

FICPI/AIPLA Colloquium "A Comprehensive Approach to Patent Quality"  
 Amsterdam, June 8–9, 2007

Session 8 “Managing Growth While Enhancing Quality”  
 Speakers: M. Kirk, A. Louage, J. Doll, F. Eiden, T. Moriya, J. Shin  
 Unidentified Questioner, D. Huntington, S. Helfgott,  
 J. Malackowski, A. Kasper, M. Michaus, M. Jewess, J. Saffer

KIRK	<p>This is our last panel, but I have one thing I want to do before we start. Alexandra, would you come up here a minute? For all of you that haven't had the pleasure that we have had at AIPLA of working with FICPI and this wonderful lady here, Ms. Alexandra Louage. Please, we have a small token of our appreciation for you to thank you for everything. You are wonderful.</p>
LOUAGE	<p>Thank you very much. Well, I'd just like to say that this was something completely new for me to work with AIPLA, such a big organization with so many wonderful people, who quite impressed me. I sometimes felt quite intimidated seeing your names and whatever, and I do hope to renew the experience because it's been great fun. Thank you.</p>
KIRK	<p>We turn now to the topic of “Managing Growth While Enhancing Quality,” and our first speaker is from the United States Patent and Trademark Office, the Commissioner of Patents, John Doll. John?</p>
DOLL	<p>Thank you, Mike. I want to mention that I really appreciate being here—thank you very much. I think this is a great opportunity. The topic is extremely important to intellectual property and especially important to the United States Patent and Trademark Office.</p> <p>Quality is our number-one theme in our strategic plan. If you look at our strategic plan, improving quality is what we're trying to do for the next five years. It's where we intend to focus all of our efforts. I'm going to talk about managing growth very quickly, and I'm going to go through a subset of the slides that you have because I don't have time to go through all the slides. I'll very quickly go through them—hopefully to stimulate your thoughts—and then we can have a conversation at the Q&amp;A, or the breaks, or after the meeting.</p> <p>When you look at the UPR filings—UPR are the utility, plant, and reissue applications that are being filed—you see tremendous growth in the United States. When you looked last year, we had a 9.2 percent growth rate from Fiscal Year '05; at mid-year '06 we were at 6 percent; at mid-year '07 we're at 6 percent again. So if we continue at the rate we're receiving applications, we can easily get a 9 percent increase again in '07. That would mean that we wouldn't have 445,900 applications—that we would be over 450,000, approaching 460,000 new applications.</p> <p>When you look at the backlogs, and I've heard a lot of talk about backlogs, we started this Fiscal Year with a backlog in the United States Patent and Trademark Office of over 700,000 unexamined new applications. If the growth continues the way it's going right now, we will end the year with 800,000 new unexamined applications in the backlog.</p> <p>When you talk about production, that's how many new cases we</p>

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actually moved. Last year, we moved about 315,000 new applications; this year we're hoping to move about 323,900 new applications—that's if things go as planned. We're actually running much better than we had thought we were going to run. Productivity is up because of some of our pilots—we have a hoteling pilot where a certain number of our examiners get to work at home. When they work at home, they're more productive. Amazingly, they use 40 percent less sick leave when they work at home than when they're at the office. That alone makes them more productive.

We have a laptop program where we're providing our examiners with laptops so they can work paid overtime, or voluntary overtime at home, at the beach, at Starbucks—wherever they would like. That's increasing productivity also; we're thinking that we may get a 3 to 4 percent productivity boost from that. We're negotiating new bonuses. For the first time ever, we're negotiating with the union for giving a quality bonus. If you're fully successful in production, fully successful in timeliness, and you're outstanding in quality, we think you deserve a bonus, and we're looking at a \$3,000 to \$6,000 bonus for that.

But again, when you look at the numbers, when you look at how much work we're hoping to do—and we're hoping to do 330,000 new applications this year—if we receive 450,000 new applications, we could easily add 120,000 applications to the backlog. Increasing backlogs, increasing pendency—when you look at the numbers, you look at the numbers in the first column. That's the amount of time it takes from when you file an application until you get that first office action on the merits from the office. The first number is what it was in FY06; the second number is where we were at mid-year. Everybody is increasing except biotechnology; the reason biotechnology is not going up, they over hired last year. We exceeded our goal last year by 200 additional hires; they took 125 of those because they were anticipating higher than expected filings that didn't materialize, so they're actually reducing their pendency.

But when you ask the question, "Is pendency too high," what pendency is too high for you? If you're working in *[inaudible]* or biotech and you're taking a product from the bench to the market, and you have a life span there of 10 years, maybe 12 years, maybe 15 years to get it onto the market, compare that to an interactive video where you go from somebody's idea in their head to your iPod—that could take less than 12 months.

So we're looking at different systems as to what pendency means to different industry sectors, what's important to you. I'm going to move from the growing to talking about quality right now because, again, as I said, it's the number-one initiative in patents. We really only have two initiatives—there are 34 actions—but the two initiatives are to improve quality and improve the pendency, the timeliness, or the productivity of the examination process.

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The website as you see it here, that's our strategic plan. If you'd like, please take a look—we're always willing to listen to suggestions, other things that we might do, other ideas that we might consider. Quality, again, is the number one thing that we're trying to improve with our five-year strategic plan. Quality of patents—quality is a shared responsibility. It's interesting because I've heard a lot of talks here today and I've heard a lot of interesting ideas and I think everybody is resonating the same thought—application quality is a shared responsibility; patent quality is a shared responsibility. It's unfair I think to dump improving quality strictly on the patent offices of the world. We need to have better application input; we need to have better applications being filed. Under Secretary Dudas consistently and constantly advocates for better application quality, getting better work in front of the examiner, and it was really good to hear that other speakers here today said the same thing.

And so the number one message that I'd like you to take home today is that the patent offices do need to get better, we do need to improve our quality—we admit that. We're willing to listen to ideas, we're willing to implement changes, but I think the bar is also that applicants and the attorneys need to work on improving quality. I don't often endorse other speakers, but, if I could have given one of the other speeches, it would have been Marc Adler's speech. It was summed up, I think, by one of the quotes that he had. I can never help but wordsmith, so the stuff in parentheses is mine, and it was really clear when it was said that applicants and I think the attorneys also—because I've got to get the attorneys under the you-draft-them-you-file-them—must take responsibility for quality application preparation and prosecution and not rely solely on the examiner. I think this is extremely important, and again I think plagiarism is the highest form of flattery, so thank you for that.

Quality of patents—what do we measure in the United States Patent and Trademark Office? We measure two things: the number one number up here is the allowance error rate. We have an Office of Patent Quality Assurance. They are former examiners; they are experts in particular art areas. We pull a statistically significant sample of allowed applications. We reexamine them to make sure that every single claim is allowable. If any one claim is not patentable, it is not allowable, then that application is considered to have an error and sent back to the examiner and that's what you see in the error rates that are posted up here. We have an in-process review where—while the application is being examined, rather than just doing in-checking—we actually look at the applications, we look at the prosecution while the examiner is doing those actions, whether it be a first action or a final rejection, an advisory action, or an examiner's answer.

