IVIEWIT HOLDINGS, INC.

P. Stephen Lamont
Chief Executive Officer
Direct Dial: 914-217-0038

June 2, 2003

By Hand Delivery

Lorraine Christine Hoffman, Esq.
Assistant Staff Counsel
The Florida Bar
Cypress Financial Center, Suite 835
5900 North Andrews Avenue
Fort Lauderdale, Fla. 33309

Re: **Complaint of Eliot Bernstein Against Christopher Wheeler, Esq., The Florida Bar File No. 2003-51,109 (15C)**

Dear Ms. Hoffman:

On behalf of Iviewit Holdings, Inc. ("Company"), I write in response to the May 23 letter of Christopher C. Wheeler ("Respondent") as submitted by Matthew Triggs, Esq. ("Author") referencing the above file number ("Second Response"), wherein we identify certain misleading statements and the factually incorrect picture it attempts to paint.

Moreover, we point to their misleading statements below and while we contest the entirety of their May 23 letter, and factually label it as preposterous and an insult to the intelligence of The Florida Bar, the following list is not exhaustive

Misleading Statement No. 1[1] of Second Response

The documents attached to (or interwoven in) the submissions actually serve to prove the points made by Proskauer in its submission. The correspondence, the taped statements, the depositions, and the patent applications all lead to the inescapable conclusion that Iviewit's patent work (whether done with extreme care and attention to detail or otherwise) was performed by **other law firms**.

[1] Christopher Wheeler, *Complaint of Eliot Bernstein Against Christopher Wheeler, The Florida Bar File No. 2003-51,109 (15C)* 1 (May 23, 2003).

Regrettably, while the Company acknowledges that other attorneys did the day-to-day patent prosecution work, the heart of the Company's February 25 filing ("Complaint"), *interalia*, is, and we will state again, that:

> Respondent, though not directly possessing of any patent experience and certainly not prosecuting patents himself, otherwise oversaw, directed, controlled, feloniously opined, sometimes impeded, altogether unfavorably aided and abetted, and otherwise positioned himself between said patent prosecutions, his other clients, many of which utilize the Company's inventions in material breach of the Confidentiality Agreements fashioned by Respondent, and the inventors all to the detriment of the patent filings and fortunes of the Company[2]

Moreover, the May 5 submission ("Rebuttal") to the response to said Complaint clearly evidences this by Section 3[3] of the Rebuttal, and as Respondent chooses not to reply to this section in its entirety, the record must show that the evidence inherent therein is beyond dispute. Furthermore, it is significant in that Respondent, and not so cleverly, chooses to skirt the heart of the Complaint by continually pointing to other attorneys.

Second, and equally misleading:

Misleading Statement No. 2[4] of Second Response

- The crux of Iviewit's complaint concerning Warner Bros., as it relates to Proskauer, is that Proskauer damaged Iviewit because it **refused** to place itself in a conflict of interest position by declining multiple requests on the part of Mr. Lamont to use the name and reputation of Kenneth Rubenstein to vouch for Iviewit's technology to Warner Bros. The numerous e-mails from Warner Bros. show that Iviewit had a relationship with Warner Bros. long after Proskauer terminated its representation of Iviewit.

Regrettably, again, the "crux" of the Company's Complaint, *interalia*, is, and we will state yet again, that:

> Respondent, though not directly possessing of any patent experience and certainly not prosecuting patents himself, otherwise oversaw, directed, controlled, feloniously opined, sometimes impeded, altogether unfavorably aided and abetted, and otherwise positioned himself between said patent prosecutions, his other clients, many of which utilize the Company's inventions in material breach

[2] Iviewit Holdings, Inc., *Rebuttal of Christopher C. Wheeler, Esq. Response to Complaint of Iviewit Holdings, Inc., The Florida Bar File No. 2003-51,109 (15C)* 2 (May 5, 2003).
[3] *Supra* Note 2 at 3-9.
[4] *Supra* Note 1 at 1.

> of the Confidentiality Agreements fashioned by Respondent, and the inventors all to the detriment of the patent filings and fortunes of the Company[5]

Moreover, the Complaint is not against Proskauer, which compliant if the Company so chooses to institute at a later date is proper in another forum, but against Respondent, yet Respondent and his subservient Author continue to misconstrue the record of the Complaint.

Furthermore, and while Respondent so unwisely brings to the attention of The Florida Bar, and in support of the Company's Complaint, Respondent's Second Response is flawed as much of the documentation submitted in our Rebuttal evidences Kenneth Rubenstein as a "retained" patent attorney and advisor to the Company as shown by the Rebuttal, and from 1998 to 2001, as further represented throughout the billings and other evidentiary documents supplied in the Rebuttal.

Additionally, as their Second Response illustrates, and we state above that other attorneys were assigned the tasks of handling the day to day patent prosecution of the Company's inventions, the plain fact remains as evidenced by the exhibits attached to the Rebuttal, and in full reliance by investors and potential license partners alike, the oversight function remained with and in Mr. Rubenstein, and, as a result, any faulty work must remain with and in same. More specifically, we point to the testimony[6] of Gerald Lewin, C.P.A., a Partner in the Company's former accounting firm, from that certain litigation titled Proskauer Rose LLP v. Iviewit.com, Inc. et. al., Case No. CA 01-04671 AB (Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida filed May 2, 2001) ("Litigation"), and where, despite the laughable assertion of Respondent through his subservient Author, such Litigation is **WHOLLY IRRELEVANT** to the Complaint, but instructive for these purposes:

[The remainder of this page intentionally left blank]

[5] Supra Note 2 at 2.
[6] Deposition of Gerald Lewin at 16-17*, Proskauer Rose LLP v. Iviewit.com, Inc. et. al. Case No. CA 01-04671 AB (Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida filed May 2, 2001).*

Q. Do you recall ever having discussions or hearing discussions among principals of Iviewit that they weren't happy with Proskauer's services?
A. The only discussions related was -- Was it Ken Attelman, the one that -- Who was --
Q. I can't - I can't answer that.
A. You can't answer. There was an attorney in New York that was supposed to oversee the - or involved somehow with the patent. And the

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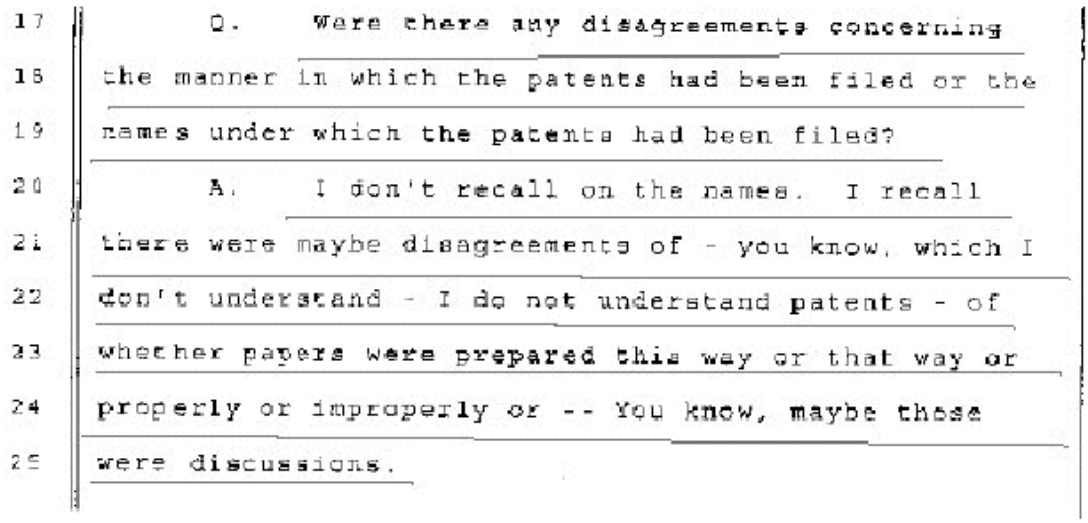
discussions were related to was he doing a good enough job overseeing Foley's firm, you know, handling the patent or he supposed --
Q. Is this Ken Rubenstein?
A. Ken Rubenstein. That's the guy, yes. there were discussions related to Ken Rubenstein and the patents. That was it.
Q. Who had those discussions? Who were the

Next, Mr. Lewin comments on improper filing of patents[7]:

A. Well, at one time, Eliot was saying that -- that somebody there might have been trying to steal his patents and wasn't filing them properly. Just general complaining.

[7] *Supra* Note 6 at 17.

Again, Mr. Lewin states the improper filing of patents[8]:



Q. Were there any disagreements concerning the manner in which the patents had been filed or the names under which the patents had been filed?

A. I don't recall on the names. I recall there were maybe disagreements of - you know, which I don't understand - I do not understand patents - of whether papers were prepared this way or that way or properly or improperly or -- You know, maybe these were discussions.

Still further, and to no matter what great lengths Mr. Rubenstein goes to attempt to cloak and distance himself due to, *interalia*, the unconscionable conflicts of interests between the Company and the multimedia patent pools of which, by his admission, he is counsel, and to the best of the Company's knowledge, patent evaluator, the fact remains that in every business plan during Respondent's representation he is listed as the Company's patent counsel, and in every business plan during Respondent's representation he is listed as the retained overseer of the patent prosecution process, and in very business plan during Respondent's representation he is listed as Advisor to the Company. Additionally, Respondent authored, disseminated, and billed for the business plans naming Mr. Rubenstein as a member of the Advisory Board, and the Company has knowledge that Mr. Rubenstein received copies, as well as all patent filing materials on numerous occasions, without the benefit of conflict waivers.

Moreover, the Company again references the electronic mail message of Brian G. Utley wherein that message states[9]: "Ken Rubenstein, as our Advisor was also copied [on the patent examiner's opinion]."

Most specifically, on behalf of the Company we submit the statement of P. Stephen Lamont, Chief Executive Officer ("CEO Lamont") that describes his December 2001 to April 2002 discussions and correspondences with Mr. Rubenstein attached herein as Exhibit A:

[8] *Supra* Note 6 at 55.
[9] *Supra* Note 2 at 7.

Furthermore, in regard to Respondent and his following statement:

Misleading Statement No. 3[10] of Second Response

- Although chocked full of rhetoric, the responses do not contain evidence supporting any violation of the Rules Regulating the Florida Bar. Instead, large portions of the responses simply raise allegations of malpractice directed at Proskauer concerning patent work

The violations ascribed to the allegations contained in the Complaint are readily ascertainable at the URL at http://www.flabar.org./, wherein from that URL the Company had built the Complaint. Moreover, should The Florida Bar wish the Company to re-file the Complaint and the Rebuttal within the framework of the Rules Regulating The Florida Bar we will be happy to do so.

Additionally, as to Respondent and his following statement:

Misleading Statement No. 4[11] of Respondent of Second Response

> The unfortunate reality is that no one is free from attack and criticism leveled by Messrs. Lamont and Bernstein if it suits their purposes. In the eyes of Mr. Bernstein, someone has to be at fault for Iviewit's lack of success. It couldn't have been due to Iviewit's business model, the economy, or a whole host of other factors that impact business ventures on a daily basis. Just focusing on the papers they have submitted, and excluding Mr. Wheeler for purposes of this response, Messrs. Lamont and Bernstein have attacked:

The success or lack of success of the Company is entirely irrelevant to the Complaint, but suffice it to say that the allegations concerning Respondent malfeasances and misfeasances with respect to the patent matters may in fact lead to the demise of the Company, and it is the Company management's fiduciary duty to shareholders to bring forth the necessary issues in the appropriate forums across the board, and we intend, on behalf of the Company, to do same.

Fifth, in regard to Respondent and his subservient Author's statement:

Misleading Statement No. 5[12] of Respondent of Second Response

[10] *Supra* Note 1 at 1.
[11] *Supra* Note 1 at 2.
[12] *Supra* Note 1 at 3.

> The response demonstrates that no amount of proof will satisfy Messrs. Lamont and Bernstein. By way of example, both Messrs. Lamont and Bernstein stand fast on their claim that Mr. Wheeler misrepresented that Mr. Rubenstein was a partner of Proskauer before he joined the firm. They do so in the face of Mr. Rubenstein's own deposition testimony that he joined the firm almost 6 months prior to Iviewit first stepping in Proskauer's door. How could Mr. Wheeler have misrepresented that Mr. Rubenstein was a partner at Proskauer when at the time he first met Mr. Bernstein, Mr. Rubenstein was a Proskauer partner (and had been for months)? Ignoring that, Messr. Lamont and Bernstein contend that, because they were told to find information about Mr. Rubenstein from his former firm's website, there must have been a fraud perpetrated upon them. We have since confirmed with Proskauer's human resources department that Mr. Rubenstein was correct when he testified that he joined Proskauer in June 1998 -- his actual start date was June 22, 1998.

We urge The Florida Bar to investigate the above claims as, by proof in Exhibit W of the Company's Rebuttal, that:

> as it is clear by Respondent response to the Complaint that, to this very day, and wherein he acknowledges the seriousness of the matters surrounding the Complaint, he continues his habitual, megalomaniacal, in collusion with Mr. Utley, compulsive speaking of falsehoods wherein, yet again, contradictions exist in Respondent's response vis-à-vis his testimony in the deposition with respect to the Litigation, wherein that certain Litigation while still wholly irrelevant to the Complaint is instructive for this, and yet another, example of the compulsive falsehoods spoken by Respondent when it concerns, in this among many cases, the issues surrounding the formation of the consulting company of Mr. Utley…[13]

Respondent's and those of his subservient Author statements are in serious need of corroboration, wherein they mislead and retract at one instance, The Florida Bar should be wary of any outright claims in the totality of Respondent and his statements. In short, the Company does not accept the representations of Proskauer's human resources department unless said records are the subjects of subpoena, or other wise requested, by an organization or court of appropriate jurisdiction.

