



IVIEWIT HOLDINGS, INC.

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

April 30, 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: **Rebuttal of Christopher C. Wheeler, Esq. Response to Complaint of Iviewit Holdings, Inc., The Florida Bar File No. 2003-51,109 (15C)**

Dear Ms. Hoffman:

By way of introduction, I am Chief Executive Officer (Acting) of Iviewit Holdings, Inc. and its subsidiaries (collectively, "Company") with a background of which the Company invites you to view at <http://www.iviewit.com/management.htm>, and I write to rebut all those material contradictions and feints in the response of Christopher C. Wheeler, Esq. ("Respondent") to the Company's Florida Bar Complaint of February 25 ("Complaint").

Moreover, and as Respondent has chosen to apprise you, the Company and Respondent's employer, Proskauer Rose LLP ("Proskauer"), are parties to 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"), that, as Respondent is aware, yet prefaces and feints in more than a seven hundred word introduction, bears not one scintilla of relevance to the specific allegations contained in the Company's Complaint.

Furthermore, one more important feint to correct, wherein Respondent rolls to the right yet hopes that your Office looks to the left, is that the Company is not now nor has ever been a so called "dotcom" company, but rather is a designer and developer of video scaling and imaging technologies where, in combination and among other things, said technologies have the capability of "panning and zooming" on any image or any image



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within a video without degradation to the quality of that image (where degradation is termed “pixelation” to those skilled in the art).

Additionally, the Company technologies are targeted to device original equipment manufacturers (“OEMs”) who, when individually, or in combination with other third party hardware, firmware, and/or software, shall include them in OEM products such as, but not limited to, cable set top boxes, satellite set top boxes, analog-to-digital converter boxes, next generation DVD players, digital cameras, personal video recorders, and personal computers; alternatively the Company has the option of exclusively contributing said essential technologies to the multimedia patent pools known as MPEG 2 (digital compression according the digital television standard), MPEG 4 (another compression standard at a lower bit rate, and wherein interactive objects may be embedded), and DVD (“digital video disc”) player-drive-codec and the discs themselves. Quite all encompassing, one might say, and this is the important point to realize when viewing the material below.

Still further, from the benefit of the narrative and attached exhibits below, the Company shall prove beyond a reasonable doubt 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, a graphical portrayal of which we attach as [Exhibit A](#).

Accordingly, on behalf of the Company, I recite the major allegations, specifics of which Respondent attempts to sidestep in the four broad categories enumerated in his letter of April 7 (“Response”), contained in the Complaint and shall cite specific documentation in exhibits attached hereto:

1. Misrepresented lawyer Raymond A. Joao by Christopher Wheeler, to the Board of Directors and investors of I View It, Mr. Joao presently of counsel to Dreier & Baritz¹, New York, N.Y. initially was represented as a Proskauer Rose attorney when he was not a member of such firm, but actually of counsel to one Meltzer Lippe Goldstein and Schlissel, Mineola, N.Y.

By Respondent’s admission in his Response to the Company’s Complaint, Mr. Joao is not now or was ever an employee of Proskauer, and I direct your attention to [Exhibit B](#),

¹ The Company, presently, has knowledge that Mr. Joao is no longer at Dreier & Baritz.



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wherein an email sent to Respondent and thereafter Respondent forwarded to Joao refutes this fact.

2. Misrepresented lawyer Kenneth Rubenstein by Christopher Wheeler as a member of Proskauer Rose, and presently a partner of Proskauer Rose, but at the initiation of contact, a partner of a one Meltzer Lippe Goldstein and Schlissel.

Respondent has represented that Mr. Rubenstein was a member of Proskauer since 1998, but Rubenstein himself as sworn in his November 20, 2002 deposition as part of the Litigation, where such Litigation is still wholly irrelevant to the Complaint, but is instructive for this allegation attached herein as [Exhibit C](#), does not recall the exact period of his joining Proskauer needing to be coached by Defendant's counsel²; the Company's contention is that Respondent, Proskauer, and Mr. Rubenstein while at the Meltzer firm began representing the Company in 1998, but Mr. Rubenstein was represented as a member of Proskauer.

Moreover, it was not until the Company questioned their estate planning contact at Proskauer (as further described by Exhibit C), and in turn Respondent, as to why Mr. Rubenstein was not listed on the Proskauer website nor in the phone directory at Proskauer, that Respondent claimed Mr. Rubenstein was in transition from the Meltzer firm and that we would need to execute a retainer with Meltzer and fund their work at Meltzer until Mr. Rubenstein and Mr. Joao would officially transfer to Proskauer. Accordingly, the Company was in need of retaining two firms (nearly four months elapsed after Mr. Rubenstein and Mr. Joao were working on the Company's inventions that a retainer agreement is executed with Meltzer) to the dismay of the Board of Directors ("Board") and investors, and all occurred after engaging Respondent and Proskauer, awarding them an equity interest in the Company, and agreeing that their bills would mainly be paid by future royalties from the patent pools overseen by Mr. Rubenstein and Respondent's content and technology clients; stemming from the Company's investigation and the Litigation, there is no evidence of Respondent conducting conflict of interest checks in regard to Respondent's and Proskauer's representation of the Company.

3. Failed to take reasonable steps to ensure that the intellectual property of the Company was protected.

² Deposition of Kenneth Rubenstein at 6, 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).



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The specifics of this allegation relate to the 2002 intellectual property review undertaken by the Company's patent review counsel, Greenberg Traurig LLP, the results of which we attach herein as [Exhibit D](#). Moreover, after the expenditure of some hundreds of thousands of dollars in patent prosecution work by three firms, Respondent and Proskauer as protagonist and overseer of Meltzer and Foley and Lardner, in the estimation of Greenberg Traurig and Blakely, Sokoloff, Taylor & Zafman LLP (Company's present patent prosecution counsel), the Company's patent applications are missing critical elements and are in need of further amendment, while they have already been previously amended, to cover the embodiment and/or scope of the original inventions.