We pull those during prosecution, and we review those again. Have

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all the claims that are allowable been allowed? Have claims been allowed that should not have been allowed, that should have been rejected? Have claims been rejected that are improperly rejected—that should have been allowed? These are considered errors, and this is what goes into the number on the bottom of our compliance rates. These are measures that we've been doing. The OPQ8, the top line of numbers, we've been doing the same way for over 30 years; the bottom line of numbers, the in-process reviews, we just started three years ago, and we're doing very well in meeting our goals there.

But again, one of the things that I'm really concerned about and that I meant to say on the last slide, one of the things that I heard, that we were talking about at the break, was that we heard someone yesterday say that they couldn't afford to do a prior arts search before they filed the application, so they filed the application to let the patent office do the search. If that's true—if it's cheaper for you to file an application and let the patent office do the search for you rather than your doing it before you draft that application—we need to dramatically raise our fees to change that focus to make sure that, when you file an application, you sincerely feel that it is patentable and when you sign that oath, you're signing an oath that states that you do feel this is a patentable invention and you're not just asking us to do the search for you.

Allowance error rates—again, I said this is the first line of the previous chart, and what it shows is for the past almost 31 years what the allowance rates have been. It's really interesting, because if you look at the 1980 number—the all-time low—I was an examiner. If you look at the 1995 number, that's when I was appointed to be a director. This is working well for me. If you look at the bottom slope, that's since I've become Commissioner. The error rates have gotten better, and I think I've heard from some of you that you think we are getting a little bit better. We need to hear that input, we need to hear what we're measuring and how we're measuring.

But let's also talk about the allowance rate because that's what's really important. If you look at the allowance rate, the allowance rate has been dropping also. One of the things that I would like to correct that I heard yesterday (I heard a couple of things throughout the meeting that I didn't really agree with statistically) was that 95 percent of the business method patents are rejected, and that's simply not true. We allowed in the last year—in FY06—20 percent of all business method applications that were disclosed over that year. The previous year it was 11 percent—the allowance rate is going up. It sounds like a low allowance rate, but what we got was a large dump of very broad claims, claims of tremendous scope right after the States 3 Bank decision—claims that were not allowable, claims that were overly broad, claims that should not have been allowed. What we've seen since then are applications that are being filed with

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	<p>reasonable scope, reasonable breadth, and we're allowing more. I expect more and more business method applications to be allowed, and I expect that allowance rate to grow above the 20 percent.</p> <p>I also heard that in biotechnology, which is the technology center where I was a director, the allowance rate was almost non-existent and that's not true either. It was 40 percent two years ago; it was 30 percent last year. Yes, it's dropping, but we're looking at things much more closely, and still the allowance rate is over 30 percent in biotechnology.</p> <p>The USPTO doesn't determine the allowance rate; we don't make this number; the attorneys do—the applications that you file determine what this number is. We make patentability determinations based on the statutes, based on prior art, based on formalities—so the allowance rate is driven by the work that is given to us.</p> <p>But, when we talk about error rates, we talk about allowance rates. It's interesting because, if you superimpose the two, they look a lot alike over the past 20 or 30 years, which is very interesting. So when you're looking at error rates and you're looking at allowance rates, I hear all the time that “you guys are allowing nothing, nothing's going out of the door.” Our allowance rate last year was 52 percent; our allowance rate at mid-year this year was 50 percent. It's dropping, but maybe that's a good thing. If a lower allowance rate means that the patents we're issuing are higher quality and we have a lower error rate, I think that's good for you. I think it's good for the patent community. Quality Initiatives—what we're trying to do, as I said, and I'll keep repeating it over and over—is that our strategic plan is drawn to improving quality.</p> <p>One of the things in our strategic plan is outreach—we'd like to reach out to the AIPLA, the ABA, the IPO, to stakeholders, to patent holders, to trade groups to ask you about our quality metrics. We'll be very transparent, we'll tell you exactly what we measure, we'll show you how we measure it, we'll show you what we do and then ask you, “Is this correct? Do you think we should measure something else? Is there another way that we should be looking at quality that might work better for us or for you?” So one of the outreach efforts we're going to start this year is going out and talking to groups and asking what we should do after we explain exactly what we do.</p> <p>We have a lot of things going on—we've got a lot of quality initiatives; it isn't only the second pair of eyes. We've instituted interviews before first action so you do have the opportunity before you get an office action on the merits to talk to the examiner, to say to the examiner this is exactly what my invention is, this is exactly what I'm claiming, this is what I'd like to get protection on. We have appeals specialists in each one of the technology centers so that, before you appeal, it's reviewed by somebody who is trained by the Board of Patent Appeals and</p>
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	<p>Interferences on what a proper appeal should look like so that, hopefully, we'll have a better affirmance rate at the Board of Appeals.</p> <p>Pre-appeal brief conferences, where you now have the opportunity to have three examiners—a supervisory examiner, a technology center quality assurance specialist, and the examiner who wrote that final rejection—tell you that the case is right for appeal, that we're going to go ahead, we're going to the Board of Appeals. So many times the applicant files an appeal brief, and the examiner allows it. Well, you're always happy for the allowance, but you spend an awful lot of time, money, and energy filing that appeal brief when probably you should not have had to.</p> <p>We also have appeal conferences. After the examiner writes the examiner's answer, it's reviewed again by a panel of three to make sure that case is right for appeal, that the claims that are rejected have been properly rejected, and that the grounds for rejection are appropriate and will be affirmed.</p> <p>We have examiner recertification programs. We have a central re-exam unit that's really doing a great job in reviewing applications or patents where an error may have been made or where new prior art has been determined. We have an accelerated exam program that I think is not only fast, but it's also improving the quality of the examination. If I don't run out of time I'll talk about that in a little bit.</p> <p>We have proposed rules changes. Our claims and continuation rules packages were submitted to OMB on April 10, and hopefully we'll get a decision from OMB by July 10. There's a chance we may not because OMB has the unique ability of granting themselves an extension of time. So, hopefully, we will get a decision by July 10.</p> <p>When it comes to claims, we're trying to focus the examination. We took a look at our quality review statistics. In FY05, in applications that had more than 25 claims, the examiner was 56 percent more likely to have made an error in that application than in an application that had less than 25 claims. In FY06, in applications that had more than 25 claims, the examiner was 40 percent more likely to make an error than in an application that had less than 25 claims. That's partly what we're looking for in the claims package.</p> <p>The continuation package—it shouldn't take three, four, five, six continuing applications to get the examiner and the applicant and the attorney to come to an understanding as to whether this is allowable or not. I heard someone say that, “If you don't agree with the examiner, appeal.” That's my real world. That would be my perfect world, that we do the best examination we can the first time around; and, if you don't like it, you go to the Board. The Board makes a decision. If you don't like their decision, you have the opportunity to move on to the Court of Appeals for the Federal Circuit or the District</p>
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	<p>Court, and you can ultimately move to the Supreme Court.</p> <p>I think what we're trying to do is simply improve the focus and the quality, but I want to make the point that there are no per se rules. We're not saying that you can only have a certain number of claims. We're never going to say that you can't have another continuation. But we are going to require you to tell us in that additional continuation that you have a good and sufficient reason as to why you need it. And if you want to have more claims than the number of claims that we put in the claims package, you may have to supply an examiner support document supplying us with the prior art search and telling us why your claims are patentable over the prior art that you've determined.</p>
DOLL	<p>Information disclosure statement. The business unit heads have agreed on what we should present; and we'll be presenting that to Under Secretary Dudas next week. We're going to also be looking at Markush claims if you practice in the biotech area or you practice in the pharmaceutical area. You'll see claims where there are more species than there are atoms in the entire universe. We need to bring that under control. I heard somebody in the hall before use the term "applicant quality submission," and it warmed my heart because that's actually what we're looking at. We've briefed OMB, and Under Secretary Dudas has briefed several members of Congress, and we're getting a very warm reception on requiring a pre-examination search before you file that application. With that I'll turn it back over to Mike.</p>
KIRK	<p>One of the advantages/disadvantages of an enthusiastic individual, there's no “off” button. Our next speaker comes from the European Patent Office. He is Mr. Fernand Eiden, the Principal Director of Biotechnology. Mr. Eiden?</p>
EIDEN	<p>In the next ten minutes I would like to take you on a journey, so to speak, through the last thirty years of the European Patent Office. I am qualified for this task, not least because I started out as a search examiner in the Institut International des Brevets (IIB), a forerunner of the EPO, before becoming a substantive examiner at the Munich offices of the EPO in 1979. Later I became a director in an examination and opposition directorate. Soon afterwards I was asked to develop a directorate dealing with harmonization and quality which I was in charge of for more than twelve years. In addition to quality building, another of my tasks was to participate in the preparation of guidelines and internal instructions for examiners in their daily work. I am currently the EPO Principal Director for Biotechnology, which consists of 250 examiners who work only on biotechnological applications.</p> <p>In the early days of the EPO, our first President, Mr. van Benthem had a prudent approach because he was in charge of a new international</p>