Still further, in Statement No. 6, Respondent and his subservient Author should be advised that they are in no position to label the Company in way shape or form as it is simply not relevant to the Complaint, and tying the Complaint to the mentioned Litigation equally serves as an ill-advised attempt to, yet again, misconstrue the essence of the Company's complaint, that we again state, *interalia,* as:

> Respondent, though not directly possessing of any patent experience and certainly not prosecuting patents himself, otherwise oversaw, directed, controlled, feloniously opined, sometimes impeded, altogether unfavorably aided and

[13] S*upra* Note 2 at 18.

abetted, and otherwise positioned himself between said patent prosecutions, his other clients, many of which utilize the Company's inventions in material breach of the Confidentiality Agreements fashioned by Respondent, and the inventors all to the detriment of the patent filings and fortunes of the Company[14]

Misleading Statement No. 6[15] of Second Response

> What we said in our initial response remains true today. The bar complaint is an ill-advised litigation tactic by the desperate officers of a failing dot.com.[1] It is telling that the latest Iviewit submissions make numerous references to the litigation, all the while contending that the litigation is "wholly irrelevant" to their bar complaint.[2]

Furthermore, as to Misleading Statement No. 7, and as previously advised, Respondent and his statements are in constant need of corroboration, wherein he misleads and retracts at one instance, The Florida Bar should be wary of any outright claims in the totality of Respondent and his subservient Author's statements.

Misleading Statement No. 7[16] of Second Response

> [2] We do note that Iviewit has pointed out a misstatement in our April 7, 2003 submission to you, based on the deposition testimony of Mr. Wheeler taken in the litigation between Proskauer and Iviewit. In his deposition, Mr. Wheeler stated that he did not advise Iviewit of the fact that he assisted Mr. Utley, years prior, in forming a corporation for him prior to Mr. Utley's employment with Iviewit. In my letter to you dated April 7, 2003, I erroneously advised you that Mr. Wheeler discussed this representation with Iviewit. Having had a chance to discuss the issue with Mr. Wheeler, I can confirm that his deposition testimony as to that issue is correct. He did not discuss the issue with Iviewit. I apologize for this oversight. Importantly, however, we are unaware of any ethical obligation that would have required Mr. Wheeler to volunteer such information.

More incredibly, Misleading Statement No. 7 is now in diametric opposition to the testimony of Mr. Utley's claim[17] in that certain Litigation wherein Mr. Utley states, and the questions refer to Respondent:

[The remainder of this page intentionally left blank]

[14] *Supra* Note 2 at 2.
[15] *Supra* Note 1 at 3.
[16] *Supra* Note 1 at 3.
[17] Deposition of Brian G. Utley at 109, *Proskauer Rose LLP v. Iviewit.com, Inc. et. al. Case No. CA 01-04671 AB (Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida filed May 2, 2001)*.

Q. Other than socially and through your immediate contact through IBM, did you know Mr. Wheeler in any other setting?

A. No.

Q. No other business dealings, no other representation by yourself of Mr. Wheeler, nothing of that sort?

A. Well, I don't know how you want to classify being on the same board. We were both on the philharmonic board. We were both involved with Community Hospital. I recruited him to Florida Atlantic University Foundation Board, which I chaired.

Q. Okay. Other than that, he never represented you as an attorney; he never represented you in any case, nothing of that sort?

A. No.

Thus, The Florida Bar should note that the reliance in any of Respondent's filings, and/or proceedings in this matter, on the testimony of Mr. Utley that would seemingly exculpate Respondent, by the above declaration it is clear that the testimony of Mr. Utley is worthless.

Additionally, the Company references the testimony of Raymond T. Hersh, former Chief Financial Officer of the Company:

Misleading Statement No. 8[18] of Second Response

Raymond Hersh:

Q. Generally, were you satisfied with the services performed by Proskauer Rose?
A. Yes, I was.
Q. Do you know if Brian Utley was?
A. I know that he was.
Q. What about Ray – I'm sorry. What about [Simon] Bernstein or Eliot Bernstein?
A. I believe they were generally satisfied with the nature and quality of the work.

However, sometime before, and during Mr. Hersh's tenure with the Company, we reference an electronic mail message from William R. Kasser, a former accounting consultant of the Company to Eliot Bernstein:

[The remainder of this page intentionally left blank]

[18] Deposition of Raymond Hersch at 33-34*, Proskauer Rose LLP v. Iviewit.com, Inc. et. al. Case No. CA 01-04671 AB (Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida filed May 2, 2001).*

Eliot,

Here is the information I promised you this afternoon. Attached are the Goldstein Lewin compiled financial statements as of December 31, 2000, the detail of the income accounts and the Doyle invoice. The income account detail (three accounts) totals $248,070.75, consistent with the $248,071 revenue number in the financial statements. As you can see, without the Doyle number the Gross Profit for the year would have been well under $100,000.

They fattened the number and palmed it off on Lewin. These financial statements were submitted to Crossbow. They may have also been given to Wachovia and others. I do not have the purchase order. Please see if it is with the papers recovered from Larry.

I tried last spring to locate Doyle Occupational. The phone number in our records is not valid. There is a Doyle Occupational Health Clinic in Nashville, but it is not related to this group. There is a Jason Speaks listed in the Nashville phone directory, but last spring he did not return my call.

Bill

iviewit.com, Inc.
2255 Glades Road, Suite 337W
Boca Raton, FL 33431

Doyle Occupational Health & Training
Jason Speaks
2000 Glen Echo Road, Suite 120
Nashville, TN 37215

DATE:	12/29/2000
INVOICE NO:	136
DUE DATE:	1/28/2001

SERVICES PROVIDED	AMOUNT
Database Creation & Management Fee	5,000.00
Developement of Courses for the National Guard	95,000.00
TOTAL	$100,000.00

Directly above, the electronic mail message sent by Mr. Kasser to Eliot Bernstein on April 23, 2002, wherein Mr. Kasser, as a result of an account reconciliation, alleges gross fraud in the booking of Company revenues by Mr. Hersch and Mr. Utley.

Thus, as to the reliance in any of Respondent's filings, and/or proceedings in this matter, on the testimony of Mr. Hersch that would seemingly exculpate Respondent, it should be clear to The Florida Bar that the testimony of Mr. Hersch is worthless.

Furthermore, by Statement No. 9, Respondent and his subservient Author, expectantly attempt a twist on the verb "procure," and we note there is no mention of "outside counsel" as follows

Misleading Statement No. 9[19] of Second Response

> Messrs. Lamont and Bernstein's claims that Proskauer performed patent work and/or oversaw patent work by outside law firms is squarely contradicted by the documents provided by them. A few examples of the documents provided in Mr. Bernstein's reply follow:
>
> - Letter dated April 26, 1999 from Christopher Wheeler to Richard Rossman (Bernstein Reply at page 126) stating that Proskauer **"procured patent counsel"** for Iviewit;

Moreover, following upon the undisputed rebuttal of the fact that Respondent destroyed files, when said files were the subject of a Court Order to produce ALL files in that certain litigation if Palm Beach County, the Company again turns to the URL at http://www.onelook.com/ and selects the Webster's Revised Unabridged Dictionary, © 1996, 1998 MICRA, Inc. definition of "procure" finding, *interalia*:

> 1. To bring into possession; to cause to accrue to, or to come into possession of; **to acquire or provide for one's self**[20] or for another; to gain; to get; to obtain by any means….
>
> 2. To contrive; to bring about; to effect; to cause.

Moreover, to further emphasize, that URL's definition by the Webster's 1828 dictionary's definition finding, *interalia*:

> To cause to come on; to bring on.

[19] *Supra* Note 1 at 4.
[20] Emphasis supplied.

Furthermore, at this juncture, it is imperative to resubmit the entire letter of April 26, 1999 from Respondent to a one Richard Rossman, highlighting sections therein that notably **NEVER** refers to procuring "outside" counsel and in fact speaks entirely in the tense of referring to Proskauer:

Christopher C. Wheeler
Member of the Firm

Direct Dial 561.995.4702
cwheeler@proskauer.com

April 26, 1999

Mr. Richard Rossman
Lewinter and Rossman
16255 Ventura Blvd., Suite 600
Encino, CA 91436

Re: iviewit, Inc.

Dear Richard:

Under separate cover I have forwarded you a revised Confidentiality Agreement.

As you know we have undertaken representation of iviewit, Inc. ("iviewit") and are helping them coordinate their corporate and intellectual property matters. In that regard, we have reviewed their technology and procured patent counsel for them. We believe the iviewit technology is far superior to anything presently available with which we are familiar. Iviewit has filed a provisional patent application on a method for providing enhanced digital images on telecommunications networks. We are advised by patent counsel that the process appears novel and may be protected by the patent laws. While in all matters of this sort, it is far to early to make any final pronouncements, we do believe that there is an extremely good prospect that iviewit will protect their process which is novel and superior to any other format which we have seen.

Very truly yours,

Christopher C. Wheeler

CCW/gb

0894/40017-001 BRLIB1/227137 v1 04/22/99 03:57 PM (2743)

At this juncture, The Florida Bar should be apprised of Respondent's biography at the URL at http://www.proskauer.com/lawyers_at_proskauer/atty_data/0894, wherein said biography makes no mention of Respondent as a member of the U.S. Patent Bar, and therefore has no right or reason to make the statements highlighted above that to untrained eyes of investors, executive management, potential licensees, and other employees, are tantamount to an **"OPINION,"** unless, of course, Respondent is referring to Mr. Rubenstein as the patent counsel opining, of which Respondent led both the Company and investors to believe.

Moreover, the Company resubmits the electronic mail message of Hassan Miah, former Chief Executive Officer of Xing Technologies, whereby Mr. Miah points to Mr. Rubenstein as follows:

> -----Original Message-----
> From: Hassan Miah [mailto:hmiah@xingtech.com]
> Sent: Sunday, May 30, 1999 1:19 PM
> To: 'eib'
> Subject: RE: iviewit, inc.
>
> Not yet. I will work out a meeting time over the next couple of days. I was looking at the profile of Ken Rubinstein at Proskauer, very impressive! Is he the person that reviewed your patent application? Ken appears to be the person behind setting up the MPEG patent pool. Xing is a licensee under this. Do you mind if I e-mail Ken questions about the nature of the patent? Also, I have not heard from Goldman.
>
> This project is very exciting to me. I keep thinking about the possibilities. Hopefully you, Kevin and I can meet over the next couple of weeks so we can accelerate our activities. How are you doing setting up the demo to view over the Internet? My home number is 805-594-0292 if you want to talk.
>
> Hassan

Next, the Company attaches Misleading Statement No. 10 herein that references Respondent's failure to enforce Confidentiality Agreements penned by his own hand.

Misleading Statement No. 10[21] of Second Response

[21] *Supra* Note 1 at 6.

> Iviewit also suggests that Mr. Wheeler somehow "fail[ed] to enforce" a confidentiality agreement entered into between Iviewit and Warner Bros. (Lamont Reply at page 9). As support for this, Mr. Lamont refers to an internal Warner Bros. e-mail dated almost a year and a half after Proskauer withdrew from its representation of Iviewit. By that time, Proskauer's collection action for unpaid fees had long been on file, and Iviewit had already been represented by Spencer Sax, Esq. of Sachs, Sax & Klein, P.A., Iviewit's counsel in that litigation. Whether Iviewit chose to consult with that firm regarding this issue is unknown.

Moreover, a proper examination of the referenced David Colter is a follows:

Subj:iviewit
Date:1/14/2002 9:51:08 PM Pacific Standard Time
From:David.Colter@warnerbros.com (DColter0264)
To:John.calkins@warnerbros.com
CC:CHuck.dages@warnerbros.com, Alan.Bell@warnerbros.com (ABell0648)
Sent on: AOL 6.0 for Windows US sub 10551

John,

In all the review we have done with ivieiwit it seems to boil down to the status of the patents and their inherent value. At that point it is a risk-reward evaluation -- without awarded patents it is difficult to completely assess the value. I would suggest that we consider one other perspective...

Prior to ivieiwit (approx Feb 2000) the video we (WB Online) delivered on the web was QCIF (160x120) or smaller and was below full frame rate. At the time of our first meeting we also identified On2 along with ivieiwit as two solid players who could deliver full screen full frame rate web video. All who saw it were impressed. Greg and I visited ivieiwit in August and reported back that they had filed patents on scaling techniques that hinged upon a visual 'trick' which allowed the human eye to accept 320x240 video scaled to 640x480 at 30 fps as close to VHS quality. We checked with Ken Rubenstein and others who provided some solid support for ivieiwit, and Chris Cookson asked Greg and I to continue to work with ivieiwit in an R&D capacity.

In the fall of 2000 iviewit also met with a number of folks at WB Online (in September and October) and demonstrated their process and techniques to Sam Smith, Houston, Joe Annino and others. Sam contacted ivieiwit a number of times and requested the patents, along with specifics of the ivieiwit process to evaluate what they were doing. I was not part of these meetings, but was aware they had occured, as Jack Scanlon kept me up to date.

When I sat down with Morgan and Houston in March 2001 to see what technology they were using to encode video, it was clear that they were using some of the techniques that would overlap with iviewit's filed process patents (still pending), but it is not clear that these were all learned from iviewit -- we may wish to explore this a little. This meeting was to determine what equipment we would get for our lab at 611 Brand. This same information was also provided to ivieiwit by Morgan as they were establishing the company as an outsourcing facility for encoding our content.

I am aware of several meeting held between ivieiwit and WB Online to share information of techniques and process, and was invited to a few of them.

We all signed ivieiwit's confidentiality agreement. So to the other perspective....

Clearly, by this analysis, the highlighting in the letter of Mr. Colter, breaches of the Confidentiality Agreement drafted by Respondent were inherent in the operations of Warner Bros., approximately September – October 2000, and well within the time frame in Respondent's representation of the Company, a withdrawal letter of which was sent April 27, 2001.

To further emphasize, the Company resubmits the above letter of Mr. Colter declaring "we checked with Ken Rubenstein," as follows

Subj:iviewit
Date:1/14/2002 9:51:08 PM Pacific Standard Time
From:David.Colter@warnerbros.com (DColter0264)
To:John.calkins@warnerbros.com
CC:CHuck.dages@warnerbros.com, Alan.Bell@warnerbros.com (ABell0648)
Sent on: AOL 6.0 for Windows US sub 10551

John,

In all the review we have done with ivieiwit it seems to boil down to the status of the patents and their inherent value. At that point it is a risk-reward evaluation -- without awarded patents it is difficult to completely assess the value. I would suggest that we consider one other perspective...