Moreover, in rebutting Respondent's response to this specific allegation, the Company shall: (a) establish that Respondent was indeed involved with patent prosecution; (b) establish that the recruitment of his personal friend and business associate, Brian G. Utley, was to further his despicable malfeasances and misfeasances in his representation of the Company; and (c) point to the specific malfeasances and misfeasances in the preparation of Company patents by Respondent as self-appointed overseer of the Company's patent portfolio.

a. Pre-Appointment of Brian Utley as President & Chief Operating Officer

This subsection a. provides a convenient reference to the point in time and unequivocally points to Respondent's involvement in the patent prosecution process. Moreover, Respondent's claim to not be involved with the patent prosecution is fraught with error, and in diametric opposition to the following documentation attached herein as [Exhibit E](#):

- Letter from Respondent in January 1999 stating Proskauer was going to obtain patents for the Company and had already begun talking with Proskauer's patent attorneys in New York;
- Letter from Respondent to a one Richard Rossman stating that Proskauer patent counsel had reviewed the patentable inventions and secured a patent, allegedly Mr. Rubenstein and his underling, Mr. Joao were counsel;
- Letter from one Hassan Miah asking Respondent to contact Rubenstein as patent counsel for the Company;
- Rubenstein letter to the Company sending information on how to formulate initial patents;
- Company letter to Rubenstein regarding the invention processes; and
- Billings of Proskauer.



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Furthermore, Respondent asserted to the Company's stakeholders and included in all business plans that Proskauer had jointly authored patent filings and that Mr. Rubenstein was overseeing the work of the other attorney, Mr. Joao, referred by both Mr. Rubenstein and Respondent. Additionally, this is not a small item as many investors relied on the statements of Respondent and Rubenstein's involvement with the Company to invest some Five Million Five Hundred Thousand Dollars (\$5,500,000) in the Company, and were attracted by the statements of Respondent after he told them that Mr. Rubenstein had opined that the Company's technologies were "novel."

Additionally, Respondent participated in a eleven hour trip (of which the Company was billed and paid for) to Orlando, Fla. where he attended a highly technical meeting with Real 3D (then an Intel, SGI and Lockheed Martin consortium) where Respondent stated that Rubenstein had opined on the strength of the technologies and that the Company had completed provisional filings; when evaluated by the technical staff of Real 3D, a referral of Respondent's, they estimated the Company's inventions as capable of generating revenues in the billions of dollars annually as said inventions applied to all forms of video and imaging systems. Still further, Respondent stated that, with respect to Proskauer's patent work, the provisional³ applications were completed and filed, thus protection of the Company's inventions were in place (unfortunately, Respondent's claims were in error as the video inventions covered at meeting were not as of yet completed). It is interesting to note in Respondent's deposition in the Litigation attached as [Exhibit F](#), where such Litigation is still wholly irrelevant to the Complaint, but instructive for this allegation, he claims that he was unaware of video inventions until the meeting with Real 3D⁴ and this is contrary to much evidence that the invention was created far before the meeting and Respondent had full knowledge of such inventions with Mr. Rubenstein and Mr. Joao (as further described by Exhibit F); this results in the Company's video inventions provisionally filed six months later than disclosure to Respondent and Mr. Joao, and whereas the imaging invention as well was filed three months later than originally envisioned by the Company .

Additionally, Respondent held copies of all patents in his office, and, factually, had been the intermediary of patent draft delivery between Mr. Joao and Mr. Bernstein since on or about April 1, 1999; presently, as a result of a granted Motion in the Litigation, where

³ For information purposes, provisional filings can be as short as a one page disclosure, and that a non-provisional filing (what industry participants commonly refer to as a patent application) must be made within one year of the provisional filings and must include claims to what the descriptive invention protects. It is the claims of the patent, when pointing to the descriptive body, that issued patent holders litigate in any patent infringement suit.

⁴ Deposition of Christopher C. Wheeler at 168, 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).



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such Litigation is still wholly irrelevant to the Complaint, but is instructive for this allegation, the Company fails to find many relevant documents in their records.

Finally, Respondent passes information from Mr. Rubenstein that everything was “OK” on several key issues regarding the patents, making those representations to the Company’s Board and the investors; Foley and Lardner, a subsequent patent counsel, taped conversations wherein Respondent opined on Joao errors and, acting as counsel, represented why the errors are “OK” in Joao’s work.

b. Post-Appointment of Brian Utley as President & Chief Operating Officer.

This subsection provides a convenient reference to the point in time and unequivocally points to Respondent’s involvement in the patent prosecution process, only this time with the recruitment of one Brian G. Utley who, from this point forward, aids and abets Respondent’s malfeasances and misfeasances in representation of the Company.

Moreover, upon referral by Respondent, the Company appoints Mr. Utley as President & Chief Operating Officer of the Company on or about September 1999; Mr. Utley began working for the Company and reviewing the provisional patent filings on or about June 1999. Furthermore, in Respondent’s self appointed role as overseer of the Company’s patent portfolio, the evidence of which is attested to by 3.a. above and Exhibit E in collusion with Mr. Utley, the Company finds Mr. Utley, after his termination by the Company, and through the investigative work of Blakely Sokoloff Zafman & Taylor LLP, writing Company inventions into his own name without assignment to the Company, and sent to his home address, using patent attorney William J. Dick of Foley and Lardner, Milwaukee, Wis.; Respondent played a big role in recommending Mr. Dick as the Company’s new patent counsel. Moreover, Mr. Dick was the patent attorney for Mr. Utley in his alleged misappropriations of intellectual property for his past employer, Diamond Turf Lawnmower (see section 9 below).