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organisation which also had to coexist with the national patent offices. But how this situation would work out was not at all clear back then. Naturally we had to convince industry that filing with the EPO would be worthwhile. What was clear to Mr. van Benthem was that quality was the key to success. Moreover, he convinced all the examiners that this was the case.

But in the context of patenting, what does "quality" mean? And do concepts of patent quality remain valid over time? It was a founding concept of the EPO that a granted patent should have claims with a clear scope and a clear description. This key principle is still anchored in the Guidelines today. It is also still the case that the first communication to the applicant in examination from the office should be comprehensive and deal with all the deficiencies the examiner detects in the application. It is also a guiding principle that EPO communications should be well drafted and should be convincing.

When it first opened its doors in The Hague in 1977, the EPO integrated 500 examiners from the IIB, and examiners from the German Patent Office in Berlin were also recruited to work at the EPO's office in Berlin. All of these examiners were specialists in searching, and, at that time, each directorate consisted of 15 examiners and a director, one of whose tasks was to assure quality in the process. Two years later, 84 substantive examiners started their work in Munich. Directorates in Munich had around 12 examiners per Director. Now, the EPO has around 3,700 examiners.

The history of the EPO has been marked by constant growth, and this expansion can be subdivided to represent different phases which correlate with the varying increases in the workload that the office has had to deal with. To begin with, we had a period of natural growth typical for a new organisation. In 1980, we received 20,000 applications, this rose to 40,000 in 1985 and 70,000 in 1990. During this time, the number of EPO examiners almost tripled to 1,750. I am glad to say that the subsequent five years was a period of stabilization, but this was followed by a period of extreme growth, or hyper-growth. We are now in the situation where, in 2006, the office received 200,000 applications—a huge number of files—which are dealt with by 3,700 examiners.

Incidentally, our building on the banks of the River Isar in Munich was originally planned to accommodate a workforce that would handle around 30,000 applications per year.

At the EPO, we have and have always had a quality policy and for good reasons this has always been intertwined with the principle of harmonisation of practice. Initially, the most urgent need was for harmonisation because the examiners which were hired between 1980 and 1985 all came from national patent offices with different practices. Naturally, we hired only the best, but their legal

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backgrounds were from many different jurisdictions. Harmonisation was thus essential. To illustrate the point, I remember very well an interesting discussion about what the correct level of inventive step should be. The view of the management was that the Dutch requirement for inventive step was too harsh, the British requirement was perhaps not strict enough, but the German level of inventive step was probably optimal.

As I am sure you are aware, the EPO has, and has always had examining divisions consisting of three examiners. The examining division is responsible for the final decision on whether to grant an application or not. In the context of harmonisation, the divisions initially had members of different nationalities, but, in addition to this harmonisation step, the Directors also had to develop harmonised working within their directorates. During the first year of operations, however, we felt that harmonisation was also needed between the three main technical fields (Chemistry, Mechanics, and Electricity), and we thus started a project reviewing files from all three fields. In 1985, this system was replaced by another employing examiners whose job it was to permanently review files. In light of their findings, proposals were then made for instructions to examiners in order to harmonise their work even more. From this process evolved better guidelines, internal instructions, and staff notices. This was essential work. Moreover, chemistry and biotechnology were special cases. Because of the complexity of these fields, a set of instructions was especially produced for examiners working in these areas.

In the beginning of the EPO, life was relatively easy, as search and examination were divided between the different sites. The Hague and Berlin were responsible for Search and Documentation matters, and Munich took care of examination and oppositions. At the EPO's inception, work was divided according to technical lines between three main fields—chemistry, electricity and physics, and mechanics. The BEST project, which was started in 1990, was visionary. It began as a study to see if search examiners could also prepare the first communications and then subsequently continue with substantive examinations. The project was successful and was seen as a way of making the office much more efficient. Now 95% of examiners are working in BEST mode—both searching and examining their files. Of course it was a huge exercise to train almost all of our search examiners in substantive examination and to teach substantive examiners searching, but we did it in five years. BEST has proved to be a great success and is now recognised in the EPC 2000.

In all of this, training was, of course, essential. So much so that I remember a time when we even had the Vice President giving a lecture on inventive step.