Prior to ivieiwit (approx Feb 2000) the video we (WB Online) delivered on the web was QCIF (160x120) or smaller and was below full frame rate. At the time of our first meeting we also identified On2 along with ivieiwit as two solid players who could deliver full screen full frame rate web video. All who saw it were impressed. Greg and I visited ivieiwit in August and reported back that they had filed patents on scaling techniques that hinged upon a visual 'trick' which allowed the human eye to accept 320x240 video scaled to 640x480 at 30 fps as close to VHS quality. We checked with Ken Rubenstein and others who provided some solid support for ivieiwit, and Chris Cookson asked Greg and I to continue to work with ivieiwit in an R&D capacity.

Lastly, Misleading Statement No. 11 is most significant in that we invite The Florida Bar to question Steven M. Selz, Esq. as to his comments regarding missing folders and information that he noticed.

Misleading Statement No. 11[22] of Second Response

Although Mr. Lamont states at page 13 of his reply that Attorney Steve Selz, Iviewit's litigation counsel, "noticed a mass of folders missing all documents, allegedly pointing to the destruction of documents supposed to be in those folders," it is telling that Mr. Selz has never complained to the court that Proskauer withheld documents or tampered with any documents. Proskauer is proud of the work that it did for Iviewit and has nothing to hide. There has been a full and complete disclosure.[7]

Moreover, Respondent sent volumes of files to Mr. Selz during the week of May 12, which as a result of those sent files, provides support for the allegations in the Complaint and the evidence in the Rebuttal as to "violation of the Court order to present ALL

[22] *Supra* Note 1 at 7.

records, and in support of the Company's Complaint,[23]" and therefore are beyond dispute.

Lastly, the Company attaches as Exhibit B the corrected Teleconference Transcript of July 31, 2000 and a CD containing the tape of such transcript, as the submitted draft of the Rebuttal shows evidence of tampering by persons unknown to the Company.

Finally, Ms. Hoffman, and on behalf of the Company, I request an expedited review of this case as international Office Actions have issued that are indefensible due to the malfeasances of Respondent, and thank you in advance for efforts, time, and review of the essence of the Company's Compliant that, again, is as follows that:

> Respondent, though not directly possessing of any patent experience and certainly not prosecuting patents himself, otherwise oversaw, directed, controlled, feloniously opined, sometimes impeded, altogether unfavorably aided and abetted, and otherwise positioned himself between said patent prosecutions, his other clients, many of which utilize the Company's inventions in material breach of the Confidentiality Agreements fashioned by Respondent, and the inventors all to the detriment of the patent filings and fortunes of the Company[24]

Sincerely,

IVIEWIT HOLDINGS, INC.

By: P. Stephen Lamont
Chief Executive Officer

Cc: Eliot I. Bernstein
Christopher C. Wheeler, Esq.

[23] Iviewit Holdings, Inc., *Rebuttal of Christopher C. Wheeler, Esq. Response to Complaint of Iviewit Holdings, Inc., The Florida Bar File No. 2003-51,109 (15C) 15 (May 5, 2003).*
[24] *Supra* Note 3

EXHIBIT A

STATEMENT OF CEO LAMONT

I met with Mr. Rubenstein in the New York offices of Proskauer Rose LLP on Monday January 7, 2002 at 11:30 A.M. Moreover, the purpose of my visit was three fold: (I) to invite him to **REJOIN** the Advisory Board along with David Colter, Vice President of Advanced Technology of Warner Bros. and Greg Thagard, formerly of Warner Bros. and left with him a copy of the Company's January 2002 Business Plan, an Advisory Board Member Agreement, and a Warrant Grant to purchase 450 share of the Company as compensation; (II) to begin a series of discussions pointing to the essentiality of the Iviewit patents pending in his role as patent evaluator of the multimedia patent pools known as MPEG 2 and MPEG 4; and (III) to have a face to face discussion as a means to allow me to ask him to speak to Wayne M. Smith, Vice President & Senior Litigation and Patent Counsel at Warner Bros. to reiterate his prior statements to Warner Bros. executives and overcome his purported conflict that was previously waived. Much to my surprise, during our discussion, Mr. Rubenstein disavowed any knowledge of the Company's patents pending, at which time I felt a bit of embarrassment. Embarrassed, because, once assuming the CEO position, I had prior knowledge of his speaking to people at Warner Bros., such as, but not limited to David Colter, Greg Thagard, and Chris Cookson, and thought I might have interpreted an incorrect picture of those prior discussions. Lastly, I advised him of my discussions with Warner Bros. pertaining to an Advanced Royalty Agreement ("ARA").

Moreover, in reviewing Company documentation, I came across more instances of business plans naming him as an Advisory Board Member, multiple emails of investors and potential licensees naming Mr. Rubenstein as an individual entirely familiar with the Company's technologies, and parole evidence stating that Mr. Rubenstein, when initially the recipient of the Company's disclosures claimed the technologies were "novel," and that "he had missed that," and that "we had never thought of that," and finally that "this changes everything."

Furthermore, although I became a bit suspicious after the meeting with Mr. Rubenstein, and as the Warner Bros. discussions began to break down due to Mr. Rubenstein's reticence at speaking to Warner Bros., I felt comfortable enough in asking Mr. Rubenstein to place a phone call to Mr. Smith of Warner Bros., for what amounts to the third time, who was the patent attorney assigned the task of reviewing the Company filings for purposes of evaluating the ARA and the AOL Time Warner investment. Mr. Smith had been requesting a conversation with Mr. Rubenstein dating back to December 20, 2001, for the purposes of describing for good or bad his aforementioned knowledge of the Company's patents pending, and that he had formerly described as "novel," on varied occasions to Mr. Colter, Mr. Thagard, and others at Warner Bros. At this point, and based on nearly ten years experience as a technology executive, I suspected that something was wrong in the Company's patent filings, as in my prior experiences, the patent applications or patents issued usually had spoken for themselves, but in this instance, Mr. Smith was seemingly interested in a check of his reading and view of the Company's filings.

Much to my surprise, **AGAIN**, Mr. Rubenstein, not now disavowing knowledge of the Company's patents pending, refused said request based on conflicts of interest as Warner Bros "is a big client here." Surprised, **YET AGAIN**, as I was aware of his prior representations to Warner Bros. where no conflicts of interests were stated, at least not to my knowledge and in my review of Company documentation, I may have advised Mr. Rubenstein in still another phone conversation, that his purported conflicts of interest were waived on both sides, but that at least "could Mr. Smith call you [Mr. Rubenstein]," to which he agreed, however, paraphrasing, "he would not be positive or negative" in that regard. Moreover, he refused to place calls himself much in the same way as he had previously, only this time with anxiety and/or anger in his voice. Subsequent to his refusal, Warner Bros. declined the ARA and AOL Time Warner declined an investment in the Company, based on their confusion surrounding the lack of critical elements of the inventions in the Company's patents pending.

Additionally, it appears that Mr. Rubenstein's refusal to again speak affected not only the Warner Bros ARA, the AOL Time Warner investment, but had direct impact on the next discussions with, including but not limited to, SONY Corporation and what was to become Movielink, LLC (a five studio digital download movie service that was to generate licensing revenue for the Company as envisioned by the Company's business plans).

Still further, as my suspicions grew, I consulted with the Company's founder and main inventor, Mr. Bernstein, who contacted Caroline P. Rogers, Esq. to enlist her help is finding a law firm to conduct an independent review of the Company's patents pending. As of April 2002, the Chicago office of Greenberg Traurig LLP submitted their review at the behest of Ms. Rogers, and advised the Company of the missing critical elements of the Company's inventions that would materially not support the claims in said filings.

Lastly, much to my dismay, and when viewing the Company's inventions as a direct, competitive threat to, including but not limited to Mr. Rubenstein's MPEG 2 and MPEG 4 patent pools of which Mr. Rubenstein who, by his own admission is counsel to the MPEGLA LLC entity that functions as licensor of those pools, and is, to the best of the Company's knowledge, the patent evaluator who decides the "essentiality" of any patent with a view to admission to those pools, my suspicions grew even stronger.

As a result of discussions on the events with Mr. Bernstein, and by my own hand, I drafted the following letter to Mr. Rubenstein on April 25, 2002, and as evidenced by right clicking the document and choosing "Properties" wherein it evidences the date of creation and the date of modification (despite the WORD document's "update automatically" function), not so much, as it appears as an invitation to engage, but as a mechanism to allow Mr. Rubenstein to "save his soul," as my suspicions of the events surrounding the Company's patent prosecution process from 1998 to 2001, were grave indeed; I have knowledge that this letter, in draft form, was submitted to Mr. Rubenstein in his deposition in the Litigation, where he was given time to read and comment upon its contents:

IVIEWIT HOLDINGS, INC.

P. Stephen Lamont
Chief Executive Officer
Direct Dial: 914-217-0038

By Electronic Mail and Facsimile

June 2, 2003

Kenneth Rubenstein
Partner
Proskauer Rose LLP
1585 Broadway
New York, NY 10036

Re: Iviewit Patents Pending

Dear Ken:

Last we spoke, Wayne Smith of Warner Bros. requested a conversation with you pertaining to Iviewit patents pending, of which you denied indepth knowledge of same and, additionally, stated conflict of interest isuues. Sadly, Iviewit has submitted Return of Property papers and a soon to be issued Cease and Desist letter to Warner Bros. for breach of a Confidentiality Agreement executed in August 2000, and ignorance of a reasonable license agreement to remedy said breach.

In any event, I am writing for another reason as I came across a piece of perplexing information earlier today. I stumbled upon some documentation that named you as an Advisory Board member of the company somewhere between the fall of 1999 and the spring of 2000.

Moreover, recalling your own words, as I sat in your office earlier in the year, of your present unfamiliarity with the Iviewit techniques and unwillingness to speak on behalf of what I have since heard you describe as “novel” approaches to video perplexes me to a certain extent when I view you as a former Advisory Board member, if you ever held such a designation.

Further, and I should not be relaying this to you, but there are rumors swirling around the company with finger pointing and all from Florida to Los Angeles wherein it catches the jet stream and arrives very soon in New York of alleged breaches of confidentiality pertaining to Iviewit technology, transfers of trade secrets, and, even in certain circumstances, knowing and willful invention fraud by the outright switching of signature

pages of patent filings by some earlier patent counsels appointed by the company, including, but not limited to one Mr. Ray Joao, formerly, it is my understanding, of Meltzer, Lippe, Goldstein & Schlissel, P.C., and an individual that, it is also my understanding, you have worked closely with in the past pertaining to Iviewit and other matters. Moreover, it is also my understanding, that you were the first individual to be presented with the Iviewit proprietary techniques, and passed along the work to your past associate, Mr. Joao, and "reviewed" same prior to, during, and, perhaps, after your transition from the Meltzer firm to Proskauer, and in whatever capacity "reviewed" refers to.

At this juncture in my tenure as Iviewit CEO, I have ordered a full legal audit of the company both from a business perspective and an intellectual property perspective. With the results of said audit nearly complete, the preliminary intellectual property conclusions relayed astound me to the point that I have been told that the Iviewit patents pending are akin to patenting "peanut butter."

Furthermore, I have been told of your past involvement with the Iviewit proprietary techniques, of your conversations about the Iviewit techniques with, including, but not limited to, Greg Thagard, Greg Cookson, and David Colter among others, and your initial conclusion of the novelty of the Iviewit techniques, and I ask myself, "Why, why has past patent counsel failed to patent the inventions as specified by our inventor?" Moreover, I ask myself "Why do the description of the inventions fail to lead one to believe that Iviewit had invented anything at all?"

Still further, I think back to the comments I have heard of your initial reaction to the Iviewit techniques and describing them as "novel," which leads me to the conclusion that in your role as overseer of many patent pools, combined with your description of the novelty of the Iviewit techniques, you had not seen scaling in your review of patents pertaining to the essentiality of any given pool, and I ask my self further, "Why is the Iviewit scaling method now so far reaching and ubiquitous in many, varied patent pools overseen by yourself and others of similar stature?"

As such, I would like to enlist your assistance, if available, to review the conclusions of past and present patent counsel, and to further assist Iviewit in further defining the inventions in any intellectual property arena of our choosing, whether it be by a petition by what process is available at the United States Patent and Trademark Office, or any administrative, state, or federal court of appropriate jurisdiction armed with executed

documents, memos, emails, and parole evidence all pointing to fraudulent, or at the least, entirely malpractical occurrences regarding the filings of the past Iviewit patents pending.

Lastly, as I mentioned above, I have ordered a full legal and accounting audit of the company many weeks ago, and I expect the completion of same shortly, and I would appreciate a response at your earliest convenience.

Best regards,

P. Stephen Lamont
Chief Executive Officer

EXHIBIT B

[INSERT FIXED TRANSCRIPT]

CORRECTED VERSION – CORRECTED ON 5/14/2003 with redline left in to see where document has been tampered with.

Transcription of Telephone Conference
Conducted July 31, 2000
Participants:
Simon Bernstein, Eliot Bernstein, Maurice Buchsbaum,
Brian Utley, Doug Boehm, Chris Wheeler
~~Docket 57103-120~~

Note: *Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified. Note also that this recording has numerous instances of participants speaking at once or carrying on simultaneous side conversations that make it difficult to follow and transcribe the entire line of discussion.*

Utley: <begins midstream>...status of the original digital image filings, and basically the fact that the original filings do not cover the full subject matter of the imaging technology; and to wit, one of the omissions, in particular in reading the claims section of the provisional and the formal filing, relates to the zooming and panning capability that is inherent in the technology. This has become a topic due to the fact that we are currently in the second phase of filing imaging patent protection which is driven by the provisionals that were filed later ~~in~~ last year, between August and December of last year. So the concern that were expressed by Eliot in reviewing this is that this omission of the zooming and panning capability was attributable to a failure, for whatever reason, on the part of Ray [Joa?], the patent attorney of record, in constructing and putting together the provisional and formal filing<tape cuts out here> did I say it is that right Eliot

E Bernstein I believe so

Utley Is that your understanding

E Bernstein Correct

Utley The purpose of this meeting is to review the facts and I think there are two particular points that are
...that are important to moving ahead. The first is: "Given that the filings are what they are, and given what we know about the filing which is scheduled to take place this week on Wednesday, what means do we have to correct the situation; and given whatever corrections we find, what then is the impact or ~~big [backdoor]~~ exposure to iviewit based upon what actions we can take. Then, lastly, what, if any, recourse might iviewit have vi sa vi the omissions in the original filings Are there any other issues, Doug?

