

**Eliot I. Bernstein**

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**Subject:** FW: Patent Application Issues**Importance:** High

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**From:** James F. Armstrong**Sent:** Wednesday, August 09, 2000 12:54 PM**To:** Eliot I. Bernstein (E-mail); Brian G. Utley (E-mail); Douglas Boehm (E-mail); Simon L. Bernstein (E-mail); alps1@bellsouth.net**Subject:** Patent Application Issues**Importance:** High

Dear Doug,

The reason for the current air of discontent is a direct result of the conference call that occurred on Friday with Steve. Whether it was the content of the discussion or the tone of the discussion that is to blame for this discontent is not the issue. **The fact is that the call should have never taken place.** The impetus for the call was the identification of easily ascertainable mistakes in the math contained in the filing. Suffice it to say that if the math were correctly stated, there would not have been a conference call on Friday.

Now, why was the math incorrect? From my reading of your account of the whole process, the fundamental change in the expression of the aspect ratio necessitated a rewrite of the math at the 11th hour. This rewrite was handled by Brian and was not made available to me for review. If all that you did was copy and paste his "new" math into the filing, then the errors in the math can be attributed to 1.) Brian, for failure to diligently express all equations and examples consistently and accurately, and 2.) You, for what was an oversight of not checking the pasted information for the presence of squareroot symbols and references. The lateness of the hour did not afford you the luxury of rechecking Brian's math for accuracy and consistency; you had to assume that it was correct. However, it should be noted that nearly all of the errors contained in the filing were substantially the same errors/oversights that I identified and we all discussed during our initial conference call review of the 3rd draft.

In the end, the patent was filed in a form that was not ideal. Eliot's concern for the inaccuracies is valid especially in light of the fact that he cannot be expected to understand the importance or lack thereof of the errors in question. He has hired both you and Brian to be the shepherds of his intellectual property and he was fearful that these errors may have resulted in allowing a wolf to desimate his herd.

Your account of the whole process minimizes the importance of the errors that I found in the math and leaves me with the impression that iviewit would have been better off had I never been involved. Were that the case, then the errors in the math would have persisted since Brian's two revisions of the math still contained errors and inconsistencies. Eliot requested that I review the patents because he wanted a fresh set of eyes and a new perspective. That review revealed errors that would not have been identified when they were. In fact, during our conference call review of the 3rd draft you praised me for having caught an error and commented that it was "a good catch". Furthermore, a review of all of the changes that I made will reveal that there were no mistakes made by me in the corrections despite your assertion to the contrary. I feel that I've been made the scapegoat for Brian's errors and for your failure to fully discharge your obligation to ensure accuracy and completeness. I am neither the inventor of the process nor the author of the patents; I simply identified problems, provided accurate solutions to those problems and later found out that those solutions were not fully integrated.

4/24/2003

The writing of patents is a art form but they are also an exercise in precision. There was a lack of precision that took place which gave rise to Eliot's concern. Hopefully the absence of complete precision will not hurt us. In the end, I think that all of this could have been avoided had the patent process been managed better. Most importantly, the process should be managed to provide ample time for review, discussion and for changes. That management process should also anticipate contingencies and plan for them accordingly. As we all work towards the finalization of all iviewit patents, effective management of the process will ensure accuracy, completeness and our ultimate success.

As someone once said, "what doesn't kill us makes us stronger". I am hopeful that this experience will serve to strengthen all of our abilities individually and as a team.

Sincerely,

**-Jim**

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