Obviously, the organisation of the office has had to change over the years in order to keep pace with the realities it was faced with. As of

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	<p>January 2005, the office adopted a new structure. Under our Vice President, Thomas Hammer, DG1 is now responsible for all search and examination work at the office. DG1 is divided into 14 Joint Clusters each representing a different technical area. DG2 is now responsible for operational support and comprises IT, quality management, patent administration, and documentation tools. One big difference is that the EPO's quality audit, performed by Directorate Harmonization and Quality, now falls directly within the President's remit.</p> <p>Turning now to quality, in 1989 it was felt that the EPO needed a director of harmonisation and quality. Three years later, I took over this job and, by the end of 2003, we had 14 examiners working full time checking granted patents for quality issues. We didn't just look only at substantive examination quality issues but also at formal aspects of the work done, and, as you can see from the slides, the EPO also proportionately hired many new formalities officers. During the period of stabilization of 1990 to 1995 I mentioned earlier, we took the time to prepare well-structured lectures and training materials. We also expended effort in improving the guidelines and internal instructions, so thankfully the office was well prepared for the period of hyper-growth or rapid growth which came afterwards.</p> <p>The EPO will continue with its original and most basic quality assurance measures which it began with thirty years go—namely the responsibility of the primary examiners for the quality of their own files' prosecution, the examining division and the directors who take responsibility for the quality of products emanating from their directorates. But consider that the number of examiners per directorate has grown in 30 years from 12 to 30. This means that directors must be legally and technically competent in order to perform quality checks properly.</p> <p>In 2003, it was felt that the quality system needed some change. The EPO Quality Strategy Exercise was set up in which examiners, management, and the administrative council were interviewed and consulted about patent quality. As a result, the EPO has created a new quality system which is concerned with the quality of our products.</p> <p>In April 2007, the EPO introduced a supplementary quality review called Operational Quality Control which in the USPTO is known as an "in-process review." In our system, between 6% and 8% of all our products are reviewed from the point of view of their quality. In terms of investment, it represents about two to three experienced examiners full-time in each Joint Cluster. We are of the opinion that this measure will help us improve our quality further, because having gone from 1,900 to 3,800 examiners in ten years means that we now need the dynamic feedback that an in-process review system will give us to move forward on quality. No doubt this will yield interesting results</p>
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	<p>which will translate into future quality improvements for our applicants.</p> <p>Thank you very much for your attention.</p>
KIRK	<p>Our next speaker will be Mr. Toshimichi Moriya. He is the Deputy Commissioner of the Japan Patent Office. Mr. Moriya?</p>
MORIYA	<p>In this section, let me explain JPO policy concerned with managing growth while enhancing quality. First I would like to introduce the number of applications filed in U.S., JP, China, Korea and EPO. Please look at graph. Responding to rapid economic growth in these years, the number of applications filed in China and Korea is quickly increasing. The number of patent applications filed in the U.S. has also been continuously increasing in recent years. The right side of the graph shows the number of PCT applications, which have been rapidly increasing.</p> <p>Now, I would like to talk about recent trends in patent application filings in Japan. The number of patent filings has remained stable at a little more than 400,000. On the other hand, there has been a temporary surge in the number of examination requests because of the shortening of the examination period from seven years to three years. As a result, the average examination waiting period, first action pendency, is 26 months in 2006. The JPO aims to reduce this period to 11 months in 2013, which is a very big challenge for JPO.</p> <p>Today, in my presentation, I would like to introduce how the JPO has been tackling the challenges of managing the backlog. In order to reduce the backlog while enhancing the quality, the JPO is taking these four measures: First, we have been increasing the examination capability by increasing the number of examiners and outsourcing of prior art searches. Second, we have also been advancing the mutual utilization of search and examination results among IP offices in order to avoid duplicate work and enhance the examination quality. With regard to this, I will talk about a Dossier Access System, Patent Prosecution Highway, and New Route Proposal. Third, we have been promoting the cooperation with industry. With regard to it, I will talk about the promotion of the strategic IP management and the refund system of examination fee. Fourth, we have been improving the quality of examination; I will explain the detail of it later.</p> <p>Let me first talk about our activities to increase the number of examiners and outsourcing prior art searches. In order to reduce the backlog, JPO plans to employ about 500 fixed-term examiners during the five-year period from 2004 to 2008. JPO has already employed 400 fixed-term examiners. The term of such examiners is five years, and this term of employment is renewable one time—namely, they may be employed for up to ten years. The second measure is outsourcing of prior art searches to the private organizations. To reduce the burdens of prior art search on the examiners and to</p>

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	<p>increase examination efficiency, the JPO is outsourcing prior art searches for Japanese patent documents. The number of searches outsourced is 197,000 in 2006, and we are planning to increase to 240,000 in 2010.</p> <p>Now, let me talk about the measures to promote work sharing among IP offices. Firstly, I touch upon the Dossier Access System. The Dossier Access System is essential to avoid redundant searches in IP offices and to advance international work sharing. JPO has established a system that allows examiners to access the File Wrapper Dossier of EPO, USPTO, and Korean Patent Offices, and the JPO has already compiled a guideline for examiners to use the search and examination results of other IP offices.</p> <p>Now, I would like to talk about Patent Prosecution Highway, which we call PPH. It is a framework of cooperation on patent examination between IP offices. If a patent application has been determined to be patentable in an office of first filing, the corresponding application is qualified for accelerated examination in an office of second filing. Under the PPH, applicants can easily apply for accelerated examination and more quickly obtain patent rights in the second filing office. The PPH is also advantageous to IP offices because an office of second filing is able to utilize reliable search and examination results obtained in the office of first filing. That means the office of second filing is able to reduce the workload and to improve the quality of its examination. Recently PPH has been extended to cover PCT applications. PPH provided three big advantages: first, an applicant can obtain a patent timely; second, quality of patent is enhanced; and third, duplicated work is avoided in the patent offices.</p> <p>As a similar framework, JPO is also proposing the New Route in the context of enhancing international sharing. According to WPO Patent Report 2006, there are 660,000 cross-filing applications a year in the world; out of them, 350,000 applications are cross-filed through non-PCT route. The New Route is designed for non-PCT route applications. The New Route is similar to the PCT, but there is no international phase and no international bureau. The New Route has three main features: Firstly, the filing with the first filing office is considered to be a simultaneous filing with the second filing office. Secondly, the first filing office examines the application first and then the second filing office utilizes the result of the first filing office. Thirdly, an applicant is given a 30-month period for submitting the translation of application to the second filing office. I believe this proposed New Route System will enhance work sharing at international level and provide sufficient flexibility for users if it is implemented. JPO is now discussing with USPTO the possibility of implementing the pilot project of the New Route.</p> <p>Now, I would like to touch upon cooperation with industry. For successful workload management, it is also necessary to cooperate</p>
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	<p>with industry. The JPO holds intensively a meeting within the top officials of the JPO and the executives of leading companies to talk about promoting of the strategic IP management at each company level, including promoting global IP strategy and conducting prior art searches for efficient and effective R&amp;D investment and filing high quality patent publications. And the JPO has introduced the refund system that the full amount of the examination fee shall be refunded if the applicant withdraws or abandons the application before the examination procedure is started. The refund system encourages the applicant to select better quality application to be examined and to weed out poor quality applications or applications not necessary to get a patent.</p> <p>Now, let me talk about other measures to improve the quality of examination from four aspects.</p> <p>Firstly, the JPO has been focusing on human resource development. It takes three or four years for a newcomer examiner to become a good examiner. During this period, a trainee will have to go under various training programs on laws and technologies.</p> <p>Secondly, to efficiently carry out the prior art searches, we have been establishing databases, maintaining search classification, and improving the functionalities of such systems. Examiners’ search know-how is stored in the database to share it among examiners. Also, to enhance the quality of prior art searches by researchers of contracted organizations, examiners meet directly with researchers when they receive their search reports. This is called dialogue type outsourcing.</p> <p>Thirdly, to ensure consistency in examiners' decisions, the JPO has prepared an examination guideline paying due attention to appeal decisions and court decisions. For the appeal cases in which a written amendment is submitted and for other cases for which patentability judgment is very sensitive, two or more examiners hold a consultation to make a proper decision on patentability.</p> <p>And finally, JPO has adopted the system which allows the director of technology division to check every office action before it is delivered to applicant. In April 2007, JPO established a quality management office to more effectively check applications on a cross-sectional basis.</p> <p>Thank you very much for your attention.</p>
KIRK	<p>Next, we will hear from a speaker coming from an office that is working very hard to make the term “Trilateral” a thing of the past. We will hear from Mr. Jin-Gyun Shin, who is the Senior Director of the Patent Examination Policy Division from the Korean Intellectual Property Office. Mr. Shin?</p>

