21 70 percent of the time an application is

1 allowed. So to begin with these were much
2 lower than average across the corp. The
3 second thing is, you know, there are several
4 -- we mentioned the fact measuring quality
5 and figuring out what is our metric with
6 respect to quality, and sometimes that's a
7 little bit difficult to get our hands on and
8 so on.

9 One indication may be that more
10 applications are going abandoned as a result
11 of the second review and the training and so
12 on and so forth. Another possibility is that
13 further rejections went out by the examiner
14 and that's what's come back now are amended
15 claims that are more specific and so forth
16 and so forth. So they are then ultimately
17 being allowed. There's many things that go
18 into an allowance rate. But you know, it
19 generally isn't -- the before and after is
20 what we were trying to show here.

21 RONALD MYRICK: Well, all I'm

1 trying to get at is the before and the after
2 was so dramatic previously. This isn't so
3 dramatic. And what I'm trying to get at is
4 that this is going to take some explanation
5 and I think you should break down those
6 numbers because people don't want to -- if
7 people were taking solace from the fact that
8 they saw the office really had clamped down
9 on things that they thought shouldn't be
10 getting out in the first place, and I'm not
11 saying that they were right or wrong. I'm
12 just saying that now when we see 47 percent
13 as compared to 57 percent, people are going
14 to say that's not much of a change. And I
15 think if there are real reasons why that
16 number has gone back up, they should be
17 explained when you publish these numbers.

18 I would add one more thing. One of
19 the things I think Congress Coble said wisely
20 I thought at the hearing where Nick and I
21 testified on this very issue was that he

1 thought some air was going out of the
2 balloon. That the consternation and furor
3 over the business methods patents problems
4 had peaked or subsided and I thought he was
5 correct. And I think one of the things that
6 would be unfortunate is if air goes back into
7 that balloon and it starts flying again.

8 JOHN LOVE: I guess I can't resist
9 from commenting a little bit because of
10 course the articles now are along the line
11 that we're being too tough.

12 RONALD MYRICK: Well, Nick
13 testified to that.

14 JOHN LOVE: Right in the middle.
15 But the other thing is --

16 RONALD MYRICK: "Some are
17 complaining we're too tough and some are
18 complaining we're too easy, and maybe we're
19 about right" and that's I guess correct. But
20 my point is 57 percent to 47 is not so
21 different as 57 percent to 35, and that's the

1 testimony he gave that day and that went down
2 very well so that's why I say you better have
3 an explanation.

4 JOHN LOVE: The other thing is that
5 attending some of the conferences that
6 attorneys are actually recommending that they
7 draft a claim so they don't come to Class 705
8 and subject it to a second review. And
9 unfortunately the patents that get in the
10 headlines are nine times out of ten are not
11 705 cases.

12 RONALD MYRICK: Well, that raises
13 another issue. 705 happens to be the
14 whipping boy of the day, and one of these
15 other classes should not be the vehicle by
16 which people get around it. What other
17 classes are you talking about besides 705?

18 JOHN LOVE: Well, the patents, the
19 same ones that they talk about when they hit
20 the headlines.

21 RONALD MYRICK: I mean today.

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1 You're saying that they're getting around
2 705, where are they going, what class?

3 JOHN LOVE: I have no idea what
4 they're talking about. Maybe data structure,
5 just telecommunications, encryption.

6 RONALD MYRICK: If they're getting
7 around it, you are going to get nailed
8 eventually.

9 JOHN LOVE: Fortunately we're
10 working with our other technology centers and
11 we're training their examiners on some of the
12 101 issues that are important and the
13 awareness is going up.

14 NICHOLAS GODICI: You mentioned air
15 going in and out of the balloon too and, you
16 know, one of the things that causes air to go
17 into the balloon is the press too. You'll
18 see an article in the press, the balloon goes
19 bigger. We explained things and testified
20 and so on and so forth, and there will be
21 some press that way and then there might be

1 another article written by someone else so
2 that there is that dynamic. If everybody was
3 looking at the numbers objectively, that's
4 one picture, but you know, you'll get an
5 article and that will change the complexity
6 and in the end we'll have to go back and
7 restart.

8 RONALD MYRICK: We know the Senate
9 is going to have hearings and I understand
10 they're going to be May 15th and they can
11 make a move I understand. That's what I
12 heard yesterday. It don't know whether it's
13 true or not, but you'll get an opportunity to
14 present this at that time and I suggest that
15 you might consider some further explanation
16 for that. But I really do suggest that if
17 there is another class or two where some room
18 dusting patents could come out, you ought to
19 take a look at putting a "second look" on
20 those.