Bernstein: Yeah, just correcting back to Ray [Joa?]'s work of the formal filing that he filed. Do we have a copy of that?

Utley: I ~~think~~do ~~you~~ have ~~it~~that.

Bernstein: I don't. I've got the provisional and I've got...

Boehm: Everything is on the table

Utley: you should have...the formal.

Bernstein: This one?

Utley: Yes, that's the formal.

Bernstein: Okay.

~~Wheeler~~Simon Bernstein: I just have one question. Does anybody have, or are we allowed to get, the files of Ray [Joa]?

Boehm: I have them.

Wheeler: Do you have all of the work that he had?

Bernstein: No, not all of it.

~~Wheeler~~Utley: What was purported to be in the files?

Bernstein: And he also claimed to us that he destroyed part of his files.

Boehm: And I have some of his files. I have what was purported to be all of ~~his~~the ~~important~~ firms files.

<Inaudible comment.>

~~Utley~~Boehm: Well, there's a whole history, then, because I tried to get complete copies of the files originally, and found out later that not only did he not send us all the files, he didn't even mention that there was an extra filing out there that we didn't even know about.

Bernstein: This one that's in question.

Boehm: Yep

WheelerSimon Bernstein: You have no notes, no data on...?

~~Utley~~Boehm: No, I have the application. I have things that you could get from the US patent office—that I ~~had to get~~could get from the US patent office. I have very few notes. I do have some scribbled Ray [Joa's?] notes, but I think you gave me those notes.

~~Wheeler~~Utley: I did. I gave you Bill Dick after Bill yourself[ ] the notes that I had.

Bernstein: And Ray's made disclosures to us that he destroyed the documents to protect us, which I don't know what he was thinking.

~~Utley~~Simon Bernstein: Destroyed what documents?

Bernstein: Whatever he had in his files. Other patent copies, copies of the drafts as they proceeded...all that he destroyed to protect us from something I asked him to explain, and his reasoning...because I said to him, you know, usually you destroy documents when you are protecting somebody from something illegal or something. Have I done something that would force you to hurt me possibly? He said it was typical, normal, that all lawyers destroy their records.

~~Wheeler~~Simon Bernstein: If that, in fact, is the case—I've never heard of a lawyer you know other than Nixon destroying anything~~that's a victim <laughter>~~ the work is ours. Am I right Chris ~~My wife says~~ when we pay for a lawyer and we pay for the work, the work is ours.

~~Boehm~~Wheeler: The work product is yours. ~~You~~ He may ~~get~~maintain copies of his files and everything; or~~but~~ his confidential notes to himself are not necessarily yours. But the wor~~k~~ "product" is...

~~Wheeler~~Simon Bernstein: Would You say that anything germane to the issue belongs to him?

~~Boehm~~Wheeler: Well, I mean if he wrote notes...in sidebars...yeah.

Bernstein: How about revised patents[ ]. How about copies? Works in progress

Wheeler: But things which would reinforce your patent, obviously, that is germane to the strength of your patent~~spec, that you can,~~ yes, you would be entitled to copies I don't think we disagree.

Bernstein: He's claiming ~~he [ ] his notes.~~ He destroyed all faxes.

Wheeler: Can I ask you a question?

Bernstein: Yes.

Wheeler: Just so both of us understand...was this patent done prior to his flying down here, or was this patent done as a result of his flying down here and having discussions with you? I was under the impression that when he flew down here—this was before Brian came—I was under the impression that followed our meeting with Reel 3-D. I was under the impression that he was coming down to discuss, at the very least, the video aspect so that you could complete that; but were you also completing the imaging ~~package~~patent?

Bernstein: Correct.

Wheeler: So he went to your [kitchen]?

Bernstein: Right. And we spent days there

Wheeler: And the two of you spent all the days...

Bernstein: ~~That's right~~Correct.

Wheeler: And did he, in front of you, write notes?

Bernstein: ~~Some~~Tons. Hundreds

Wheeler: And did he then produce them on his computer and ~~talk about~~ type out certain things?

Bernstein: Yes.

Wheeler: I was under the impression he was doing that with you.

Bernstein: He did.

Wheeler: And did you read those?

Bernstein: I did. I did ~~[ ].~~ ~~But~~ now going to that same nature, ~~I think~~ that's the provisional I think we're talking about...

Wheeler: Right.

Bernstein: But he flew out here again with me and Brian and went through this as he went to file this—this is a 3/23/2000 file—that also ~~failed~~ fails to make mention of.

Wheeler: So that's the formal file...the formal one?

Bernstein: The formal file. So ~~Beau~~ both also missed the point.

Wheeler: I just wanted to know and to put things in proportion, when you read the provisionals, because Brian wasn't with the company right now and then, and when there were all those drafts, because obviously we didn't ~~receive~~ see them...

Bernstein: Well, you saw ~~that~~ because we gave you all the documents. I'd get a document from Ray and bring it to you so you would have records of everything up to that point because I didn't want to keep them at my house.

Wheeler: The final...the final...but I'm not reviewing the patent. I was keep~~ing~~ ~~and~~ maintaining it as~~the~~...

Bernstein: Okay, ~~so~~ but you have every record...

Wheeler: Everything you gave me ~~meeting that~~ we maintain. We don't...

~~Boehm~~Simon Bernstein: Any notes ~~that could~~should be produced...

Wheeler: We don't throw away anything.

Bernstein: Yeah, I know.

~~Buchsbaum~~Simon Bernstein: I know you don't You're very thorough.

Wheeler: So, I'd file it away; so if you gave it to me, it's in our archives.

Bernstein: Right.

Wheeler: I wanted to know, when you read those drafts...

Bernstein: Oh, it was...it was clear

Wheeler: Answer my question...when you read the drafts, did you see the panning and scanning elements?

Bernstein: Yeah, and zooming, up to 1,000 times we thought it was. That was the big...you know, we ~~got~~ had it ~~that~~ in there...as a matter of fact, he just said it...somewhere it's in there up to 1,000 times, isn't it?

Utley: 1,700.

Bernstein: Right. That was our old mistaken a number of times. So, yeah, for him to miss that, Chris, would be the essence of stupidity.

Wheeler: So it was in there?
Bernstein: Absolutely.

Utley: The zooming, it was in the body, but not in the claim.

Boehm: But a provisional doesn't really...doesn't have to have claims.

~~Wheeler~~Utley: It doesn't have claims.

Bernstein: But then in our claims of our patent, it's not there. This is what you're representing, ~~Brian~~correct?~~.~~

Wheeler: So you're saying that it wasn't put in the file, but it was put in the provisional.

Boehm: No, I could see where he's going to argue that it's there.

Bernstein: Let's see. Let's take a look.

Wheeler: ...what the language of the patent claims are that he filed.

Bernstein: Okay, let's see what he...

Wheeler: And this isn't the final decision because I can go back right now and amend those claims.

Bernstein: Wow, yes, but we have elements of exposure that creep in correct?~~.~~

Wheeler: I'm just telling you the whole thing, then we'll go back. So you did look it over, and there are no claims in the provisional?

Boehm: There are no claims in a provisional. You can file them, but they are never examined.

Wheeler: But the zooming and the panning and the scanning element was incorporated in that?

Boehm: Go ahead, Brian.

Utley: Let me make sure that we say that properly. The provisional filing had a claims section which migrated into the final filing, but Eliot is correct in saying that the provisional does not need a claims section.

Boehm: The provisional never gets examined, so it doesn't need the claims. It just holds your place in line for one year.
Bernstein: But then when I look through this...

~~Wheeler~~Simon Bernstein: Hold on, Eliot, I need to understand this. What you're saying, then, is assuming any negligence on his ~~point~~part, ~~at~~ to that

point the negligence doesn't become realistically damaging to the company until ~~he~~ since he actually made a claim...~~until~~ since he actually made a provisional filing. ~~This~~ Which took our place in line.

Boehm: If the provisional filing covered the invention, your place in line is only as good as the subject matter described in accordance with the law.

~~Utley~~Simon: Obviously, it should have had the panning and zooming in there.

Boehm: Well, the word "zoom" is in there.

Bernstein: But not really to describe what we're doing.

~~Wheeler~~Boehm: But do you see what I'm saying? It's only to the amount of subject matter that and attested where the average person skilled in the art could make and use an invention as it's described in this document, and without "undue" experimentation, without inventing it himself.

~~Utley~~Simon Bernstein: Right.

~~Wheeler~~Boehm: Now, this provisional application, you throw it...different patent attorneys do different things with it. On one end of the spectrum, you do an invention disclosure. Most big corporations have invention disclosure forms which leads the inventor to write out good disclosures and figures and things, and I've seen people actually file that invention disclosure because if you're coming up on a bar date, you don't have time to write an application or think about what your invention is. All you've got to do is get something on file, and then hope that it will protect...that whatever you had on file covered your invention.

~~Boehm~~Simon Bernstein: Is that what we've done so far?

Bernstein: No.

~~Wheeler~~Boehm: I don't want to answer that, but that's the line.

Boehm: It's a grey question, it's a grey area, I think.

~~Utley~~Wheeler: That's what we're aiming to do, that's what we're hoping to do.

~~Wheeler~~Boehm: But on one end of the spectrum, you file very minimal work, and that's what Ray did on some of the applications, like on the one...

~~Boehm~~Wheeler: He was trying to do it in a broad...

Wheeler: He did say ~~thing~~ conceptually that his method was to do a broad stroke of it.

Boehm: Right. Well, a broad stroke on drafting the claims.

Wheeler: Okay. Right.

Eliot Bernstein: He's got to put the invention in!

Boehm: That doesn't happen in a provisional at all, generally. If you want to, you can write the provisional claims just so you know what you're doing, and it's actually used as subject matter; but the claims are never examined. It doesn't matter if it's in proper format or anything, it just sits there. Now, if you pick up the provisional a year later—it has to be within that year—if it's a real well-done application, you just file it. There's no money involved in turning the provisional into a regular filing. Oftentimes, with these one-page disclosures, there's a substantial amount of money involved in taking that from there to there. The problem is you cannot add subject matter to the patent application later on once it's filed.

Bernstein: Unless it's really the patent application, correct?

Boehm: No, the subject matter has to be supported—has to be described—

~~Wheeler~~Simon Bernstein: ~~As~~ In the provisional.

Boehm: Uhhuh To that text, or you lose ~~your~~your filing date.

Wheeler: But the zooming element, then, is not in addition.

Boehm: Is not in addition? You mean…

E. Bernstein: It's not even in there.

Wheeler: ~~Y~~You can't add subject matter. So if he did describe zooming, then it's not in addition.

Bernstein: Did he, ~~Doug~~?

Wheeler: I am asking you whether he did or not?

Boehm: I'm not clear on what you mean. You can't add additional subject matter after the filing date of an application or you'll lose the right to that filing date.

Wheeler: The provisional?~~.~~ You can't add subject matter to the provisional?~~.~~

Boehm: To any application...any patent.

Wheeler: But if he did describe the zooming, then the zooming element is not an addition in the formal.

Boehm: Right. It's supported. If he described it in the original, you can base claims on it later.

Wheeler: And have we said that the zooming is in the provisional?

Bernstein: Nowhere that I can see.

~~Buchsbaum~~Simon Bernstein: Wait. You're the lawyer reading another lawyer's work. Is it in there?

Boehm: Do you have a copy of it?

Bernstein: Yeah, right here. It isn't in there if it bites you.

~~Buchsbaum~~E. Bernstein: It's not in the filing either.

~~Wheeler~~Simon Bernstein: It's obviously not in the filing if it's not in the provisional.

Bernstein: No.

~~Wheeler~~Simon Bernstein: Can you make reference to something...let's say he uses the word "zoom".

Boehm: Exactly. I'm pretty sure the word "zoom" is in there, isn't it Eliot?

Bernstein: But what Doug's saying is that had you written the patent, you would have described the invention as the ability to do this ~~great~~ cool zoom that we all...and just said this is the cool part of what we're doing. What Ray's missing in the outline is the ability for you to put a picture on a Web page.

~~Utley~~Wheeler: He did know that an important element was the fact that when we went in and made it bigger, we didn't pixelate.

Bernstein: It didn't pixelate. Not in here at all.

~~Buchsbaum~~E. Bernstein: Not even mention to that concept.

Bernstein: Complete failure. It's not.

~~Boehm~~Wheeler: But if said it doesn't distort when we zoom...

Bernstein: Nope. Nothing like that.

~~Boehm~~Wheeler: That's the same thing, isn't it?

Bernstein: Yeah, but he hasn't said anything...he doesn't even tell you ...

~~Boehm~~Wheeler: What about the panning element, or is that element not patentable?

Bernstein: No, that's part of the whole process is to be able to zoom while panning.

~~Boehm~~Wheeler: Here it is. "The above process can be utilized in order to create higher zoom capability~~y~~ies with each new depth layer of an image..."

Bernstein: No, but that's a new depth layer which is bringing in another hotspot image, so it's really a completely different subject.

Boehm: Oh. Okay.

~~Wheeler~~Boehm: Okay. Where is that?

E. Bernstein: I read it to, he's very crafty you know.

Boehm: "Where the zoom capacity of up to 1700 times or greater may be easily obtained with the [present conventions.]" Are they talking about the hotspot now?

Bernstein: No.

Boehm: No, it's the general zooming capability.

Wheeler: So it's not in addition.

Bernstein: Well, ~~it's [ ] or it's~~explain to him where its missing.

Wheeler: You guys didn't put it in the formal...I don't mean you...he didn't put it in the formal one in the depth in that what we want to do it but he could have ~~and the fact that we want to zoom it, but could have~~ without it being construed as an addition.

~~Bernstein~~Beohm: Yes.