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SHIN	<p>Good morning. My name is Jin-Gyun Shin from KIPO. I am pleased to have a chance to introduce KIPO's efforts to manage growth and enhance quality.</p> <p>First, let me explain the background of KIPO's efforts to reduce patent examination period. In 2002, the patent first action period averaged 22.6 months. The delayed examination process caused delays in the acquisition of patent rights and complicated the tasks dealing with imitation products. Consequently, in 2002, we adopted plans to shorten the patent first action period, and by the end of 2006, KIPO's continual efforts and innovation bore fruit with the remarkable achievement of the world's shortest first action period of just 9.8 months.</p> <p>KIPO's first initiative was to recruit a greater number of patent examiners; thus, we expanded the pool of examiners from 558 to 727 in 2006. We also endeavored to alleviate the workload of examiners by extending the outsourcing of prior art searches to outer organizations. Thus, the points of outsourced cases more than doubled from 65,000 in 2004 to 133,000 in 2006. The actual number of applications will be roughly half of these points.</p> <p>KIPO's second initiative was to introduce performance-oriented management whereby the performance evaluation of the examiners was based on the performance records of patent examinations. Examiners who score well in the examination evaluation are rewarded with incentives for promotion. As a result, the examination performance score of each patent examiner has risen from an average of 54.1 points per month in 2002 to 79.5 points per month in 2006.</p> <p>In 2005, KIPO also endeavored to improve the examination process more efficiently by introducing 43 Six Sigma projects which included plans to reduce the patent examination period and improvement of the KIPOnet system. In another initiative KIPO developed an upgraded component of the patent administration information system. The new version KIPOnet II enhances the efficiency of patent examination tasks, particularly through faster download speed and screen movement and also through its intelligence such as system which enables both automatic and reservations such process.</p> <p>By these efforts KIPO succeeded in shortening the average patent first action period from 22.6 months in 2002 to the world's fastest service of 9.8 months in 2006. In four years, we reduced the examination period by 12.8 months; it is faster than 21.8 months of USPTO, 26 months of JPO, and 26.1 months of EPO. In 2002 the cost of delayed patent examination period was about \$162 million estimated from the report of the Federation of Korean Industrialists. The shorter examination period should therefore lead to an enormous</p>

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	<p>savings. In addition, the shorter examination period expedites the granting of patent rights and subsequent commercialization thereby enhancing the efficiency of national R&amp;D investment and strengthening national competitiveness.</p> <p>Aside from shortening the patent examination period, KIPO has been endeavoring to enhance the quality of examinations. KIPO became the first central government department as an enterprise type responsibility management agent. This change in status has imposed greater demands on KIPO to implement customer management. On another front, WIPO is urging PCT organizations to improve the quality of PCT international reports. To keep pace with domestic and international changes in the patent environment, we need to accelerate synthetic and systematic plans to improve the quality of examinations. KIPO's index of patent examination quality has been rising steadily; the index in 1999 was 100 points and we achieved 128.7 points in 2006. According to customer surveys, the level of customer satisfaction for examination has risen steadily since 2004. Thus the KIPO's efforts in raising the quality of examinations have led to an annual increase not only in the examination index but also in the level of customer satisfaction. Also, through the Joint Prior Art Search Program between KIPO and other patent offices such as JPO, SIPO, IP Australia, and EPO, plans to enhance the examination quality are discussed.</p> <p>To achieve world-class patent examination quality, KIPO implemented four major policies: greater equity in the examination workload; reinforcement over the examination infrastructure and the capability of examiners; development in the examination process; and improvement in the quality of prior art searches.</p> <p>To achieve world-class patent examination quality, KIPO has been promoting greater equity in the examination workload. The first step was the introduction of a degree-of-difficulty index in examinations according to technological fields. We assign a small number of tasks for technical fields with a high degree of difficulty and a larger number of tasks to technical fields with a low degree of difficulty. We also balance the examination workload between the new and the experienced examiners by assigning tasks according to the graded skills of examiners—for example, junior examiner, senior examiner and chief examiner—something like that. In addition, team directors and section leaders are assigned fewer examination tasks so they can focus on managing the examiners.</p> <p>To further enhance the quality of examinations, KIPO has reinforced the examination infrastructure and the capability of examiners. In one initiative, we encouraged examiners to share their examination know-how by means of an Examination Task Management Card. This card includes examination know-how, examination standard over a particular technical field, etc. KIPO also develops the technical</p>
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	<p>expertise of examiners by offering ongoing education in new technologies, particularly through joint educational programs, examiners, and forums with other organizations.</p> <p>In addition, we continually support examiners through study groups in various fields of patent systems and technology. This year, we had 39 study groups in the various examination bureaus. KIPO has also enhanced the KIPOnet system in order to reduce the errors and raise the efficiency of examinations. Moreover, to simplify the system of controlling the workload, we have improved the examination function and accommodated a dual monitor system.</p> <p>KIPO is also endeavoring to manage the examination quality by developing the examination process. For instance, we have adopted the Claim-by-Claim Examination System whereby examiners notify applicants of their reasons for the refusal of the application on a claim-by-claim basis and in detail, so that applicants can easily abandon a particular claim or take supplemental measures. We have also implemented the Examination Note System. Under this system, any prior art information reviewed by an examiner is described in the examined publication, so that the judgment process over the registration decision is disclosed. In addition, we drafted and distributed a checklist for preventing errors in PCT examinations. The checklist is useful for developing examination expertise or PCT specialists and enhancing the quality of PCT papers. Finally, to make our evaluation of examinations more reliable, we adopted a more comprehensive evaluation both by quality review team and by team directors. KIPO has also established a system for improving the quality of prior searches that is directly related to the examination quality. For example, we improved the search system to enhance the expertise of examiners in conducting prior searches and we also distributed a manual on how to use the system. In addition, we try to ensure the high quality of prior searches by promoting quality competition among the outsourced agencies that conduct prior searches. Moreover, the examiner in charge of a case is required to thoroughly evaluate any relevant prior search reports from outsourced agencies.</p> <p>As the first self-financing executive agency of Korean Government, KIPO has adopted an enterprise type of management with an emphasis on customer-oriented management. Through all the efforts that I've mentioned, KIPO hopes to obtain a shorter patent examination period and a higher quality of patent examination. In this way KIPO hopes to provide a worldwide patent examination service.</p> <p>Thank you for listening to the end.</p>
KIRK	We will now open it up to questions from the floor. Yes, sir?
UNIDENTIFIED	Thank you. One of the points that concerns me very much is prior art