21 JOHN LOVE: Well, in other areas of

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1 the office have instituted to some extent a
2 second level review.

3 ESTHER KEPPLINGER: We are
4 addressing that very issue.

5 RONALD MYRICK: Good; now that's a
6 sweeper.

7 JOHN LOVE: And part of the
8 allowance rate is I think too that somewhat
9 to these statistics of the 714 applications
10 that have gone through the second review as
11 of the end of the second quarter which would
12 be March 30th. We did reopen prosecution in
13 41 cases which is roughly -- well, it's just
14 5.7 percent. The good news is that the
15 majority of those were earlier. That that
16 has been tapering off now. So we think we're
17 having some effect on the patentability of
18 the cases that the examiners are now allowing
19 versus what was happening say six or nine
20 months ago. We did withdraw from the issue
21 quite a bit, and the good news as I say

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1 though is that percentage is going down as
2 time goes on.

3 And actually of the cases that get
4 by our second level review and then go ahead
5 to a regular quality review process, this
6 last number indicates that since August 1st
7 up to April 15th we've only received one case
8 back from our internal quality review process
9 where they have questioned the patentability
10 of the claim. So pretty proud of that
11 statistic. Next steps.

12 RONALD MYRICK: Was QR involved in
13 that?

14 ESTHER KEPPLINGER: That is QR's
15 numbers.

16 RONALD MYRICK: All right. So
17 second look though is not QR?

18 JOHN LOVE: That's correct.

19 ESTHER KEPPLINGER: That's correct.

20 RONALD MYRICK: So that is your
21 internal check on whether "second look"

1 really works?

2 ESTHER KEPPLINGER: Well, QR is
3 looking at all the cases, but his slide is
4 indicating that perhaps the second clarify is
5 having some impact.

6 RONALD MYRICK: Thank you.

7 JOHN LOVE: As far as next steps
8 going we are continuing the initiative.
9 We've felt they've been very successful and
10 we've got some work to do. What you talked
11 about earlier in capturing somehow the
12 nonpatent literature that's being cited in
13 cases, we are in the process of developing a
14 project planned for this. Initially it will
15 be paper and we certainly do want to migrate
16 though very quickly to image and also optical
17 recognition so that we can do a text search
18 of this database. And this would be
19 documents that the examiners feel are either
20 extraordinarily valuable or are rather
21 obscured and hard to find because you don't

1 want to duplicate what we can already get
2 through a traditional NPL search or sticker
3 dialogue or what EIC would come up with.

4 And we also want -- we have some
5 representatives on the TEAM that you may have
6 gone through the presentation, but doing
7 electronic IDS submissions, somehow capturing
8 the NPL to the extent we do have that in the
9 future and merging the two systems so that we
10 can have all of these documents. But we are
11 -- as we speak, we are putting together
12 collections at least in first step paper form
13 of these documents that are coming into the
14 cases.

15 RONALD MYRICK: Everybody in this
16 room knows that's a project that I'm
17 interested in, but I would say this. I think
18 it's very important when you do this that you
19 publicize the dickens out of it because if
20 you're going to incentivize right behaviors
21 and the right behaviors are for people to do

1 searching that they might not have otherwise
2 done because now the art they turn up won't
3 be just used against them; it will be used
4 against everybody else too.

5 JOHN LOVE: I believe we want to
6 open this up to people -- we've asked for in
7 our OG Notice that hasn't been published yet
8 for people to identify prior art
9 depositories. We'll also I think eventually
10 want to give the public an opportunity to
11 submit documents to us that we can put in
12 this database. For example, the insurance
13 industry if they have some textbooks or
14 internal manuals on sales techniques or
15 policy writing that they feel are really
16 great reference works that we should have,
17 they can send that into us and we can
18 incorporate that into our database.

19 But they're finding out that their
20 record keeping is not as tight as it should
21 be either. They're running scared to some

1 extent as to how they can prove -- we get
2 questions on that all the time. You know,
3 the AIPA legislation, how can I prove that I
4 practice this procedure. And the other
5 problem is web sites come up and go and
6 disappear and there's no real -- I think
7 there's a service now that will moralize
8 these sites as they come and go, but you
9 know, they're gone, they're gone. It's hard
10 to bring them back or to have physical
11 evidence that these types of things did
12 exist.