More specifically, Respondent, in collusion with Mr. Utley when concerning the patent application referenced directly above that was malfeasantly written into Mr. Utley as inventor and malfeasantly not assigned to the Company, further aids and abets a one Ryjo, Inc. and its founder, Ryan Huisman, in Ryjo’s attempt, with the aid of Respondent and Mr. Utley, to claim ownership of one of the Company’s inventions, an imaging applet (a.k.a. Zoom and Pan Imaging Design Tool as in U.S. Provisional Patent Application No. 60/233,341 and a.k.a. the Ryjo Phokus Zoom and Pan Applet⁵,

⁵ As background for this example in this allegation, Mr. Huisman was a former employee of Real 3D, wherein he had the benefit of the Company’s teachings, and is yet another example of Respondent’s failing to enforce Confidentiality Agreements on behalf of the Company (see Section 4) though such was



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collectively “Applet⁶”). Moreover, once Ryjo is proficient in this Applet, Respondent and his charge at Proskauer, a one Donald E. “Rocky” Thompson who also is an attorney not normally assigned the task of drafting a technology licensing agreement which is a complex, technical document normally assigned to a member of the U.S. Patent Bar, draft an agreement whereby the Company will enter into a transaction to own a fifty percent interest in the Ryjo Phokus Zoom and Pan Applet, one of the Company’s inventions that Ryjo is using in direct violation of the Real 3D Confidentiality Agreement, of which Respondent and Utley have full knowledge.

Moreover, had Respondent been diligent in his role as overseer of the Company’s patent portfolio, the evidence of which is attested to by 3.a. above and Exhibit E in collusion with Mr. Utley, Mr. Utley and Ryjo, Inc. would not have been able to attempt to abscond with the Company’s inventions, a true copy attributable to the Mr. Utley reference of which is attached as [Exhibit G](#). Fortunately for the Company, Mr. Utley had a provision in his Employment Agreement that gave the Company limited power of attorney to assign any inventions made by Mr. Utley to the Company (the Company incurred additional expense as a result of Respondent’s negligence, such assignment of which a true copy is attached herein as [Exhibit H](#).) Furthermore, although subsequently abandoned, Respondent’s negligence in this matter in his self appointed role as overseer of the Company’s patent portfolio, the evidence of which is attested to by 3.a. above and Exhibit E in collusion with Mr. Utley, these abandoned patent applications may provide exposure to the Company’s pending patent applications per present patent counsel Blakely Sokoloff Taylor & Zafman LLP.

Lastly, during Mr. Utley’s tenure, and attached as [Exhibit I](#), the Company presents the following documentation:

- Letter from one David Colter, former Vice President of Advanced Technology for Warner Bros., stating that he and other representatives of Warner Bros. have knowledge of favorable opinions by Rubenstein regarding the Iviewit patents to AOL Time Warner and Warner Bros representatives;
- Utley statement that he was counseled by Rubenstein as a Company advisor;

agreement executed with Real 3D, and also said agreement appears nowhere in Respondent’s files under a Court order to produce ALL files.

⁶ An applet is a program written in the Java™ programming language that can be included in a web page, much in the same way an image is included. Moreover, when using a Java technology-enabled browser to view a page that contains an applet, the applet’s code is transferred to your system and executed by the browser’s Java Virtual Machine (JVM). In the Company’s case, said Applet contains proprietary algorithms that allow for the varied zooming magnifications and other proprietary functionalities.



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- Company Private Placement Memorandum (“PPM”) approved, authored, disseminated, and billed for by Respondent stating Rubenstein as Advisory Board member, and delivered to, among various others, Wachovia Securities, Inc⁷, and wherein the language refers to Mr. Rubenstein as a retained attorney of the Company⁸, and where said PPM erroneously claims Utley as a graduate of San Francisco City College^{9 10};
- Oppositely, the deposition of Mr. Rubenstein¹¹ (it is interesting to note that Proskauer alleged that Mr. Rubenstein did not know the Company and thus did not need to be deposed; needless to say, as the Litigation has proceeded, Judge Labarga has ordered Mr. Rubenstein to testify and then later after he claims privilege for questions refuses to answer other questions, Judge Labarga has again summoned him to yet another deposition to answer the questions he refused to answer at his first deposition);
- Proposed Ryjo, Inc. Agreement; and
- Comments on proposed Ryjo, Inc. Agreement¹² by Douglas Boehm of Foley and Lardner.

c. Specific malfeasances in the preparation of Company patents by Respondent as self-appointed overseer of the Company’s patent pool, the evidence of which is attested to by 3.a. above and Exhibit E in collusion with Mr. Utley.

Following directly upon establishing Respondent’s role as self-appointed overseer of the Company’s patent pool, the evidence of which is attested to by 3.a. above and Exhibit E in collusion with Mr. Utley as evidenced by 3.b. above, what follows is the result of Respondent’s malfeasances in collusion with Utley presented in terms of the video inventions¹³ attached herein as [Exhibit J](#):

- The Company’s technology specification for the video invention;
- Respondent’s, in his role as self-appointed overseer of the Company’s patent pool, as evidenced by 3.a. above and Exhibit E in collusion with Mr. Utley,

⁷ Iviewit Holdings, Inc., Confidential Private Placement Memorandum at 30 (unpublished manuscript, on file with the Company).

⁸ *Supra* note 7, at 4.

⁹ *Supra* note 7, at 27.

¹⁰ Deposition of Brian G. Utley at 94-95, 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)..

¹¹ *Supra* note 2, at 11-12.

¹² Iviewit Holdings, Inc., Website Development Agreement at 4 (unpublished manuscript, on file with the Company).

¹³ A similar analysis for the imaging invention is available upon request.



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- submission of the video disclosure;
- The provisional patent filing; and
- The non-provisional patent filing.

Clearly, by this Exhibit J, Respondent clearly fell outside the norms of reasonability as Company counsel, in protecting the lifeblood assets of his client.

4. Allowed the infringement of patent rights of the Company and the intellectual property of the Company by other clients of Proskauer and Rubenstein. Failed to submit to patent pools overseen by Rubenstein Iviewit patents for inclusion to such pools, including but not limited to MPEG 2, MPEG 4, and DVD.