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QUESTIONER	searches that have been out-sourced. They are an essential part of the procedure to get a quality examination. We have a number of important offices including Japan, the United States, and Korea for example, which outsource this work to outside bodies. It's not clear to me, and possibly to most of the users of the system—what are these bodies, what are these agencies, how do they work, who has responsibility for their quality, and so on and so forth? What is the relationship between the examiner and the body doing the outsourced work? What efforts are made in order to harmonize that work internationally?
KIRK	Which of the three offices named would like to take that on first? Mr. Moriya?
MORIYA	<p>Thank you very much for your question. With regard to JPO outsourcing, JPO examiners have full responsibility for the quality of search for examination of patent applications. Outside bodies just report the result of searches conducted by their researchers using the same search databases as the JPO examiner uses. If necessary, JPO examiners have to conduct additional prior art search. I think that prior art search is very important to improve the quality of applications as I mentioned in my presentation.</p> <p>I know that Japanese language is very difficult for foreigners to understand. So, as one of international cooperation activities in the patent field, JPO has provided English abstract of Japanese patent documents which are made available to the public in the IPDL through the website. You and all IP offices, of course, and private research organizations can use IPDL systems to retrieve Japanese patent documents for their prior art search purpose. And also JPO has provided machine English translation services for Japanese patent document. You could access our JPO website to retrieve Japanese document in English. Thank you.</p>
DOLL	I wanted to talk about outsourcing because the only outsourcing the United States Patent Office is doing is the outsourcing of PCT applications, and that decision was made, again, to move our backlog. Every PCT application done by a U.S. examiner is one less U.S. national stage application that is done by an examiner, so we're outsourcing the PCT. I actually see that as an improvement in quality because now what we have is two different searches: we have a search that's being done by either IP Australia, by Landon, or by Cardinal Law Group in Chicago. Those searches are given to the examiners when they do the corresponding U.S. national stage case and then the examiners perform their own search. So I actually see that as improving search quality, not deterring it. Was that the question?
KIRK	Mr. Shin, do you want to comment on the Korean outsourcing?

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SHIN	Yes. As I mentioned, our internal report says that 27 percent of workload of examiners can be reduced by outsourcing of search reports, and being a government organization, we cannot increase the examiners as much as we want. That is why we decided to outsource prior art searches, and by managing the quality of the outsourced prior art search, I think we can produce high quality patent examination.
KIRK	Do you have a follow-up question?
UNIDENTIFIED QUESTIONER	I have no additional questions. It seems to me a little awkward that this outsourcing to various entities could be a sign of improvement of quality. I do not know. I probably should have much more knowledge of how this is done. Certainly it is a little strange that this procedure, that this outsourcing, is a sign of improvement.
KIRK	It may be a sign of the times.
UNIDENTIFIED QUESTIONER	Exactly.
KIRK	Danny Huntington?
HUNTINGTON	Perhaps John Doll can talk a little bit about how the quality is assured from the outside service. It's my understanding that individuals can also, or companies can also, go to those services and get the identical search made <i>vis-à-vis</i> their own <i>[inaudible]</i> ?
DOLL	<p>Right, that's an excellent point. All the searches that are done by an outside source, whether it be IP Australia, whether it be one of our independent contractors, are reviewed. When we first started the outsourcing effort, we reviewed every application that they had done a search on by a U.S. examiner to make sure that search was equivalent—that they had found the right prior art. As we're gaining more and more confidence, we're doing less and less of the researching. That way we can save efficiencies on that.</p> <p>The interesting point is that I saw an ad recently, and I don't know if it was in an AIPLA journal or one of the trade magazines, where Landon, which is one of our outsourcing searchers, actually advertised, “If you would like to have the same search the USPTO gets, employ us.” Landon is one of our outsourcers, as I said. We also have Cardinal Law Group. I can't emphasize enough that we're not <i>just</i> outsourcing. We ran a pilot initially, we reviewed the quality, and we were unhappy with the quality of the work we were getting, so we stopped the pilot. We then went out and did a rebid to get new people to come in and offer to do the work, and, again, we went back and reviewed the work extensively, and we're happy with the quality we're getting from the outside contractors.</p>

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KIRK	Other questions? Sam?
HELFGOTT	On a different subject, in your written materials, part of your strategic plan calls for a proposal or an initiative for alternative claims. Can you explain what that is about?
DOLL	<p>Yes, I'd love to. That was the slide that I was going to do next when I got cut off. The alternative examination is an effort that we're doing with our PPAC. PPAC is the Patent Public Advisory Committee and that's a congressionally mandated advisory committee for the USPTO. We're doing an outreach with them to go across <i>[inaudible]</i> starting in late <i>[inaudible]</i> Jin-Gyun asking you, the bar associations, the trade associations, the users, the attorneys, what would you like to see the USPTO be? What would you like to see intellectual property be in the United States? We're looking at possibly changing statutes; we're looking at changing our rules, the regulations, our forms, the way we examine. We're interested in anything that might help the examination backlog.</p> <p>One of the things we're looking at is that there may be different levels of examination; maybe everybody doesn't need that one-size fits all where everybody gets that presumption of validity—where you have that level of examination that requires an intensive effort. Maybe it's just enough to file an application, get an initial indication so that you can get the venture capital, and then you could possibly defer the examination and come back.</p> <p>We're not going out with any suggestions saying this is what we would like to do; we would like to ask you what you would like to see us do. That might include deferred examination, it might include a collaborative examination where you have two or three examiners, or you have a search expert, or you have a practice expert, or you have a legal expert to really work on that application.</p> <p>One of the things that we heard when Under Secretary Dudas was having meetings with the outside people about our rules changes was that certain industries were spending huge amounts of money based on intellectual property. They're building factories, they're hiring hundreds of thousands of people, and, when they leave the patent office, they would like to know that that patent is bulletproof, that it's platinum-plated—that when they go out and build that factory, they're not going to get shut down for infringement. That's something that we could possibly do. It would be a much more expensive service, but you would leave the office with a much higher presumption of validity.</p> <p>Oh, alternative claims—I answered the question I wanted to answer, and that worked well. Alternative claims language was the Markush-type claims or extremely broad generic-type claims. Thanks, Sam.</p>
KIRK	In the back, yes, sir?