13 And the third initiative or the
14 second new initiative that we are pursuing
15 and we have a prototype actually up and
16 almost ready for testing and deployment. We
17 have some concerns about security and so
18 forth, but -- and it came from an examiner,
19 the idea of an electronic chat room. For
20 those of you who were examiners 25 years ago,
21 everybody's door was open. We would all be

1 in the search room examining cases and you
2 could ask your buddy, hey, I've got this
3 spray nozzler with this type of material for
4 the nozzler, have you seen that anywhere?
5 And that would happen quite a bit. Quite a
6 bit of interaction and opportunity for
7 interaction.

8 And now with examiners relying more
9 on electronic means for searching, there
10 isn't that opportunity or that physical
11 change and we're trying to reproduce I guess
12 a virtual experience where you can chat with
13 your coworkers putting up questions like,
14 hey, I have a case and this concept is in
15 here. I'm having trouble finding it. Does
16 anybody know where to go? I mean, those are
17 questions that we asked each other many, many
18 times when we were examiners 20, 25 years
19 ago, and this is an opportunity for them to
20 ask questions and direct examiners to other
21 various searches also. So assuming that we

1 can overcome any security problems, this is
2 something that I believe we'll be able to
3 implement rather shortly.

4 ANDY GIBBS: A couple quick
5 questions, John. First of all on the chat
6 room issue that we looked at, Lotus notes as
7 opposed to a chat room so that you can build
8 a perpetual knowledge base that can be
9 referenced when examiners leave. The concept
10 of a chat room is fairly instant and you
11 don't really have a knowledge base that
12 you're building. So Lotus notes have been
13 used by the software industry for a million
14 years to build this knowledge base.

15 JOHN LOVE: Well, we haven't, but
16 we certainly will look into that.

17 ANDY GIBBS: And secondly, on the
18 number of applications that are filed by the
19 internet companies, we know what's happened
20 to those. When applications are pending and
21 the companies just disappear, do those

1 applications ever end up as NPL?

2 JOHN LOVE: Well, the ones that
3 were filed before the AIPA won't be because
4 they'll be abandoned. But with the 18 month
5 publication, those cases that were filed
6 after the effective date will become public
7 documents, those that don't opt out anymore.

8 ANDY GIBBS: There's nothing we can
9 do to capture those applications?

10 JOHN LOVE: Not that I'm aware of
11 in terms of prior art.

12 NICHOLAS GODICI: Just a comment or
13 two. We rarely kind of put the microscope on
14 this area and from a quality aspect, you
15 know, really done a lot of things in quality,
16 some of the things that Roger was mentioning,
17 I think there's some lessons to learn here
18 that we can look at in the subcommittee and
19 so on.

20 ROGER MAY: You took the words
21 right out of my mouth. You've done some

1 really good work in this group and I think we
2 can apply those lessons learned.

3 GERALD MOSSINGHOFF: And raise the
4 fees to do it.

5 JOHN LOVE: Collect them, that's
6 the key. Collecting the fees.

7 MARGARET BOULWARE: Keeping the
8 fees.

9 JOHN LOVE: Yeah; right.

10 MARGARET BOULWARE: Any other
11 questions? Well, thank you very much, John.
12 Business method patents as you mentioned have
13 really been getting a lot of press, and I
14 think that the whole system to some degree is
15 affected when you have this type of issue
16 that gets in the press, it spills over to
17 everything. So it's not just this business
18 method patents, it's the whole system.

19 And at this point in time we are
20 past our adjournment time. I think we've had
21 a lot of discussion, very good discussion,

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1 and I want to thank everyone for coming and
2 attending and I will see the committee
3 tomorrow morning. And also we will be
4 meeting in the morning with the Trademark
5 Public Advisory Committee and then we'll be
6 splitting off in the afternoon for our
7 discussions. And Nick or Bo, do I need to
8 make any other announcement or -- the same
9 room?

10 BO BOUNKONG: I think it's going to
11 be in the vicinity. We're going to have
12 several rooms break out.

13 MARGARET BOULWARE: Several rooms.
14 Okay, great. Starts at 9, breakfast is at
15 8:30. The meeting starts at 9; right. We'll
16 see you downstairs. So with that I'd like to
17 thank our acting director for organizing it
18 and we'll see you all tomorrow. I'll call
19 this meeting adjourned.

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CERTIFICATE OF STENOTYPE REPORTER

I, Janice E. Miller, Stenotype Reporter, do hereby certify that the foregoing proceedings were reported by me in stenotypy, transcribed under my direction and are a verbatim record of the proceedings had.

JANICE E. MILLER