Boehm: Well play lawyer on you now<Laughs; cannot understand his comment.>

Wheeler: Right - sorry

~~Wheeler~~Boehm: Whether or not it's supported is a question that's going to be determined either between you and the examiner...probably not, it's between you and another lawyer someday when the case is litigated. The question is And again, the test is: Can the average person skilled in the art—the average designer of this type of software—can he read this document and make and use of your ~~this~~ invention without inventing it? That's the test. Now, whether he uses the word "zoom" in here and "magnification" later, that doesn't mater as long as he would have gotten it. If it is so simple to build by reading this, you don't need any subject matter. If you're combining three elements A, B, and C, and A, B, and C are standard in the art, and you tell them these are standard in the art, go combine A, B, and C, that could be a one-page application. The average person will pick it up and he could. It's a patent test. Are you with me? The more complex it is, the more you want it supported in this text.

~~Wheeler~~Simon Bernstein: What if it is basically simple, and he just wrote it as basically simple, does that support our position anyway though?

Boehm: Does that support our...Sure...

~~Wheeler~~Simon Bernstein: I mean, if we were to litigate against another ~~[ ]~~person that infringes on our...

Boehm: An infringer.

Simon Bernstein: Supportable for the sake of argument?

Boehm: Right. Yes. That is ~~what I'm saying. I hope so.~~a fair arguement

~~Wheeler~~Simon Bernstein: OK So then I don't know that, at least from ~~this [__]...~~first blush

Bernstein: That's the provisional you're reading though, right?

Boehm: Aren't they the same? I think they're identical, aren't they?

~~Utley~~Boehm: You can check in his notebook.
Boehm: Are there differences?

Bernstein: Where did you find that piece that you just read?

Wheeler: Is the reason...now continue answering my question...is the reason we came to the formal in March of this year, which I didn't realize that [Joa?]. I thought that we had agreements for doing everything, but apparently [Joa] filed...

Boehm: For that one, yes.

Wheeler: But he didn't bother telling anybody.

Boehm: That's the one that we didn't find out until way late.

Wheeler: Okay, perhaps the reason that he did that was that was the easiest way to do it and the course of least ~~resistence~~resistance, and he thought he could go back...is there an amendment procedure?

Boehm: Yeah, there's an amendment procedure.

Wheeler: That he could do it a few months later or something like that?

Utley: We had a conversation before the formal filing, and, in fact, I have my notes here from that conversation.

Wheeler: Okay.

Bernstein: And ~~he~~ you mentioned that there was no zoom.

Utley: Yeah, I said...

Bernstein: Claim one.

Utley: Yeah, Here are my notes. This is my original copy. ~~"[Graves? Ray?] did~~Claims do not reference ~~[ ]~~stitching. The patent ap does not cover providing enhanced digital image with zoom and pan controls. It covers for creating enhanced ~~pages~~ images to show zoom and pan functionality without distortion." Those are my notes.

Bernstein: And you told him that.

~~Wheeler~~Simon Bernstein: Here's a man that was cognizant of what was necessary to be in there. ~~Hired~~ How did a guy to file a patent without any of us—obviously, not me, but Eliot, Brian...

Boehm: Jim wasn't around yet.

~~Wheeler~~Simon Bernstein: Okay, but Chris was and so on and so forth—how did they get through the crack that he did this?

~~Boehm~~Wheeler: It didn't get through the crack. Brian addressed it with him.

Bernstein: And everything is shredded now, too. Everything else is shredded.

Utley: Kind of what he was going to do—his time factor—he was going to...he didn't think he would get this ~~done~~in. He would submit it and then would turn right around and amend it.

Boehm: Did he really say that?

Bernstein: Yeah.

Utley: I wouldn't say amended, it was because ~~[ ]~~of the stuff that was coming...

Bernstein: It was supposed to be in there.

Utley: ...he was going to smash that all together and ~~finalize~~ file it.

~~Wheeler~~Simon Bernstein: Was that the same time, Brian, that he was leaving the firm?

Bernstein: Yeah.

~~Wheeler~~Simon Bernstein: So would you say that probably…

Utley: —he knew at the time that he probably would be leaving?

Utley: Right.

~~Wheeler~~Simon: But he wanted to get all of this in place so he could do the billing and get that part of it in...

Utley: I don't know that.

Boehm: Just speculating.

~~Wheeler~~Eliot Bernstein: What day did you give him those ~~[documents]~~notes?

Simon Bernstein: I don't ever have to speculate on billing

Utley: I don't have my address book with me...I didn't write the date down, but it was the date that he was here. He came.

Wheeler: ~~<Inaudible. Everyone talking at once.>~~He wanted to get it done to take care of you, make sure it was filed for you.

Simon Bernstein: —That could be too. One other reason is...

~~Boehm~~Wheeler: We're just speculating.

Wheeler: And I'm not trying to... <Everyone talking at once.> I thought he was trying to work on our best behalf, but one time or two times that I met him, ~~he [ ]~~it seems like he was earnestly trying to help. Who knows? Maybe he was incompetent. I mean we're only suggesting that~~...~~ it would have been incompetence

Bernstein: Well, the fact that it's not in your patents, right up front, this is the invention, is a gross neglect. And the fact that it doesn't say, "this is what the invention is trying to do. This is the ~~piece of~~feature..."

~~Wheeler~~Simon Bernstein: The point is not whether it's gross neglect or not, it's what the damage is if there is...if, one, gross neglect is of any import; and two, what is the damage? ~~[ ]~~it has caused iviewit. That's what I think we need to ascertain here, and if we can ascertain it.

Utley: How do we fix it?

Simon Bernstein: Of course lets try to fix it, if we can't fix it then we'll worry about…

Eliot Bernstein: Well 1st lets fix it

<Everyone talking at once.>

Boehm: Let me go over the procedures so everybody's clear. Again, on one end of the spectrum you file a very sparse, like a one-page provisional application, and it's cheap, and the purpose of the provisional is to get you in line...it is to protect your date. What you're trying to do is get the

benefit of your priority date. When you invented it. When you're in line in terms of whose the next guy that invented it. Whose the first inventor?

~~Wheeler~~Simon Bernstein: Someone~~times they ask~~comes after you the second day after… ~~who first invented...~~

Boehm: Who's the first inventor, that's what you're after.

~~Utley~~Simon: I understand. I really understand...you don't physically stand...

Boehm: Not physically in line in the patent office is right, not or even in physically in line in order as well. Okay. One year letter, the provisional expires and you have to file a non-provisional patent application, okay? Many times it's identical. If you do a good job up front, you just file that, but you needs to put claims on at this time. When I do a provisional, I try, if there is money and time up front, to do it once up front. I even write the claims. As a matter of fact, I don't even like to file provisionals because there's not much of an advantage. If you've got the time and the money up front to do a good job, well then, just file it as a regular application.

~~Wheeler~~Simon: Understand that at the beginning, the time and the money...I mean, the time was certainly available, but the money was a short substance. So it was obvious that Ray would be working in a most expeditious way.

Boehm: Well, that's why the..

~~Buchsbaum~~Simon: ~~Well, that's why Ray~~ Which might have short-circuited us because of all of th~~at funk~~e lack of funds.

~~Boehm~~Wheeler: Well, that's true because the filing date is 3/24/99 to endorse that...that was very early in the game.

~~Wheeler~~Simon: We did it in your office Chris in your library...in your conference room. The only meeting I had with him was while we were going to file the patent and that was in your office.

Boehm: Okay, 3/24/99 is the provisional application.

~~Buchsbaum~~Bernstein: That's what I'm saying. Well, Chris,

Boehm: So even at a year, he filed the second one with claims.

Buchsbaum: ~~Well, Chris, t~~Yeah two things happened during the year. One, ~~somebody~~ the Company was doing other things, even though they knew that was coming up, and two, I guess there wasn't a whole lot of money to allocate towards doing that much.

~~Wheeler~~Simon: Here's what we did. We hired Ray [Joa?] on the monies that were raised by the investors; and then when Huizenga was coming in with their money, and when that money came in, we made a company decision that the first and foremost thing was to get the patent filed properly. So the fact that we were going to spend more money and get them completed at that point had already been ~~reached~~made.

~~Buchsbaum~~Simon: Okay, but prior to that, we were working on short forms. Then after that, we started to raise capital, and we always knew that the priority was intellectual property, so were going to make sure that those got done right. Brian's been working on it ever since, and I felt comfortable...I never did feel comfortable with Ray [Joa?]...just an observation.

Boehm: Hmmm....is it all patent attorneys? <Laughter>

~~Buchsbaum~~Simon: No, no, there's nothing wrong. He came in, he's a nice guy, he tried hard, you know, all the nice things, but his work always appeared sloppy, okay? And that's the only thing I can say. You're a patent attorney, you see what ~~I~~he did. If I'm wrong, then let me know; but to me, it looked like it was a little slipshod. And then he made some statements that really bothered me, too, that I don't think he should have made to a client, and that is that he was filing his own patent. <Chuckling.> I mean, horseshit

personally, I haven't heard of a patent attorney in my life telling me that he's an inventor filing his own patent. It really did bother me.

<Everyone talking at once.>

Bernstein: Transmitting video files on a communication network for airlines and...

~~Buchsbaum~~Simon: It probably meant nothing because I don't think the guy was of the nature to be stealing from us, but I don't know! But I'll tell you this, it did ring a bell. From a pure novice, it made me a little nervous. I asked Eliot why he was dealing with somebody, but we were assured that this was a good firm...

Boehm: Let me look back in my own spiel...here with the provisional. You file a provisional, then within one year, you file a regular application with the claims. You can add claims to it; but if you add subject matter to it—in other words, if the zoom and pan concept wasn't well described, you have lost the benefit of that first phase. Right. Now why is that going to hurt you? Two main reasons. One is if you put it on sale—offered it for sale—or you publicly disclosed it, there are certain regulations that say you've got to get something on file, so if you had ~~publically~~publicly disclosed it, that would protect...getting the application on file will protect you from losing your ~~[ ]~~date because of public disclosure and offer for sale. I think that's what he was trying to get the earlier dates for.

~~Wheeler~~Simon: Sure.

Boehm: I spoke with Ray when I was trying to get all of these files, and his comments to me were...when we were on the phone—you remember, we were asking him where was this stuff, and he said, well, he kept building on and he learned more ~~as he~~it got in there. After I reviewed these applications, I agree that you're learning more as you go along. I'm doing the same thing. So it's kind of a learning curve.

Bernstein: If they ever find a zoom description that adequately ~~meets~~makes...especially in the claims...I mean, if you're reading the claims...

Boehm: But Eliot, he's going to say that the claims are of no import right now. All you have to do...

Bernstein: In the filings?

Boehm: In the filings. I can go amend those right now. We can sit down today and re-write them.

~~Wheeler~~Simon: ~~We~~ If it can ~~definitely~~be amended amend it. There's no problems.

Boehm: There's no problems.

~~Wheeler~~Simon Bernstein: There's always maybe a little money that's been ~~dislocated~~duplicated and that's it.

Boehm: Here's the problem, and that's what I want to get across about that. If he's trying to claim zoom and pan and I rewrite the claims to claim zoom and pan, and the examiner says, that's great, but it's new ~~...~~matter

Bernstein: But it's in the provisional that you can zoom up to 1700 times.

Boehm: If my claim is supported by the spec on that date, then you're fine.

Bernstein: Isn't it?

Boehm: I can't answer that without going into the...

Bernstein: But when we read the provisional and we see that, it says...

~~Wheeler~~Simon Bernstein: Before this meeting took place, before we called this meeting, aren't you privy to everything that's been done?

Boehm: Oh, sure. I have everything.

~~Wheeler~~Simon Bernstein: So when Eliot asked you that question, why can't you answer it?

Boehm: Because there's no...in my opinion, there's no clear-cut answer, yes or no, on the ~~embodiment or~~quality of the work product. It's a judgment call.

Bernstein: So that's an exposure, and what if the judgment is against us?

Wheeler: It's [an examiner] judgment call is what we're saying.

Boehm: The damage?

Wheeler: No, the examiner. <Everyone talking at once.>

Wheeler: Whether the subject matter is new or not.

Boehm: The examiner would...hold on...it's...

Wheeler: Who's judgment call is it?

Boehm: It could be the examiner's, if he catches it. If it's not caught, and you get it to patent and you litigate the patent, ... at court. Or if the examiner catches it and I want to appeal it to the board of appeals in the patent office, it's their~~...~~ judgment call

Wheeler: Okay, so we go to court and we're fighting over the patent, we would argue that it's supported by the zoom 1700 in our language, and the other side ~~of it~~would, say ~~you have~~that's baloney that's too broad~~...~~ you didn't describe it enough

Boehm: You didn't have your invention...

Bernstein: Then you lose.

Boehm: We would lose only if you had a bar date come in there if somebody else invented before you, or if you put something on sale...or if we offered something up for sale.

Bernstein: Which we did.

Boehm: But the offer-for-sale date from our first meeting is not until September.

Bernstein: Right.

Boehm: So the offers for sale won't normally kick off a foreign...

~~Buchsbaum~~Simon Bernstein: Could you explain to me what offer for sale means?

Boehm: Sure. As soon as you...you can't get a patent on a product after you've been using it for more than a year. As soon as you publically disclose your invention, you've got one year in the United States to get a patent on file, okay? Even if you don't publically disclose it...let's say I've got a method of making [ ] in my factory, but it never gets outside. I'm starting to commercialize it, I'm making money off my invention...the commercialization date a year later is you can't patent it in the U.S. So that's that one-year ~~grey~~ grace period.

~~Utley~~Simon Bernstein: Aren't we within that period?

Boehm: Yes. As far as we know, yeah. As far as we know.

Utley: Yes-yes we are within that grace period

~~Wheeler~~Simon: Okay, somebody explain to me, what am I doing here? Why am I sitting here? Are we saying that Ray [Joa?], other than being sloppy, but there's not much damage that could have been done or can be done because we can fix it, which really would make ~~you~~ me the happiest to hear that.