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MALACKOWSKI	<p>Jim Malackowski. We've heard a lot about accelerating numbers of applications and, from the other three offices, we've heard about efforts to recruit examiners to deal with this. One of your slides shows examiner head count, and it's quite noticeable that since 2003 the examiner head count stayed relatively static, whereas the patent administration head count has not. In fact, by my calculations, from 1994 to 2006, the number of examiners increased by about 90 percent and the number of administrators increased by about 115 percent. Has the need for administration increased faster than the number of applications and if so, why?</p>
DOLL	<p>If you look at the graph and if you divide, in fact, the number of examiners by the number of formality officers, you will find that between 1994 and 2006 it decreased—the number of formality officers per examiner. And the fact that we have recruited less in 2004 does not mean that we will not continue to recruit examiners, and we are foreseeing over the five coming years to recruit 1,200 examiners more.</p>
KIRK	<p>Questions? Danny? Then we'll go to the back.</p>
HUNTINGTON	<p>I have a question for Mr. Moriya—I understand that the Japanese Patent Office is the office that is not willing to consider supplemental searches for PCT applications. I'd like to know why that is?</p>
MORIYA	<p>Thank you very much for your question. I'd like to explain what Japan's position on SIS is. If the quality of ISR is not sufficient, it can be said that quality of the examination by the national office, which is qualified as an International Searching Authority, is not sufficient either. Therefore, when we consider the quality of ISR, it is necessary to take care, not only the quality of ISR but also the quality of national search and examination.</p> <p>In order to improve the quality of search and examination by the national offices which are qualified as International Searching Authorities, the ISAs should make due efforts to improve their search abilities. In addition, the ISAs could take collaborative measures for improving search environment so as to enable other ISAs or national offices to more easily search patent documentations. In this context, as I mentioned before, JPO has made best efforts to provide English translation of Japanese patent documents.</p> <p>Turning to the SIS, it is a sort of proposal that a couple of ISRs prepared by plural ISAs can be obtained because one ISR prepared by one ISA is not sufficient. In principal, each individual ISA should take full responsibility of producing an ISR. If the PCT system allows an ISA to easily rely on other ISAs in producing ISR, the JPO cannot shake off the doubt that the result would be an irresponsible system in which no one has a sense of responsibility for making a high quality</p>

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	<p>ISR.</p> <p>Therefore, we are concerned that SIS will not lead to improve the quality of the ISR; rather it will make it costly for ISR and for the SIS new system. In addition, the supplemental ISR proposed under the SIS is not an examination result by the national office, but a search report in the international phase. The SISR is just a search report and not an examination report. Nevertheless, additional cost will be needed. Taking those points into consideration; the SISR is not so different from asking a commercial search organization for an additional search and cannot be said as cost effective. Instead, in addition to an ISR, obtaining an examination result by the national offices at early stage would be more cost effective than requesting SISR. Under the current PCT system, an applicant can obtain additional search and examination from a designated office which is well-qualified to conduct a search for documents in a specific language, if the applicant enters into the national phase of that particular designated office.</p> <p>JPO believes that the early entry into national phase could solve this issue without changing the current PCT system. I think SIS will make the PCT system more costly than the current state, so I believe that ISA should promote the improvement of the search database and searching skills through the cooperation between trilateral and other offices. Thank you very much.</p>
KIRK	Alan Kasper?
KASPER	<p>One question for John Doll. I found it interesting that you had examined the performance of searchers and found some not to be particularly qualified and went out and got someone who was better. You also had proposed that searches could be performed by the applicants. So it occurs to me that we, as the applicants who need to get a search, are more than likely to go to those whom you've rejected because they will probably provide the search at the lowest cost, where if we go to the searcher that you have selected as being the highest quality, more than likely their workload will result in the quality being reduced because of the number of searches they had to perform. So my question is: Will you have some qualification required for the searchers that we could use? Will there be some continuing qualification for them, or will you simply take any search because something is better than nothing?</p>
DOLL	<p>What we had hoped to do was to phase the program in, because right now there probably aren't enough searchers, and we needed 330,000 searches done this year. We're looking at how we can do that to allow the searching industry to build up. We've actually talked to people in the public search about how many they think they could do now, how many additional they could do, what the cost would be.</p>

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	What we're looking at with respect to your quality question is that I hope you wouldn't go to the person that gave you the lowest cost search, because I think, again, this is a shared responsibility where the better the prior art you give us, the better you prepare your application, the better the examination, and the better the patent. I think if you look at the litigation history recently in America, when the examiners have had the best prior art in front of them, they've made the right decision. The vast majority of time where a patent is returned, it's because of prior art that the examiner didn't have the opportunity to review or to make a patentability determination based on. Did that answer all your questions? Thanks.
KIRK	In the back, Martin?
MICHAUS	Martin Michaus from ASIPI for John Doll from the USPTO. <i>[Inaudible]</i> announce any program already working on a bilateral basis regarding the quality of patents with other patent offices, as for instance the Mexican Institute of Industrial Property.
DOLL	You're asking what bilateral programs we have?
MICHAUS	Yes, or if you have some new programs?
DOLL	Well, we're continually talking, especially with Mexico. Your commissioner—I'm not sure what his title is—the President, Jorge Amigo, we've worked really well with Jorge. One of the things that we're doing right now is we're looking at translating our Internet site into Spanish, and I think I had talked to you earlier that possibly we might like to have your help on that as to what would be the most important parts of our Internet site to translate into Spanish. It seems that, when we translate things into Spanish, we get laughed at a lot because obviously our Spanish translators aren't as good as natural speaking Spanish. So we were going to ask you to review that. As far as bilateral programs that are available, we've had some examiner exchange, and we're willing to discuss just about anything, especially between the offices in North America.
KIRK	Yes, Sir?
UNIDENTIFIED QUESTIONER	Thank you. It's a question primarily to Mr. Doll, but perhaps also to the other offices. What is perhaps, what is the relationship between allowance rates and managing growth?
DOLL	When we look at the allowance rate, it's been dropping in the last few years. Several years ago, the allowance rate was as high as 75 percent. What we've done is try to enhance quality. When I became commissioner, one of the things that we did was implement a mandatory second pair of eyes program because the error rate at that point in time was around five and one-half to six percent. What we did for the second half of Fiscal Year 2005 was require that every case to