More specifically, since Company patents have not been issued, Respondent upon introduction of potential licensees to the Company (many meetings of which he personally attended, billed, and was paid for said introductions), fails to enforce the Confidentiality Agreements he personally drafted or oversaw against companies attached herein as [Exhibit K](#), a list of which is not exhaustive, and corroborated by a letter of Mr. Colter, wherein he additionally states that Warner Bros had spoken with Mr. Rubenstein who provided solid support for the Company's patents. Similarly, among one of the most grievous alleged misfeasances, Respondent as self-appointed overseer of the Company's patent pool, the evidence of which is attested to by 3.a. above and Exhibit E in collusion with Mr. Utley, fails to take even one step towards introducing the Company's inventions to the multimedia patent pools aforementioned (MPEG 2, MPEG 4, DVD). From the URL at http://www.mpegla.com/news/n_02-09-11_jvt.html, the application process is merely submitting a patent, together with a fee of Eight Thousand Five Hundred Dollars (\$8,500) per patent to cover the costs of the aforementioned Mr. Rubenstein in his role as the patent evaluator.

Still further, the Company has reason to believe that said multimedia patent pools presently use the Company's inventions without compensation to the Company¹⁴.

5. Failed to and/or inadequately completed work regarding patents, copyrights and Trademarks.

With respect to patents, we reference Respondent's role as self-appointed overseer of the Company's patent portfolio, the evidence of which is attested to by 3.a. above and Exhibit E in collusion with Mr. Utley. Moreover, when the Company finally received the provisional filings of Mr. Joao, there were multiple instances of documents that appear as

¹⁴ Especially the storage requirements inherent in DVD encoding and replication and the Video on Demand initiatives of cable operators utilizing MPEG 2 compression via digital cable.



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fraudulent submitted to Respondent, the U.S. Patent and Trademark Office, and the Company; inventors were missing from the filings, switched content in the filed patents vis a vis what the Company had instructed Mr. Joao through Respondent to file, and in some instances faxes that are transmitted in the year 1900; in all Respondent did not exercise the degree of care necessary in his role as self-appointed overseer of the Company's patent portfolio, the evidence of which is attested to by 3.a. above and Exhibit E in collusion with Mr. Utley. Subsequently, Respondent advised the Board that after Mr. Rubenstein's review of the patents there might have been some errors but that everything was "OK." Lastly, the Company references teleconference transcripts attached herein as [Exhibit L](#), wherein Respondent opines on the adequacy of the patent work performed by Mr. Joao (compare this to Respondent's deposition in the Litigation of Exhibit F) and further supporting the contention that problems existed in the filings by Mr. Joao and overseen by Respondent and Rubenstein, that would eventually expose the Company to massive shortfalls in projected revenues, cash flow, and net income.

As for copyrights, essentially, the Company's technologies are an intricate series of steps to manipulate video and image frames, and to seamlessly work together, said steps are best served by the writing of a basic source code to complete such steps over the many frames and images in any given video. Moreover, while the steps of the invention are patentable, the basic code connecting the steps is not, but is eligible for copyright protection. Respondent never obtained the copyright for the basic source code, yet billed the Company for it, absent the common law, unenforceable, copyright entitled to any author upon completion of his writing.

6. Engaged in unnecessary and duplicate corporate and other work.

The Company's references the sworn testimony of Brian G. Utley in the Litigation, where such Litigation is still wholly irrelevant to the Complaint, but instructive for this allegation attached herein as [Exhibit M](#)¹⁵.

7. Submitting false resumes for President candidate Brian Utley.

The Company attaches the submitted resume of Mr. Utley by Respondent and the footnoted excerpts from depositions in the Litigation cited below as 16 and 17, where such Litigation is still wholly irrelevant to the Complaint, but instructive for this allegation herein as [Exhibit N](#), which misrepresents Mr. Utley's, tenure and termination at Diamond Turf Lawnmower, and the involvement of, recommended by Respondent and Mr. Utley, Company patent counsel Mr. Dick in said Diamond Turf Lawnmower circumstances. Moreover, from the first of Respondent's introduction of Mr. Utley to the Company, and although Respondent is continually copied on Mr. Utley's biography in

¹⁵ Supra note 10 at 26.



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various drafts of Company business plans authored by Respondent, and Respondent's representations of Mr. Utley to various Board members, Respondent claiming he was unaware of Utley misrepresentations¹⁶, was negligent in recommending and forcing the appointment of Mr. Utley as the only means for the Company to secure the seed investment of Huizenga Holdings, one of Respondent's referrals, without Respondent's own prior independent background checks of Mr. Utley, though by Respondent's testimony therein, states he had known Mr. Utley in social surroundings since 1990, had formed a corporation with him on or about 1994, continues to know Mr. Utley in social surroundings until introduction to the Company in 1999, and thereafter serves as his chief outside counsel and self-appointed overseer of the Company's patent portfolio, the evidence of which is attested to by 3.a. above and Exhibit E in collusion with Mr. Utley; Mr. Utley, for his part, claims Respondent was aware the circumstances¹⁷.

Additionally, the Company's references the sworn testimony of Brian G. Utley in the Litigation, where such Litigation is still wholly irrelevant to the Complaint, but instructive for this allegation wherein Mr. Utley directly refutes parole evidence collected by the Company from Monte Friedkin¹⁸ of Diamond Turf Lawnmower who relates to the Company that Mr. Utley's tenure was marred by misappropriations of intellectual property naming Mr. Utley as an inventor written with the assistance of William Dick of Foley and Lardner, Milwaukee, Wis. Mr. Friedkin shall testify that these malfeasances led to the closure of his business in diametric opposition to the aforementioned resume of Mr. Utley, a biography that Respondent authored, reviewed, and approved for the Wachovia Securities, Inc. Private Placement Memorandum, among others.

8. Recommendation by Mr. Wheeler and Mr. Utley of William Dick as patent counsel for I View It without disclosure that Mr. Dick had been involved in patent malfeasances with Mr. Utley's former employer Diamond Turf products.

Upon the conclusion that the provisional patent filer for the Company, Mr. Joao, under the oversight of Respondent, the evidence of which is attested to by 3.a. above and Exhibit E in collusion with Mr. Utley, had done a poor job of capturing the inventions, Respondent and Mr. Utley suggest, as Mr. Joao's replacement, a one William Dick of Foley and Lardner, Milwaukee, Wis. Unbeknownst to the Company, it was Mr. Dick who had been involved with Mr. Utley regarding intellectual property disputes at the Diamond Turf Lawnmower company; Respondent, owing a duty of diligence and care in

¹⁶ *Supra* note 4 at 117-120.