[not in transcript: PSL look at change above although minor it indicates perhaps the change in text to match new text]

Utley: Can I jump in? Let's just say there are two steps. We're going to make a filing this week; and to the best of our~~my~~ knowledge, we have swept up all this in this filing~~expect to have all of this done by Friday [ ] week~~, and that will be within the commercialization period. The second thing that we're going to do is we're going to look at filing an addendum to the original ~~product~~ formal filing to ~~[expect]~~strengthen the claims - broaden the claims ~~them to [ ]~~ ... to the maximum extent that we can~~,~~.

Boehm: ~~—~~if we need it...if we need it.

Boehm: It'll be a lot of this was swept up into~~...~~ the application.

Utley: What we're trying to do is protect the date~~...~~ day of March 24

Boehm: The original...

Utley: The original date as March the 24th, but filing should remain an objective.

~~Buchsbaum~~Simon Bernstein: Brian, if you broadened the language now, would that be a red flag to the commissioner that you should have done it earlier? Or should we just say that this has always been there?

~~Wheeler~~Buchsbaum: You mean the examiner of ~~...~~the commission

Bernstein: We~~'d like~~'re not going to be able to say it was in the claim.

~~Utley~~Simon Bernstein: What happens when you start those amendments or broaden them is you start to admit that you didn't do it.

Boehm: Um, yes and no. We...I do that all the time.

~~Utley~~Simon Bernstein: It's common then?

Bernstein: If they do it all the time, then we have to do it.

~~Utley~~Simon Bernstein: But not until I feel more comfortable with it.

Boehm: We normally have a search done. The patent examiner will do a patentability search, and he will come back and reject it. The problem is if the claims are too narrow to begin with, he will not come back and reject it, he'll allow it, and boom! Now I can't amend it he's in. [ ], we're done. But I can file an continuation on it. I can keep dragging this out and get broader claims as long as the subject matter is...

~~Utley~~Wheeler: So that's why he sta~~r~~ted it broadly versus ~~singly~~narrowly?

Boehm: No.

<Somebody comes into the room to take food/and or drink orders.>

Boehm: No, but ~~in part~~as far as, doing it broadly, if you're saying t~~he~~o claim i~~s~~t broadly it's our job to claim... as prior art which I doubt the claim is as broad as the [ ] allows...

Wheeler: Right. That's what I'm saying.
Boehm: And this is claimed broadly.

Wheeler: Right.

Boehm: And that's the normal tactic, to claim things broadly, and then wait for the examiner to come back and say, "Oh, you can't get it that broad," and then narrow down your claim.

Wheeler: Okay, so isn't that what he was in part trying to do? That's what he's been saying, yeah.

Boehm: Yeah.

Wheeler: Well, would that not be consistent with how patent attorneys try to do things?

Bernstein: Well, claim one, if you look at their claim one, Chris, that they've written, it identifies...

Wheeler: Who's they?

Bernstein: ~~[ ] and Marder~~Foley & Lardner. It identifies what you're trying to do.
[not in transcript: Stephen note how Dicks name is deleted and Foley's name is screwed up, may indicate who was changing this transcript]

Wheeler: Okay, so maybe it should have been written differently.

Boehm: You won't get two patent attorneys to write the same claims.

Bernstein: Well, no, but you try to write the claim, and that's the teaching you and Steve ~~and~~ both represented us here, to describe in its broadest term...

Boehm: Right.

Bernstein: ...the invention.

Boehm: Well, I can't say that this isn't broad. This is very broad. This might be rejected for indefiniteness...I don't know what it is...but now he's got the opportunity to go back and...

Bernstein: And Brian, you know, there's print film image in here, it's all supposed to be out of here.

Wheeler: What you're telling me is that in your ~~corner~~ forum of ~~the world~~law there's always going ~~that all this going~~ back and refining and refining and refining, that was wrong.
<Everyone talking at once; two different conversations going on at once.>

Bernstein: This is like he just completely ignored what we said over a year. He didn't do a thing. Nothing. No comments, nothing.

Utley: Almost nothing between the provisional and the formal process.

Boehm: And some people intentionally file narrow just to get something on file. Then they can come back and repair it without damage to it.

Bernstein: But you don't know that because an examiner...

~~Utley~~Simon Bernstein: You'll never know that until you have a litigation.

Bernstein: And then the question is what potential damage does that...

~~Utley~~Simon: That damage potential and that remedy will be then taking place at that time, not now.

Boehm: That I agree with. Even if we decide something now, you won't know what the outcome is for five and a half months.

~~Utley~~Simon Bernstein: ...wouldn't happen anyway. You wouldn't even know that.

Utley: Let me come back where I was. We are going to file on the 7th, Wednesday. As far as we know, that will cover every element of this invention that we have our arms around at this point in time.

Boehm: I believe so, yes.

Utley: And we should go back and address what amendments we can make to the claims in the filing of March this year and determine within the spec of the filing how broad those claims can be. I mean, that's going to be the test. Within the spec of that filing, how much leverage have we got to broaden those claims so that we do have a priority date which is back about a year ago last March.

Bernstein: So we want to insert everything going into this one into that one?

Utley: No, it'll be...

~~Wheeler~~Utley: It'll be based upon the preamble, if you will, of what's in here.

Boehm: We do reference it. As a matter of fact, this is the cover page, Brian, of the application we're going to file.

Utley: Yeah, you reference it right there.

Bernstein: But you can add claims to that one that you're referencing that would encompass what we have in today's filing, which is really...we do want it in there.

Boehm: Yes, I can claims to the zoom and pan to get you back to the original date in this one~~—just write a claim for this or onto here.~~ Since I claim to this onto his.

Bernstein: Well, we should do both.

Boehm: Well, you can't get two patents on the same invention, so it depends on where we want to go.

Bernstein: Well, we want to definitely get it in on his because it gets us an earlier date. ~~Brian~~Correct?

~~Utley~~Boehm: No. It's a mess with these dates. What will happen is...nobody will worry about the date unless there's an occurrence, and that occurrence might... it's a major problem. You won't find out about that occurrence until you sue somebody, and then they go search in Australia, and they find a reference that somebody's done this before in the library, and then you worry about the date. Were you before him?

Bernstein: Well, that's what I'm worried about. I'd like to go back to our earliest date.

~~Boehm~~Wheeler: Can I point out one other thing? I know we look for the word...Eliot looks for the word...I know we look for the word "zoom," but there's also other language in here too. Sometimes we get caught up in a word "zoom," when what is zooming other than enlarging or reducing? And he does have language in here, "when enlarged or reduced, these pixels of the digital image becoming distorted ~~will quickly~~a feature which typically results in the digital image being fixed to an original size or being available at low magnification, such as, for example, magnification from 200 to 300 times. These digital images are also difficult to enlarge to a full screen without a tremendous amount of distortion present in the end product."

~~Utley~~Wheeler: I mean, he's describing~~...~~ I mean that's zooming. Reducing and enlarging is zooming.

Bernstein: But he's not putting it in your claims, that's what he's saying. You see~~,...~~, this is different

Boehm: But it doesn't matter right now

~~Utley~~Wheeler: But it doesn't have to be if you've made mention. The opinion is that it doesn't have to be as long as he's ...if you made mention...if you've gone on record of~~...~~ having desrbibed this

Boehm: This is the background that's…problem. He's got….

Boehm: That kind of invention, right, it's got to state...

~~Utley~~Wheeler: Well, I didn't get to that either.

Bernstein: Right. And that's where it's not.

Boehm: I pointed out a couple of things. It's not as...

Bernstein: Within the claims, the claims I'm reading, you could not...

Boehm: The claims really don't matter.

Bernstein: In the patent?

Boehm: The patent claims on a pending application basically don't matter.

Bernstein: No, the ones he filed.

Boehm: Yeah, they basically don't matter. I can go back and change them.

Bernstein: Okay. Why? So we want to change back to the original one he's filed, put as much language as we can that we have today...oh, it's all supported. Everything you wrote in that new one is supported in this one because it's the same process.

Boehm: That's the ultimate problem that Steve and I—Steve is Becker, the other patent attorney that actually wrote these patents <in audible>—but that's the ultimate problem that we're worried about, and that's the problem that you always worry about unless you first of all have a handle on the invention, inside and outside, and second of all, unless you really have a handle on Prior Art so you know where you want to go with this. Then you spend the time and the money to do a good original provisional filing. You've got a pretty good shot that it's supported then. But when you file as, oh, I've got to try and cover this base, and when you do this kind of stuff, there's always going to be a question of what was supported when.

Bernstein: But that's fine. It is supported.

~~Wheeler~~Simon Bernstein: We're off the subject matter.

Bernstein: So we should definitely claim back to the earlier date?

Boehm: We may get a rejection, or you may find out in litigation five years from now, that none of this was supported. Some court may say that you never talked how to do this because your software wasn't in the patent application.

Bernstein: It is, though.

Boehm: Well, the code isn't. They might say that these broad diagrams and these flowcharts aren't good enough. There's always that risk.

Bernstein: But we're trying to say that if they accept it, we want it to be to the furthest filing date that we can, which is March 3, 2000, and that's where it should lie; and if it's going to get argued ~~whether it's going to get delivered by~~let it live or die at that date.

Boehm: That's what we're trying to do right now.

Bernstein: Okay, good. So I'm under the impression from this point that we're going to encompass what we've learned what we're filing even in this other one even into the original one so we can claim back to a March 3 filing date that claims back to our original March patent...

~~Wheeler~~Boehm: March 24th, yeah, all of that will go back toward what is supported in here, in the original. Not supported in ours.

Bernstein: Okay. And it's all going to be supportable because you're going to be able to pull up an image of the nature that we are discussing, and anybody with an eye can see that you've now done this.

Boehm: <Inaudible comment.>

Bernstein: Well, you're going to be able to show your invention, aren't you?

Boehm: No, no.

Bernstein: You can't?

Boehm: You live or die on what's in the specs. That's why...

Bernstein: ~~You have to~~Then get it in there.

Boehm: Yeah.

Bernstein: You can't bring it in as evidence what the invention is?

Boehm: Only outside evidence of what the average level of skill in the art is, okay? If somebody says that the flowchart isn't detailed enough, I'm going to go, "Oh, yes it is. Here's 29 programmers who are going to testify and say yeah, I can do that in my sleep with this document." So, there's always going to be a battle about the level of support.

~~Utley~~Simon: Maurice and I—that's why I asked him to come in—Maurice and I were talking because neither one of us understands patents or how you file them or invention ~~[~~ actually~~]~~. What we do understand a little bit about is the theory in business; and now that we know that Ray [Joa?] was somewhat sloppy—I'm not suggesting that he's not a fine attorney or anything else—you have been...you have reviewed all these patents that we have, whether there are eight or ten of them...

Boehm: There were eight original filings, and then...eight original filings.

Utley: Okay. And then how many do we have now?

Boehm: Let's look at the chart right now, but it's basically. We've got 17 applications that have been filed. These old ones are dead now because they were provisionals, and we've basically covered all...we pointed out basically covering two, maybe three inventions, so there's not...I mean, if we were to start over, maybe you'd do this with two patents, maybe one patent. So.

~~Utley~~Simon Bernstein: Who owns ~~it~~them?

Boehm: Who owns it? iviewit Holdings, Inc.

Utley: Owns all of them?

Boehm: Except for...<Pause, and then text comes in that doesn't seem to be answering this open question.>

? Video playback over a network

Wheeler: How did he get in? [not in transcript but this refers to Jeff Friedstein on an invention]

Bernstein: He's part of the invention.

Boehm: An inventor - inventorship.

~~Utley~~Boehm: So I've So I've got a document right here for him to sign. If he signs, then I do a couple of things.

Bernstein: He signed that when you faxed it to him originally.

~~Utley~~Wheeler: I have copies of each one of these. Can I get a copy of your [ ]?

Boehm: of ~~T~~this? Sure.

~~Utley~~Wheeler: I have a copy of each one of these, I believe, or most of them...

Buchsbaum: Can I ask you a question? Your saying everybody that has an obligation to sign is on the list of names in these patents?

Boehm: You preferably don't...well, unless you have the new ones...

~~Utley~~Wheeler: I don't have the new ones, but...

Bernstein: That's an old one. That's old.

Buchsbaum: You're saying everybody that ~~[ ]~~has an obligation to sign is on the list of names in these patents ~~works with me in 2000 should sign this,~~ right, because the company was ~~really [ ]~~part because the Company was doing, is that what you're saying? Because I don't even know if everybody has signed because

you may ~~[ ]~~due corporate ~~for~~ due diligence for financial reasons or if...and they will say ~~if~~ has everybody signed off on these patents, and if three people don't...if one person hasn't, he has an obligation to sign?

Boehm: Brian, have you signed?

~~Wheeler~~Buchsbaum: Has everybody signed off on these? Brian?

~~Utley~~Boehm: See these ~~[ ]~~tabs [refers to tabs for inventors Bernstein, Shirajee, Friedstein and Rosario to sign] right here? That's what I'm trying to do today. As soon as...I'm going to have people sign, me sign...all the inventors sign. I've got to get a hold of~~...~~ Jeff

Bernstein: I thought we did that when we filed.

Boehm: You only signed one real document, didn't you? Did you actually a declaration? I know you didn't sign an assignment over~~of...~~but you're real clean on it because these are all based on the original filing~~.~~ Which is assigned to iviewit holding already

Bernstein: What's that mean?

Boehm: ~~Here's a filing of your holdings, all right.~~ So all of the other inventors would have a helluva problem trying to say they owned anything.

~~Buchsbaum~~Simon: Again, this is a little off the subject matter, but I have asked Chris about it before. If something were to happen to iviewit, and it were ~~[__],~~ it went into bankruptcy, what would happen to those patents? How would those patents [ ]?

~~Boehm~~Wheeler: It depends on which at iviewit you're talking about.

~~Buchsbaum~~Simon Bernstein: The one that ~~they're holding~~they are held in.

~~Boehm~~Wheeler: Well, first of all, holdings is held separately versus...we're operating the company out of a separate entity, correct? iviewit.com. So, let me think there...

Buchsbaum: The operating company is iviewit.com.

Simon Bernstein: All I'm concerned about is, for example, that the largest creditor...it wouldn't be a creditor, it would actually be an investor...would then...

Bernstein: They're not a creditor.