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	<p>get allowed have a supervisory examiner look at it, review the application, and make sure that it was allowable. It was a tremendously expensive and resource-intensive effort, but it dropped the error rate dramatically. What we did then in FY06 was allow each one of the technology centers to design a program that they thought best fit.</p> <p>We were talking with our PPAC members about our quality enhancement programs, and there was an interesting question raised. They said, “Don't you know who your low performers are?” I think anybody who runs a patent office, or is a supervisor, knows where they should focus their efforts. So in FY06, we focused our efforts on particular examiners, on particular art units, on particular art areas where we felt for the resource we'd get the biggest payoff. The interesting thing is that we overlaid those two graphs, simply because it's interesting. But I can't emphasize enough that the allowance rate of the patent office is not determined by the patent office; the allowance rate is determined by the quality of the applications that you submit. We allow only those applications that are allowable. I don't think any office has a goal to allow a certain percentage of applications.</p>
KIRK	<p>Let me take the privilege of being a moderator and ask John a follow-up question on that, because I'm curious about the allowance rate. In the United States, if one were to file an application, abandon it; file a continuation, abandon that; and then file a second continuation that issues, is the allowance rate for that invention 33 percent?</p>
DOLL	<p>That's a great question, because what we do is calculate the allowances on the percentage of applications of the total number of applications that were disposed of. So for the question that Mike asked—in the first year when that application was abandoned, that was a disposal and that was counted as the denominator in the allowance rate. It was not counted in the numerator until the year in which it was allowed; it was then counted in the numerator and in the denominator.</p> <p>So your question is really good because, when you look at the absolute allowance rate, you really should be calculating continuing applications. We've tried that and it's extremely difficult to do because in the United States you have divisionals that come off of an original application, you have continuations in parts, and then you have self-divisionals. So you actually have more than one allowance from almost every application in the United States that gets allowed, so the number would appear to be very high.</p>
KIRK	<p>Okay. One. Mike Jewess?</p>
JEWESS	<p>If the PCT supplementary search proposal had been adopted, then by 2-½ years the applicant could have had all the searches he wanted;</p>

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	<p>whereas, on the present system, he risks getting unpleasant late surprises.</p> <p>Personally, I would be very happy to bring forward searching costs to the PCT stage, even though these might total £3000, \$6000, €4800.</p>
KIRK	Mr. Moriya, do you wish to comment on that, or do we accept that as a comment?
MORIYA	Thank you very much. I don't deny the quality of prior art search may be enhanced by doing the several searches conducted by other offices. But, SIS searching is still at the international stage, and SIS report is just a search report— not an examination report in the national procedure. In my opinion, we will have to seek the system of one application, one search, and one examination for the future. So it is my belief that ISA should make every effort to enhance the quality of the ISR prepared by itself. And so far, we have not supported the supplemental international searches which intend to enhance the quality of searches with additional international searches only at the international stage. I believe that the future of PCT depends on enhancing the searching ability of ISAs as such.
KIRK	Thank you. Sam, let me see if there's anybody else in the room— you've had one question so far. Are there any other questions from the audience? Last question, Sam?
HELFGOTT	For Commissioner Doll. The outsourced PCT search—when I then come back into the United States, under 35 USC 371, will that be accepted automatically, or will there be another search?
DOLL	No. We've never given full faith and credit to another search; it's a search that the examiner considers. If the examiner thinks that search is sufficient, he has the option of giving it full faith and credit, but we don't ever want to take away the opportunity of the U.S. examiner to do an additional search, or to do a totally different search, or to supplement that search. Again, the reason I said that I think it improves quality is that you have two different people looking at the problem who may have two different search strategies, and you then wind up with two different search results—I think giving you a more rounded opinion as to what the prior art really is.
HELFGOTT	Except that when I apply for a search to the international search authority, I'm requesting the U.S. to be the international search authority?
DOLL	Yes.
HELFGOTT	The fact that they decide to send it to someone else . . .
DOLL	Yes?

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HELFGOTT	I should not be affected by that. I'm asking the U.S. to do it, and, therefore, when I come back into the U.S., I should be able to rely on what I paid the U.S. to do.
DOLL	<p>You're correct, but our contractors—whether it be IP Australia, whether it be Landon, whether it be Cardinal Law Group—we've employed them. When that search comes back into the United States and we do that PCT office action, it's certified and signed by a U.S. Patent and Trademark Office employee. Even if you have a U.S. examiner do the PCT search, when the U.S. national stage case comes up for examination, the examiner is not bound by the search that he did in the PCT. He may have found additional prior art; he may have become a better searcher; he may simply want to take a different look at that application. So even if the same examiner has the PCT in the U.S. national stage case, there's no guarantee that he's not going to do an additional search.</p> <p>Again, I would think that you, as an applicant or an attorney, would want the best search you could possibly get. And so the more people that search it, the more people that look for it, I think is better for you. It gives you more confidence that we've done a great search and that we haven't constrained that U.S. examiner to accept the search of somebody else.</p>
HUNTINGTON	I just have one question for the Japanese and Korean Patent Offices. You've heard earlier that the outside searching company you can hire independently for the U.S. I would like to know whether that's also true in Japan and Korea. In other words, can companies go to the same searchers that you use for outsourcing and ask them to do searching?
MORIYA	Sorry, I don't understand the question.
KIRK	The question, Mr. Moriya, is: If you have an organization that does searches for the JPO, can a member of the public go to that same organization and get a search performed for that member of the public?
MORIYA	They have a system to accept private search from the public, but our all-private organizations are now working only for the JPO prior art search.
KIRK	Mr. Shin?
SHIN	As for Korean, the outsourcing organization can do as they want—not just restricted to the KIPO's job.
KIRK	Alright, I think we are running a little over, and I want to thank the panel very much for your participation and your comments. Let's

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	show them our appreciation.
SAFFER	<p>Yesterday morning I had a very important role, which was to say hello. This afternoon I have an equally important role, which is to say goodbye.</p> <p>Thank you all very, very much for coming. I am sure you feel as I do that this was an extremely productive program, and we genuinely appreciate the efforts of all of the speakers and particularly of our moderators, Danny and Mike. So, a round of applause for them. And as the program is now over, I will symbolically turn off the computer.</p>
HUNTINGTON	<p>Just a couple of last words.</p> <p>First, from the viewpoint of FICPI. We, as many of you know, are an organization of about 4,500 patent attorneys in private practice and right now have members in 85 countries. We have continually said that what we're looking for is harmonization—not centralization—because it's important that if you want to have respect for the IP system, you have to have people in the individual countries who can explain why have the patent system, or the copyright system, or whatever is important to the individuals of that country. You've heard from some of the smaller patent offices today that they provide a very valuable role there, and I think that it's important to have the people who can do that in private practice also.</p> <p>The other comment that I've heard from many people is about providing a summary or some kind of a conclusion to this, and I don't think that's appropriate at this point. There were a lot of ideas—I know I learned a lot during these sessions and have a lot to think about. We're going to take it back to our CET group within our organization, and we look forward to working with all of the other organizations who so graciously accepted our invitation, and we're very pleased about that.</p> <p>So, thanks again for coming. This will all be on the Internet as soon as we can get clearance from everyone. We don't intend to wait for you. We intend to send the materials out for your approval; but, if we don't hear from you, we're going to assume that you approve so that we can move forward within a reasonable time.</p> <p>Thank you very much.</p>