¹⁷ *Supra* note 10 at 244.

¹⁸ Mr. Friedkin is available for questions as indicated in his inclusion on the Witness list as part of the Complaint.



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referring the Company to other legal professionals, did not disclose such happenings by and between Mr. Dick, Mr. Utley, and Diamond Turf Lawnmower¹⁹.

Moreover, equally devastating to the Company's prospects, under the oversight of Respondent as the self-appointed overseer of the Company's patent portfolio, the evidence of which is attested to by 3.a. above and Exhibit E in collusion with Mr. Utley, Respondent's referral of Mr. Dick results in the filing of patents with: (i) incorrect math; (ii) further filing patents with missing inventors with full knowledge of the rightful inventors; (iii) changing patent titles and content to harm the Company's prospects; (iv) without any knowledge of the Company, filing of patents into Mr. Utley's own name, with no assignment to the Company for Company inventions in an attempt to enrich Mr. Utley similar to the contentions of Mr. Utley's past employer, Diamond Turf Lawnmower; and (v) the incorrect conclusion that certain patent bodies could not be rewritten as they contain new subject matter, in contradiction to the views of the Company's current patent review counsel.

9. Mr. Wheeler transacted stock/securities to Tiedemann/Prolow, another referral friend of Mr. Wheeler, without proper documentation, nor Board approval.

More specifically, Respondent represented the Company in the issuance of corporate securities, without Board approval or executed documents. Moreover, once revealed to the Board, the members showed a grave concern for this matter when the Tiedemann/Prolow group was introduced by Respondent; Respondent drafted the transaction and negotiated the transaction on behalf of the Company, yet leaving no executed documents in the Board's possession from which to measure the terms and conditions of said transaction wherein the Company references the letter of Board member, Donald Kane an ex-managing partner of Goldman Sachs regarding Company concerns attached herein as [Exhibit O](#).

Furthermore, and even more negligent, Respondent drafted, negotiated, and approved for execution a Warrant grant to Tiedemann/Prolow at an exercise price so low (approximately \$155.00 per share) in comparison to the Company's valuation (approximately \$387.59 per share) that, upon execution by Mr. Raymond Hersch as Chief Financial Officer, said exercise price immediately triggered the antidilution clauses of the Company's lead investor, Crossbow Ventures and another of Respondent's referrals, to the detriment of other Company shareholders as a whole (as further evidenced by Exhibit O).

¹⁹ The Company invites The Florida Bar to further inquire of Monte Freidkin of Diamond Turf Lawnmower the circumstances surrounding these issues (Address and phone number are part of the witness list).



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Still further, the Company alleges the conversion and misappropriation by Respondent, with the assistance of Mr. Utley and Bruce Prolow, a principal of the Tiedemann/Prolow investor in question, of some Six Hundred and Fifty Five Thousand Dollars (\$655,000) in Company funds. During the discussions surrounding the Tiedemann/Prolow investment, the target investment was One Million Dollars (\$1,000,000). Moreover, at the time of the wire transfer of Tiedemann/Prolow funds, which turned out to be Three Hundred and Forty Five Thousand Dollars (\$345,000), and allegedly February 23, 2001, employees witnessed a large, steel suitcase full of cash, evidenced by [Exhibit P](#), in the Company's research and development laboratory, wherein Michael Reale, Mr. Utley's Vice President of Operations, stated that it was from a Company investor.

Lastly, Respondent was requested by several Board members to attend a series of follow-up Board meetings to explain his actions, Board meetings at which he failed to appear; thereafter, as stated above, Mr. Utley was terminated and Mr. Wheeler terminated legal services immediately, Mr. Utley filed a breach of contract complaint and, subsequently, an involuntary bankruptcy petition, and Respondent filed the Litigation, all a series of coordinated actions by Mr. Utley and Respondent against the Company to burden the Company in an attempt to cover up these and other malfeasances and misfeasances; shortly thereafter, Mr. Utley allegedly surfaced at Mr. Prolow's distance learning company, InternetTrain.com, allegedly together with stolen proprietary Company equipment, and perhaps the diverted \$655,000 of Company funds.

10. Knowing and willful destruction of Company records.

The Company references the deposition of Eliot I. Bernstein attached herein as [Exhibit Q](#) with respect to the alleged destruction of documents wherein it is equally telling that Respondent's counsel was misleading the Court in the meaning of destruction of documents²⁰. Moreover, in his deposition, where Mr. Bernstein states that documents that were not put forth under the Honorable Jorge Labarga's order to have ALL documents, but noticeable by Mr. Bernstein and Steven M. Selz, Esq., attorney for the Defendant, ALL documents were not included in the set of documents put forth by Respondent, and thus were missing and, therefore in the Company's and Mr. Bernstein's opinion, destroyed, Respondent is in direct violation of the Court order to present ALL documents.

Furthermore, of the many folders, of which the Company can submit taped review and pictures to illustrate, Mr. Bernstein and Mr. Selz noticed a mass of folders missing all

²⁰ Deposition of Eliot I. Bernstein at 235-239, 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).



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documents, allegedly pointed to the destruction of the documents supposed to be in those folders, and wherein Respondent would be in violation of the Court's order to present ALL documents for review. Additionally in said deposition, it is clear that Respondent's counsel claims that, paraphrasing, "they may be on shelves and not procured for review," wherein Mr. Bernstein states that ALL the documents were under a Court order for review, Respondent's counsel retracts his statement that there is anything on the shelves and thus Mr. Bernstein claims that the documents were therefore destroyed. Finally, in further questioning of Mr. Bernstein, Respondent's counsel thereafter states, "So destroyed means missing to you...Right. Why don't you go buy a dictionary? There's a Barnes & Noble's down the street...", as Respondent's counsel believes "destroy" does not include, refer, or infer the term "missing," and quickly closes his questioning and the deposition.