Buchsbaum: Okay, then the largest creditor could come in and pierce the corporate veil of iviewit.com and say that this is just a way of protecting the only valuable asset of the company away from creditors. Is there a possibility of that?

Boehm: Obviously there is.

~~Utley~~Wheeler: There is a possibility, but that's ~~a [ ]~~one of the main reasons… ~~agreement.~~But ~~T~~the loan, they made the company who wrote the patent, join in as a guarantor anyway on it.

Bernstein: Well, that would be all of us. All of those would be all of the investors ~~giving up these facts~~getting a piece back?

~~Utley~~Wheeler: No, no, no. On the $800,000 loan, those people, it's secured by the patent.

~~Buchsbaum~~Simon Bernstein: What about the $600,000...or the other $800,000 loan?

~~Boehm~~Wheeler: The others weren't loans. The others were equity, as I recall.

~~Buchsbaum~~Simon Bernstein: No, no, they have claims.

Bernstein: Well, they're supposed to be converted to equity, which is another issue.

Utley: But there where noteholders

~~Boehm~~Wheeler: No, because there was no ~~[ ]~~quid pro quo at that time. The noteholders I mean you can't go back and do it, we had that talk Si

~~Utley~~Wheeler: I mean, you can't go back...

Bernstein: The note? I believe They're not final, even though we told people they would be by this time.

~~Utley~~Wheeler: The noteholders ~~could demand [ ]~~took their money in without ~~[ ]~~taking security. Now you...<Indecipherable. Everyone talking at once.> ...new considerations...I said now you can't … back to a failure to the corporation

Simon Bernstein: …Board if everybody that was a creditor found, everybody that was a note holder at that point there was no what would you call it - problem

Buchsbaum: ~~There was no...~~and that would be protected by the courts anyway usually. The court would see this probably as a you know a fraud~~e property as a...~~

~~Boehm~~Wheeler: You could have two frauds: fraud of creditors and fraud of shareholders.

~~Utley~~Simon: No, Chris I'm not worried about fraud. I'm really concerned with the fact that what we did here, the last loan that we took in, from...

Bernstein: ~~Crossbar~~Crossbow.

~~Utley~~Simon: No, not from Crossbar...

Bernstein: Crossbow~~ar~~.
Wheeler: Crossbow

~~Utley~~Simon: ...is secured by the...

~~Boehm~~Wheeler: ...the ~~[ ]~~term of the deal, right.

~~Utley~~Simon: And that's perfectly acceptable to me except that everybody else that had loans prior to that at that time should have been considered with the same equity because~~....~~ …posses able and Chris told me that that was the perfect time to get it done

Bernstein: Yeah, but would Huizenga ~~release~~ lose his?

~~Utley: What?~~

Bernstein: Would Huizenga ~~release~~ lose his stake in it to Crossbow~~ar~~?

~~Utley~~Wheeler: No, no, no, it wasn't...I said that if there was going to be new considerations from those people, we all could of…??

~~Buchsbaum~~Simon: ~~You obviously [ ]~~We all could have put in another $10. I mean, at the time we ~~dealt~~ did it with Crossbow, we should have made sure that our other people...

Bernstein: Are protected.

Utley: No, no, no. We would have had to issue new contracts out for everyone.

~~Boehm~~Wheeler: There would have had to have been some material consideration, not just $10. It would have~~...~~been…

~~Utley~~Simon: So~~Say~~ it would have been $10,000...

~~Boehm~~Wheeler: Well, then, you could have...Crossbow, we didn't even talk about Crossbow at that moment, and I said you couldn't go back and just collateralize. You couldn't go back for money that you already put in. But if you put in new considerations that you could demand as a condition to be collateral.

Simon~~?~~: What ~~you could~~we should have done, or what we maybe we still should~~can~~ do to protect our original group of investors, is to have them pony up a few

more thousand or~~f~~ whatever you think is legitimate, and amend the contracts to protect them as well.

~~Wheeler~~Utley: That's new subject matter.

~~Boehm~~Simon: Well, I only brought it up because it had to do with the patents.

~~Si?~~Utley: I know but can ~~No,~~ we finish the patent discussions before we bring ~~in~~up new subject matter.

Simon: You can, but I want to make sure that we do finish.

Utley: No, I agree with you Si.

Si: The problem is that I made claims to certain people like Don Kane~~ing~~, who put op $100,000, who thinks...

Bernstein: Let's get back to that. No, let's get back to it. It's a definite point. There are~~y're our~~ people.

Buchsbaum: This is a business issue~~Let's deal with this issue~~for later.

Bernstein: No, we're asked by these very people these questions.

~~Utley~~Boehm: Did you get your question answered on the...

Buchsbaum: Yeah, I just wanted to understand...you know, I got an answer. It had to do with the obligations Si I was trying to understand if somebody does due diligence now with regards to understanding what is there and what has to be done, like those yellow tabs. [Yellow tabs indicate signatures of missing inventors]

~~Utley~~Boehm: Yeah, but after...I ~~primed~~ find everybody, we can get guys to sign.

Buchsbaum: We aren't that many. I don't know on that sheet what you have, but I don't think there are that many names. There's what about five names?

Buchsbaum: There's aren't that many...you don't have that many. I don't know on that sheet you have, I don't think there's that many names.

Boehm: No, there's not.

~~Utley~~Boehm: ~~We had early problems with~~So we have everybody but Jeff, if we can get Jude and ~~Brett~~Zak.

~~Wheeler~~Buchsbaum: You just have to get ~~them all~~people around and sign.

~~Utley~~Boehm: No, that should not be and issue.

Buchsbaum: That might be questions brought up when people do do due diligence. Is everybody else on these?

Bernstein: That's why we're ~~dis~~closing it. Right?

~~Wheeler~~Boehm: We'll record what was~~'s~~ in the patent office(…???) can do~~now~~.

Utley: ~~They do.~~ The other~~We have a~~ piece that's not in any part of the original filings, which is the reduction of the technology to a disciplined ~~concept~~process~~—~~ the mathematical representations of whats in and how it works and stuff like that.

Wheeler: (…???)

Buchsbaum: That will also be included in there, right?

~~Boehm~~Utley: We'll put it in the new filing...one of the new filings.

Wheeler: I form My opinion of everything, and we can talk about post solutions but I think Brian wants to get this back on track, but to me there's bad news and there's good news in this. The bad news is, just like anything in life, perhaps we would have liked to have tidied up some things better, like ~~those having~~to have had Mr Joao ~~[Joa?]~~tidy them up. The good news is

considering the state that the corporation was in in the early stages and the variable limited resources that it had, I'm glad that we have an awful lot on record that we do have on record, to be honest with you.

~~Utley~~Simon: As long as it's not to the detriment of what we thought we were filing, I have no...I couldn't agree with you more.

Wheeler: But I think I like your approach, and I assume it's your approach, too, in that I assume that you're doing a fairly comprehensive new one, but then you're going to probably...

Utley: Claim priority back to the old one.

Wheeler: Right, but you're also going to do your amendment because now we're finding out that it's not an uncommon procedure and it's not a red flag.

Utley: Two things: the new filing on Wednesday will claim priority all the way back for as much as possible back to March 24th last year. Second, we will look at the March 24th year 2000 filing and determine how we should amend that to include additional claims and broaden that ~~claim~~ filing so that it more fully represents the knowledge of the invention as of that time.

Bernstein: Does it claim all the way back?

Wheeler: It'll go all the way back ~~as long as~~...

Boehm: as long as You don't go outside what was described.

Bernstein: No, the math is just describing the original invention.

Boehm: We'll, I'll never know the answer to that until it's litigated.
Utley: Due diligence.

Bernstein: Right, but from your perspective here, that's what we're setting up. Correct?

Boehm: We're going to try.

Bernstein: Okay.

~~Wheeler~~Boehm: The question never even gets answered half the time in the real world. ~~The guy~~I will claim priority back on the document, and then ~~if nobody cares,...~~if the examiner doesn't care, nobody cares

Bernstein: It gets through.

~~Wheeler~~Boehm: It gets through.

~~Buchsbaum~~Wheeler: Would it be a fair assessment—I'm posing this more as a novice, not as an attorney here—since we're not at IBM and we don't sit down at the very beginning and work out all these equations and all that, that in an invention such as this by a Ma-and-Pa type of inventor, and now since we're getting into the nuts and bolts and really uncovering, in essence, what's behind it, as Brian dissected it as we moved along, but that's all we're doing? I mean, that Ma-and-Pa inventors do that as they go along? They add the flesh to the bones as they go along?

Boehm: Boy, that happens, and we try not...we try to minimize the amount because if the flesh that you have to add is new subject matter and you've already sold your invention a year ago, you're dead.

~~Buchsbaum~~Wheeler: Well no, Let me at it a different way. It does this, but I can't describe how it does this. But now we find out...we tell you what it does, now we're telling you in detail how it does it.

Boehm: Yeah, in terms of we claimed it properly.

~~Buchsbaum~~Wheeler: So I'm not adding flesh in defense...

~~Utley~~Simon: New flesh.

~~Buchsbaum~~Wheeler: ...new flesh. I've got the box, now I'm disclosing what's in the box including the gears and how it works.

Bernstein: No.

Utley: No. Here's what the big difference is. The original filing claims a process for print film imaging.

Bernstein: Well, that was all stricken, by the way. That's why I'm having a big problem. I was going to get to that next, Brian.

Utley: Okay, good.

Bernstein: But we have discussed with Ray [Joa?] numerous times to take out the references to print images out of this right here. Over the course of the year in the 59,000 modifications back and forth, we continuously pushed him away from the words that I see in this filing, and that's what's so disturbing to me because we sat ~~t~~here when...

<End Side 1; begin Side 2>

Buchsbaum: That would be conditional, probably.

~~Utley~~Simon: Right, they probably will.

Wheeler: ~~Right. As a matter of fact, they may say take your...~~Their not going to want infact their going to say take it off aren't they

Utley: No Crossbow ~~knows~~ notes~~that it~~ would be converted to equity when someone else comes in.

Si? ~~Right~~Of course , and that's gone. And those issues are gone. ~~So it adds new value.~~

~~Boehm~~Wheeler: Well, Yeah, so that it was the …it was intelligent way to do it...and I'm not...

Buchsbaum: Crossbow would probably manage the million dollars anyway

~~Utley~~Wheeler: By the way, if we did do a deal by which we tried to collateralize it even further, then we'd have to have some sort of provisions as well to get rid of ~~[ ]~~your collateral.

~~Buchsbaum~~Simon: Yes, of course. As soon as it converts to equity, it's gone.

Wheeler: But I mean, what if you didn't convert yours to equity—[ ]?

~~Buchsbaum~~Simon: Then you'd have to lose it anyway.

Wheeler: But at a point.

Utley: It just becomes a normal stockholder...

~~Buchsbaum~~Simon: Right.

Wheeler: It would have to drop away or something. For instance, it would drop away when theirs drops away.

Utley: The stockholders, in the event of a default, the stockholders, the distribution that takes place, includes all the stockholders according to the rank of the preference. So the preferred get first cut, and the common stockholders get the second cut, whatever is left for distribution. But of that amount[ ] unless there's nothing to distribute.

~~Boehm~~Simon: Not if one of the preferred stockholders has a collateralized position and the others don't. If one of these preferred stockholders...

Utley: Theres no~~...those~~ stockholders that have ~~the~~a collateralized position.

~~Boehm~~Simon: That's true.

Buchsbaum: You're talking about the small ~~lump~~ amount of money, ~~[ ]~~that have any value, it should be reasonable value, and those ~~should~~ would be taken out anyway.

~~Utley~~Simon: Except that we seem to feel that we have an obligation to those, ~~particularly~~ to protect the other stockholders who...had all good…I think its prudent anybody to ask permission

Buchsbaum: A good way to do it is the way he said to do it, and that's to [?—].

Utley: Will you look it up and see what it's going to take to do it?
Wheeler: I'll coordinate that

~~Wheeler~~Utley: I'm not clear. What are we trying to do? Are we trying to provide for collateral for new money coming in, or are we trying to...? We're not trying to collateralize money which has already been...

~~Buchsbaum~~Simon: I don't know. Can you handle the old money the same way? I don't think so.

~~Utley~~Wheeler: We have to see. We might be able to consider it for the full amount in the view of the fact that if you had enough substantial new consideration, ...

Buchsbaum: The problem is that you may have to go back to Crossbow to do that, and you may be better off just to do it on a subsequent money.

~~Utley~~Simon: Well, but to ask Don Kane~~ing~~ to put up $10,000 when he's got $160,000 in the...$135,000 in the company, and then he only gets 10%...$10,000 worth of consideration...I'd like to protect his whole $165,000, which is what he has.

Buchsbaum: The answer is you go back and ...

Utley: I don't think you can do that because that's equity. It's in common stock.

Bernstein: It's not equity. It's a loan.

~~Utley~~Bernstein: Don had the stock prior to his putting up the money. These are loans. There's $~~1~~400,000 that's on the books. Then there's another $100,000 besides what he put in originally. Sal has a loan on the books of $25,000. Your guy should have had a loan on the books for $250,000.

Utley: No, that's equity. Okay.

~~Wheeler~~Simon: At any rate, <tape cuts out[tape does not cut out on my tape]>...While I got Chris here I'm going to take advantage of his being here.

~~Buchsbaum~~Simon: One of the issues ~~That is what~~ we tried to do when we raised the last $80,000 that came form Eliot's two friends Anderson and Mitch Welsch. [ ]

Bernstein: Ken Anderson.

~~Utley~~Simon: It was my knowledge, according to Jerry, that those monies were to go to Eliot, and then Eliot was theoretically to loan the money to the company so that Eliot would have a loan on the books and he would have sold his stock because Eliot has some personal needs that he needs to accomplish as soon as we get funded or we get some money in here. I'm under the understanding again. It could be way off.

Bernstein: How do we work that out, Brian? The 10? A loan?

Utley: Yeah, that's better because otherwise you will get taxed.

Bernstein: Will they loan me $10,000 to ~~save the cash~~pay the taxes?~~.~~

~~Utley~~Simon: Who loaned you?

Bernstein: The company just today?
Utley: So I took~~ake~~ that as a loan?

Utley: Yes.

Bernstein: The money went to the company, which spent the money already—the stock money—from Ken and ~~[ ]~~Mitch.

~~Utley~~Simon: You haven't sold any of your stock?

Bernstein: No.

~~Utley~~Simon: You just made an officer's loan.

~~Buchsbaum~~Wheeler: Right.

~~Utley~~Simon: Is that how you handle it?

~~Wheeler~~Simon: You loan the loan back by some method at some point.

Bernstein: Right. Correct.

Buchsbaum: ~~What's~~ Thats the way to do that?

~~Wheeler~~Utley: Well, there's no tax impact...

Simon: but he would have had a [ ] gain.

Bernstein: Right. ~~In your rhetoric~~And there were other things at the time...right, things. At the time, the company needed the money and I didn't...not that I didn't

~~Utley~~Simon: Sure, I just wanted to make sure that it was done. I didn't even know ~~[ ].~~….???that bank account

Bernstein: Not that I didn't.

~~Utley~~Simon: Let's finish up.

Utley: Eliot, let me summarize. I want to make sure we have an agreement of this meeting. Let me interject two final two points that we kind of skimmed over. One is you said that we want to go ahead and change the claims to go all the way back on this US, but we have sort of got covered on the one we're filing? The one we're filing is a PCT. It won't pop ~~out for~~ tothe US for 18 or 30 months. Or we could file another PCT and a US, then the claims would hit the US. In other words what I'm saying is it would matter if we do the claims here. We could either fix up the claims here or file a PCT and a parallel US if you want US patent protection sooner. The PCT will split out to US, but not until later. You can file a US anytime...

~~Buchsbaum~~Simon: Let me ask you. You're not a lawyer, what do you recommend?

~~Wheeler~~Boehm: Well, it's more money up front.

~~Buchsbaum~~Simon: How much money? A great sum of money?

~~Utley~~Boehm: No, it's another grand to file.

~~Buchsbaum~~Simon: For what we've spent already, let's do it.

Bernstein: And that protects us better?

~~Utley~~Boehm: Quicker. You'll get a quicker US patent. It'll get you in line quicker.

Utley: The other point that you're making because in this week's filing we are going to claim all the way back...

Boehm: We're going to claim all the way back ~~to the [ ] date.~~but this is what is supported

Utley: Right. So if we claim all the way back to March of last year, do we need to touch the filing that's already in motion?

Boehm: The one that's out there?

Utley: Yes the PCT. Do we need to touch that?

Boehm: No, no. There's a PCT and a US.

Utley: Right.

Boehm: The PCT, we will get a search back. In fact, we should get it in a month or so, and then you'll decide what you want to do with that, what foreign country and possibly the US, but he files the same thing basically in the US, and now it's in line in the US.

Utley: Right, right. But what I'm saying is if the new filing that we make this week creates priority all the way back and embraces all of the teachings of the prior...

Boehm: Zoom and pan stuff.

Utley: Zoom and pan stuff, filings, do we need to go and modify and update and amend those ~~other two~~earlier filings?

Boehm: Those other two.

Buchsbaum: ~~Or would that be your~~That's a good question would there be new recommendation?

Boehm: It depends on two things. One is how quickly do you want to get the US for the new filing? This is a PCT that we're preparing right now. If we file the US right away with it, then it makes less difference.

Bernstein: Less?

Boehm: Less difference because he's in line sooner. That's all. It just depends on how soon you want to get your patent.

Bernstein: Well, we want to go for the sooner.

Utley: The sooner the better.

Boehm: The sooner the better then let me play with this

Bernstein: Right.

Boehm: ~~Except~~ Plus you're gonna~~ing to~~ get an office action back from the patent office on him~~here~~...

Bernstein: On that.

Boehm: For free. There's nothing involved.

Bernstein: Right, but it doesn't claim anything.

Boehm: I don't know yet. It claims...he'll get this blasted. It will will be rejected.

Bernstein: Yeah.

Boehm: It will be rejected. The question is do we want to ~~pick~~ fix this, or where are we with the other things? So there's no decisions to be made now on this, it's just that do you want to file a US and a PCT?

Utley: The answers yes

BoehmL Yes

Bernstein: And we do want to fix the original work?

Boehm: We can decide that later.

Bernstein: Well, why would we leave it unfixed?

Boehm: Because you can't get two patents on the same thing. So if we fix this, you're not going to get it over here.

Bernstein: But then we lose the date.

Buchsbaum: No we don't.

~~Utley~~Simon: That's what he's saying.

Buchsbaum: You really don't lose the date.

Wheeler: So were not going to…???

Utley: Because he's ~~stating~~ claiming all the way back.

Boehm: We may not. It depends on...

Bernstein: May and less, these are words that scare me.

Boehm: You don't like that, do you?

Bernstein: No, I do not.

Boehm: But I don't think this is the right time to make that decision now.

Utley: What is the right time?

Boehm: When we get ~~the [ ]~~some office action back on this patent. And when we hear from the patent office, we'll sit down ~~and see if~~say do we want to ~~take~~ fix this, or do we want to ~~take~~ fix this, or have we uncovered some killer Prior Art that blows this whole thing out of the water? You don't want to spend money right now if you can avoid it.

~~Utley~~Wheeler: We've never done a search, have we?

Boehm: We did a search...I've done a search on...<Everyone talking at once.> on a dozen patents that really weren't on point~~s~~. We didn't find any close Prior Art; and all I can tell these...

~~Utley~~Wheeler: This was on imaging and video?

Boehm: Yeah.

~~Utley~~Wheeler: That's incredible.

Buchsbaum: Yeah, it was huge.

Bernstein: If it is found impossible to do these things, why would people be doing them?

Boehm: I want to make...the tape recorder's off, right? <recorder turned off>

Buchsbaum: What does PCT mean?

Boehm: Patent Cooperation Treaty. It's a formal filing process for filing foreign patents.

Buchsbaum: Oh, that's the thing with the different countries?

Boehm: Yeah. So we file one application that splits out later to different countries.

Buchsbaum: Two years?

Boehm: Yes, but we'll get indicators before that. Our search comes in nine months, which is three months from now for the first one. But, Brian, they're searching this claim; this claim is crap. You're not going to get a good search on it.

Buchsbaum: So what? In six months or nine months, we'll start hearing from them?

Boehm: Yeah.

Bernstein: Well then we should do an alternate search on what you have.

Boehm: It's a judgment call. I mean, you asked me this question a while ago, and you said what would it take to get me comfortable because I'm kind of a pessimist and I'm an engineer, so I have that background where I look at it that

it's half empty. It would take more searching, and it would take more searching inside the technical articles. And it would take quite a bit of work. I mean, I guess $5,000, I don't know. It depends on what happens. Then, again, that will only raise you to a different level of comfort, that's all.

Bernstein: And then they'll say the same thing, and for another five grand, ~~[ ]~~well get Rays to another indiscriminate ~~from that~~ level of comfort.

Boehm: Exactly. But we don't have to do that because we will be getting an article...

Bernstein: Right, from the searches.

Boehm: And from your investors because if I was working for them...

Buchsbaum: Let me put it another way. If you have somebody that will take this company and auction off the technology, okay? As it is existing...as it is unfolding, okay? And as the licenses come along. It's strategy. Some of these people bid on that. What are they really bidding on? It's potentials, right? Basically?

Boehm: Well, no, there's a present value of the technology. If you...

Buchsbaum: Well, not if you don't have patents issued on it.

Boehm: Well, sure there is. Sure there is. If he can get a royalty based on 2% of their products—or whatever it is—per minute, whether or not it is patented, absolutely.

Buchsbaum: My question is at what point does it become...is the efficacy there significantly enough from the standpoint of others now that would be doing their own review. You know, like, say a firm that would do the option. They'd have their patent lawyers take a look at what you're doing to see if they think it has a real good value. At what point does that come along? Is it six or nine months from now, basically? Is that when that probably would start to unfold as far as having a real relevant potential value? I've been trying to get a general..

Boehm: I understand your question. I guess I would answer...

Buchsbaum: General idea.

Boehm: If your licensees are spending a lot of money...

Buchsbaum: On your technology.

Boehm: On your technology, they're going to have their patent attorneys right now, today, go do a search, and they will have a good indication. They may come up with Prior Art that blows you out of the water. They may find nothing. They may not search it. They may say, we don't care about patents; it's the technology.

Buchsbaum: Reality, though, this is not the...more likely six to nine months as some licenses start to unfold here and as things start to come back, and that's when this thing will start to have some relevance more than it does right now? From the standpoint of the...

Boehm: That ~~T~~the patent ~~technology~~will have relevance?

Buchsbaum: No, no. The technology has a value that can be created in the marketplace and turned to bidding.

~~Utley~~Wheeler: Well, you can look at the technology as almost value added to the company. I mean, the company has worth because of the process and what we can provide and we can build it up. But it'll even astronomical more worth assuming that we have...that it's totally proprietary to ourselves. Now some companies have great technology that's proprietary to themselves, and it doesn't earn them money. For instance, Wang Laboratories went down the tubes. They had the best word processing, and they had the best of everything else. And, of course, a lot of their technology is licensed out

there, as I understand it, to VisionAire and to...they did the true ones, and...

Buchsbaum: It's was also to get to the possible strategy for the company's investors, okay?

Utley: Right.

Buchsbaum: Or it may be at some point a window of huge value placed on this technology where you may take advantage of it.

~~Utley~~Wheeler: Well, and to our investors, we have said, and we can continue to say, we are attempting to create a pool of intellectual property and protect it.

Buchsbaum: Okay.

~~Utley~~Wheeler: But there can be no assurances that this will withstand the test of time.

Boehm: That is exactly it. And you never want even when it issues ~~one addition~~. You will get a good comfort level when you have a US patent issued in your hands.

Bernstein: Why?

Boehm: Because you've had an examination.

Buchsbaum: Because you've got some review.

Boehm: Because you have a presumption of validity.

Bernstein: That's why I'd like to ~~For our part, we need to~~ get that first one corrected because that's the first one that's going to be examined.

Boehm: No, we've got one...oh, yeah, it is. It's the US.

Bernstein: And therefore I want that to be ~~important~~approved. The investors are going to say...

~~Wheeler~~Buchsbaum: The first one that we're going to be issued will be ~~Issue One~~issued in May.

Bernstein: And the investors are going to say what happened to patent one.~~to 2001.~~

Boehm: 3/10 of 2000 was when it was filed. Typically a year...they'll get around to it within a year. Maybe it'll issue in. 18 months to two years~~Anything less than two years...~~

Buchsbaum: From right now or from then?

Boehm: From 3/10.

Bernstein: What is the process speed up? If you can show...

Boehm: If you can show somebody's infringing, you can have an expedited examination; but that doesn't always buy you much time, and you really have to get into the patent office the first time, and I'm not sure we can do that.

Wheeler: Wouldn't a good example of one way be that Apple had really great patents, and Microsoft was still able to come in and duplicate it, even though everyone knows they violated the hell out of the patent of Apple.

Boehm: Um, hum.

Wheeler: So I mean you could have a good patent and it could still go down the tubes. But another one I'm thinking of that did stand up was Polaroid had patents and Kodak tried to come in and do everything to distinguish, and ~~whether they will go~~wasn't able to and g~~e~~ot clobbered, right? And there's probably a lot of every variation in between.

Boehm: Yeah.Wheeler: [Not in transcript this is strange here]

Wheeler: Are those the two extremes?

Boehm: Yeah,

Wheeler: those would be the two extremes.

Utley: Especially when it comes to method patents and software patents.

~~Boehm:~~
Wheeler: Yeah, what was the first thing that Brian

Boehm: ...and the more patents you have, the less chances. It's like putting out mine fields...less chances ~~to~~ people to get around you. But if the original concept is broad enough and claimed right, Yeah, we can be okay.

~~Wheeler~~Boehm: But what, the test - —I guess what you're asking for is when we have that first claim promised, probably within two years of when you filed, which is March 10, 2000, I would probably say

Utley Doug come back, close it out again.
<Inaudible comment.>

Boehm: There were two points. One was the PCT ~~[ ]~~and I got that in correct.

Buchsbaum: Right.

Boehm: The second point was everybody was saying you don't destroy documents. Lawyers do destroy documents; and in the patent realm, it is common practice to get rid of all of our attorney notes, but it depends on what the practice is in your law firm and your corporation. Most patent attorneys who use this practice that I've seen, it happens after it~~'s~~ issue~~s~~d. You never do it before. I don't even like to do it then. I like to do it after all the...

Bernstein: I don't even understand why you're destroying it. If you've got nothing to hide and everything's on the up-and-up.

Boehm: But throw in the concept that I'm leaving the law firm. Let's say I'm leaving the law firm, my notes, ~~let's say,~~ who's going to follow up and destroy my notes to benefit you, because I do want them six months from now. Maybe that's what he's doing.

Wheeler: Yeah, he could have done it to protect you. He didn't want them around in the other office.

Bernstein: I don't know. I don't know. I don't even know if he knew he was leaving then.

Boehm: Now it's intentional!

Utley: ~~Let's close it up. Let's~~But I want to comeback were going to file PCT and US on the new one. We're going to wait for the old one to get kicked back; and when it gets kicked back by the examiners, we'll then determine how we want to amend it. Is that what you said?

Boehm: No, I want to say something on that again. I think if you want a patent to pop quickly—if that's the goal, which sounds like it's a good goal—then, no, I think we should amend the claims with a preliminary amendment before the examination.

Utley: A preliminary amendment?

Boehm: A preliminary amendment.

Bernstein: Encompassing everything we can throw in there?

Boehm: Yeah, whatever support there is. But a preliminary amendment on whatever it is on the...

Bernstein: So we're going back to the original

Boehm: So I'll fix the 119 case yeah

Bernstein: March 3, 2000, to encompass what we've embraced.

Utley: When will you be in a position to recommend what that amendment will look like?

Bernstein: It should look a lot like the one we just did.

Boehm: Yeah, that's...

Bernstein: That's my guess.

Utley: When will you be in a position to...

Boehm: I'd have to...a few days...

Utley: About a week or so?

Boehm: Oh, Yeah, within a week, sure.

Bernstein: Okay. That's good.

<End of meeting.>