Lastly, as Barnes & Noble's is a convenient venue for information, the Company opts for a more cost effective form of information gathering and references the URL at <http://www.onelook.com> and selects the Webster's 1828 dictionary's definition of "destroy" finding:

DESTROY, v.t. [L. To pile, to build.]

1. To demolish; to pull down; to separate the parts of an edifice, the union of which is necessary to constitute the thing; as, to destroy a house or temple; to destroy a fortification.
2. To ruin; to annihilate a thing by demolishing or by burning; as, to destroy a city.
3. To ruin; to bring to naught; to annihilate; as, to destroy a theory or scheme; to destroy a government; to destroy influence.
4. To lay waste; to make desolate.
5. Go up against this land, and destroy it. Is. 36
6. To kill; to slay; to extirpate; applied to men or other animals.
7. Ye shall destroy all this people. Num. 32.
8. All the wicked will he destroy. Ps. 145.
9. *To take away*²¹; to cause to cease; to put an end to; as, pain destroys happiness.
10. That the body of sin might be destroyed. Rom 6.
11. To kill; to eat; to devour; to consume. Birds destroy insects. Hawks destroy chickens.
12. In general, to put an end to; to annihilate a thing or the form in which it exists. An army is destroyed by slaughter, capture or dispersion; a forest, by the ax, or by fire; towns, by fire or inundation, &c.

²¹ Emphasis supplied.



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13. In chemistry, to resolve a body into its parts or elements.

And its synonym, “suppress” finding:

SUPPRESS', v.t. [L. suppressus, supprimo; sub and premo, to press.]

1. To overpower and crush; to subdue; to destroy; as, to suppress a rebellion; to suppress a mutiny or riot; to suppress opposition.
2. Every rebellion when it is suppressed, makes the subject weaker, and the government stronger.
3. To keep in; to restrain from utterance or vent; as, to suppress the voice; to suppress sighs.
4. *To retain without disclosure; to conceal; not to tell or reveal; as, to suppress evidence.*²²
5. She suppresses the name, and this keeps him in a pleasing suspense.
6. To retain without communication or making public; as, to suppress a letter; to suppress a manuscript.
7. To stifle; to stop; to hinder from circulation; as, to suppress a report.
8. To stop; to restrain; to obstruct from discharges; as, to suppress a diarrhea, a hemorrhage and the like.

Consequently, the Company maintains that if the Court ordered Respondent to present ALL records for viewing and copying, and should it be apparent to Mr. Selz and Mr. Bernstein that known records are not included, then it would follow that said records are “missing”, and if such “missing” records are not shelved as Respondent’s counsel maintains, then such “missing records” have been “taken away or destroyed” and still further if “taken away or destroyed” then said records were “retained without disclosure; to conceal; not tell or reveal; as, to suppress evidence,” all in violation of the Court order to present ALL records, and in support of the Company’s Complaint.

Secondly, the Company references the general ledger of Company bills with Respondent and Proskauer attached herein as [Exhibit R](#). Moreover, as evidenced by Exhibit R, the first invoice of June 18, 1999 and the second invoice of August 24, 1999 total One Hundred and Sixty Five Thousand Five Hundred and Thirty Dollars and Fifty Five Cents (\$165,530.55) in billings for a developmental stage company, a development stage company with no employees lest the inventors, a developmental stage company with no employees and no office space, a developmental stage company with no employees and no office space and no executed business development agreements.

Furthermore, at this volume of billings and assuming Respondent was the sole billing attorney at this juncture, this volume of work represents approximately four hundred and thirty (430) billing hours for a developmental stage company with no employees and no

²² Emphasis supplied.



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office space and no executed business development agreements. Despite many requests for the itemized bills, and despite a court order in place to present ALL records, the Company still finds disclosure, not even lacking, but non-existent, and leaves the fact of just what Respondent was doing in these 430 hours as the “Eighth Great Wonder of the World,” unless he was, as the Company alleges, overseeing, directing, controlling, feloniously opining, sometimes impeding, altogether unfavorably aiding and abetting, and otherwise positioning himself between said patent prosecutions, his other clients, and the inventors.

11. Failing to list proper inventors of the technologies on the patents, and thereby submitting false and fraudulent patents to the US Patent and Trademark office based on improper legal advise by Wheeler that foreign inventors could not be listed until their immigration status was adjusted leading to further erroneous billings by Proskauer Rose for frivolous immigration work.

Respondent as the self-appointed overseer of the Company’s patent portfolio, the evidence of which is attested to by 3.a. above and Exhibit E in collusion with Mr. Utley, fails to supervise the insertion of the proper inventors, so that wherever all of, and only, Eliot I. Bernstein, Jude Rosario, and Zakirul Shirajee²³ (and in one case, Jeffrey Friedstein) do not appear as in the Company’s marked up draft in [Exhibit S](#) versus the similarly attached intellectual property docket of Blakely, Sokoloff, Taylor & Zafman LLP attached herein, the resulting patent application are subject to invalidation at issuance; this is also an instance of Respondent’s negligence in his role as the self-appointed overseer of the Company’s patent portfolio, the evidence of which is attested to by 3.a. above and Exhibit E in collusion with Mr. Utley, when viewing the Blakely docket and witnessing how many other patent applications name Mr. Utley as an inventor.

12. Failure to communicate with Company to the detriment of the Company, and in certain instances communication of false materials to the Company.

Former Board director Mr. Kane and other members of the Board were concerned over a proposed transaction by Respondent and Mr. Utley whereby the Company would undertake a merger with a distance learning company; the legal bills incurred for this unauthorized proposed transactions were horrific. Moreover, Mr. Utley arranged transportation for representatives of said distance learning company; Board members

²³ Mr. Shirajee has submitted taped conversations whereby he states that he met Respondent and Mr. Joao, reviewed patents, attended meetings with Respondent and Mr. Utley at Real 3D, and executed invention papers.



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were so disturbed they asked the distance learning representatives to leave, and notified Mr. Utley that they were all equally concerned with his new investor, Tiedemann/Prolow, the fact that no documents were circulated or in place for the investment. Mr. Prolow, a principal of the investor who received such securities in the Company and a Company director at that time, was also the owner, whether directly or in his capacity of a principal of a Tiedemann/Prolow, of a minority interest of the distance learning company.

Moreover, as a result of Respondent unauthorized structuring of this aborted merger transaction as well as the Tiedemann/Prolow investment, the Company suffered to temporary loss of computers that were stolen, and that contained both highly confidential proprietary processes and corporate records; the Company has reason to believe that said stolen property was taken to Mr. Prolow's distance learning company in New Jersey.

13. Lastly, the negligent actions of Wheeler and Proskauer resulted in and were the proximate cause of loss to the Company.

The history of the Company, literally back to the first day of discovery of the inventions, sees the allegations described in Defendant's Motion for Leave to Amend to Assert Counterclaim for Damages, 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) attached herein as [Exhibit T](#), a motion of which stems from that certain Litigation that is still wholly irrelevant to the Complaint, but is instructive for this allegation, as all relating back to a very small group of attorneys overseen by Respondent as graphically described by Exhibit A, and after review by the Company's present patent review counsel, the work product overseen by Respondent result in the causing of damages to the Company over a twenty year patent life, as described in the Company's projections across all distribution channels as evidenced by [Exhibit U](#) attached herein.

Moreover, that upon the discovery of the above referenced events, the Company's lead investor, Crossbow Ventures, ceased funding of the Company. Furthermore, Crossbow Ventures, a referral of Respondent, obtained a security interest in the Company's inventions, under the guise of protecting the Company against the actions of Respondent and Mr. Utley, when factually, such conduct was motivated by Crossbow's attempts to wrongfully interfere with the interests of the Company in its inventions; such conduct, upon information in possession of the Company, was undertaken with the assistance of Respondent and Mr. Utley as described and attached herein as [Exhibit V](#).

Presently, as a result of Respondent's malfeasances and misfeasances, the Company may have suffered proximate damages to its entire international patent portfolio as Office



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Actions, perhaps indefensible by the Company, have issued that relate to a critical part of the Company's technology seen as its largest revenue driver.

Additionally, Ms. Hoffman, the Complaint, contrary to the contradictions and feints ascribed to by Respondent, was borne from almost two year's investigative work by Company management, Caroline P. Rogers, Esq., and, under her direction, Mr. Selz, when viewed in light of our fiduciary responsibilities as officers and directors to the Company's shareholders rather than some "Hail Mary" vendetta theory as a result of a denied motion in the Litigation, fiduciary responsibilities of which we take very seriously in light of the large amount of capital invested by prominent business and entertainment people to date.

Moreover, in assembling all of these issues into a coherent picture of what transpired, the Company has found corporate records and attorney files missing or destroyed, computer files mysteriously formatted and reformatted, stolen equipment, the locking of the Company's domain, the "hackings" of the Company email server, web server, and other electronic equipment and computer virus infections of same, and, last but not least, the breaking and entering on many occasions to the private homes of the Company's founder, Eliot I. Bernstein. Accordingly, it has been a monumental task to piece the series of events together from former members of the Board, investors, past employees not involved in the conspiracy, the relevant facts and documents to support these allegations.

Lastly, the Company urges The Florida Bar to question each and every individual referred by Respondent to the extent of their involvement in any wrongdoings, as it is clear by Respondent's 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, and attached herein as [Exhibit W](#)^{24 25 26}.

Moreover, in the Company's view, it is of interest to note that although what Mr. Selz, Ms. Rogers, and the Company have termed a "conspiracy" while it involves many people, all those roads in said "conspiracy" lead to Respondent and his referrals.

²⁴ Supra note 4 at 119.

²⁵ Supra note 10 at 109.

²⁶ Christopher C. Wheeler, *Response to Complaint of Eliot Bernstein Against Christopher Wheeler*, *The Florida Bar File No. 2003-51,109 (15C)* 6 (April 7, 2003).



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Alternatively, of the countless other investors, employees, and professionals involved with the Company not a single instance of malfeasance or misfeasance has been leveled against any other individuals other than Respondent and his referrals, whether they be the following well respected businessmen, lawyers, law firms, and philanthropists not introduced by Respondent, including but not limited to: Wayne Huizenga, Wayne Huizenga Jr. (seed investors), Alan Epstein, Esq., Michele Mulrooney, Esq., Kenneth Anderson, CPA, Donald Kane (ex-managing partner of Goldman Sachs), James Osterling, James Armstrong, Blakely Sokoloff Taylor & Zafman LLP (present patent counsel), Irell and Manella (law firm), Armstrong Hirsch Jackoway Tyerman & Wertheimer (law firm), Ellen DeGenres (shareholder), Alan Young (shareholder), Allan Shapiro (Atlas Entertainment – shareholder), Mitchell Welsch (UBS Paine Webber), Jeffrey Friedstein (Goldman Sachs, shareholder) and many more esteemed individuals represented on the witness list sent to The Florida Bar as part of the Complaint.

In closing, Ms. Hoffman, and contrary to the contradictions and feints of Respondent, it should be apparent that by filing this Complaint and the Motion of Exhibit T, a motion of which stems from that certain Litigation that is still wholly irrelevant to the Complaint, but is instructive for purposes of the Company's Complaint, the Company, nor Mr. Bernstein, nor myself were acting unilaterally, but on the advice of competent counsel in the State of Florida and his associate Ms. Rogers who have levied these charges against Respondent, the ferocious attack on Mr. Bernstein is a not so well concealed attempt to ignore and deny some very damning facts, facts of which competent and licensed attorneys, who have reviewed the case and the evidence, have urged the filing of this Complaint. Moreover, it is the fiduciary responsibility of the Company and its officers and directors to call upon additional investigatory bodies to protect the Company and its stakeholders.

Finally, after the expenditure of nearly Five Million Seven Hundred and Fifty Thousand One Hundred and Forty Six Dollars (\$5,752,146) of total invested capital that includes, but is not limited to, approximately \$400,000 in payments of Respondent's past invoices, approximately \$50,000 of past legal billings by Meltzer Lippe Goldstein & Schlissel, approximately \$200,000 of past legal billings by Foley & Lardner, approximately \$145,000 of past legal fees in reviewing, repairing in part, and reassigning the Company's patent applications by Blakely, Sokoloff Taylor and Zaffman LLP, and approximately \$250,000 in future legal bills of Greenberg Traurig LLP, when viewing the malfeasances and misfeasances as detailed in this rebuttal, the facts of which, in the opinion of the Company, are clearly beyond dispute, we request you to force refund of those monies and are aware that such refunds sometimes occur. Additionally, with respect to the alleged conversion and misappropriation of Company funds enumerated in section 9 above, and if Respondent ultimately receives discipline, whether by admonishment, reprimand, suspension, resignation, or disbarment, the Company shall



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seek redress from the Clients Security Fund of The Florida Bar, wherein we shall file a claim in the fulfillment of our fiduciary responsibilities to the Company's shareholders.

Thank you for your diligent attention to this matter, Ms. Hoffman, and time is of the essence as international Office Actions have issued, the Company's patents are in need of repair, and the investments of the Company's stakeholders are in jeopardy.

Sincerely,

IVIEWIT HOLDINGS, INC.

By: _____
P. Stephen Lamont
Chief Executive Officer (Acting)



EXHIBIT A

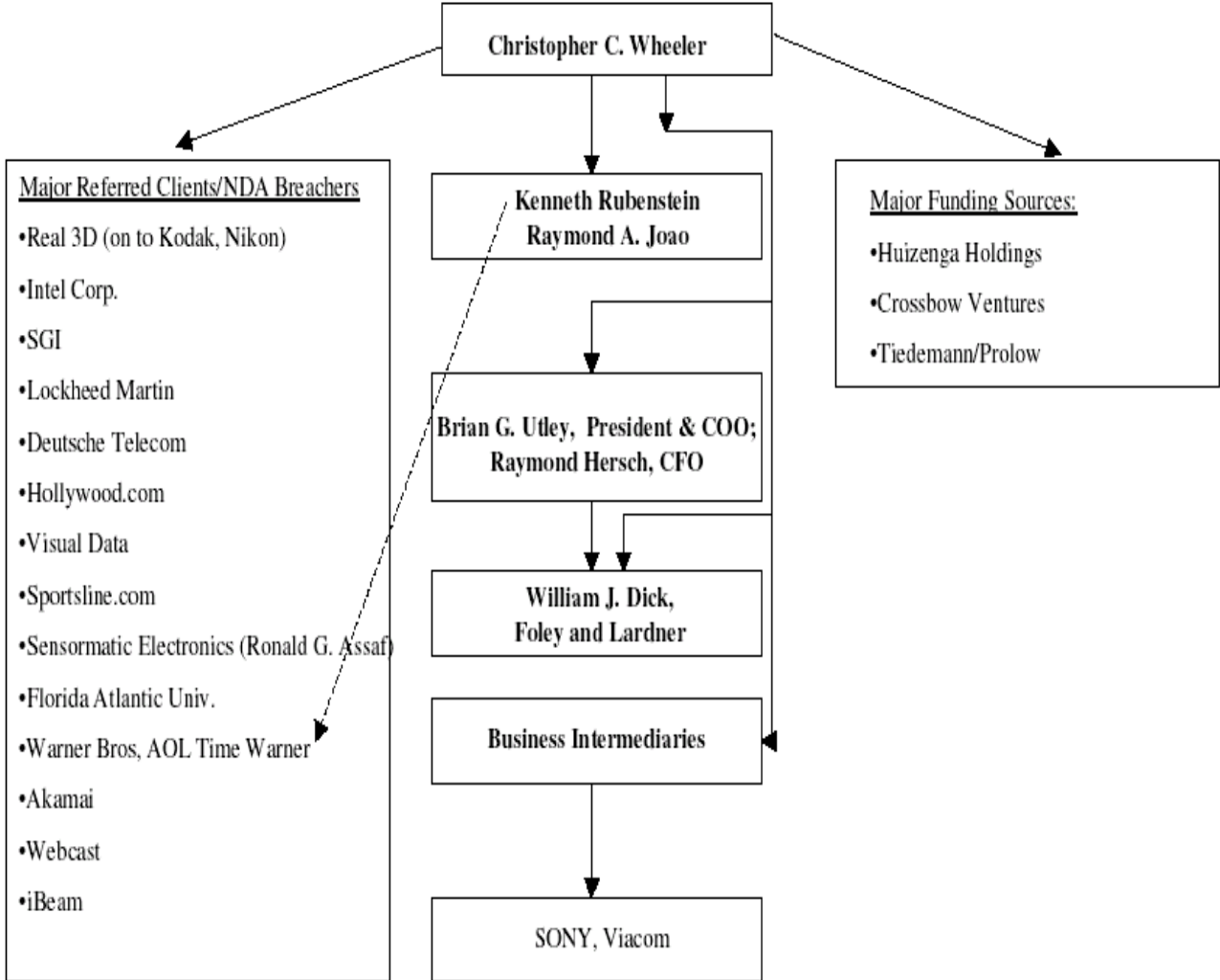




EXHIBIT B



-----Original Message-----

From: Eliot Bernstein [mailto:alps@netline.net]
Sent: Tuesday, February 23, 1999 7:53 AM
To: Kenneth Rubenstein (E-mail); Christopher C. Wheeler (E-mail)
Subject: Please call when you receive this message. 800.519.0234 or
561.417.8980

Ken,

Per our discussion, I have attached the following file = process.doc.

Eliot

<< File: ATT00027.html >> << File: PROCESS.doc >>

-----Original Message-----

From: Eliot Bernstein [mailto:alps@netline.net]
Sent: Friday, March 05, 1999 6:42 AM
To: Simon L. Bernstein (E-mail)

Subject: FW: Please call when you receive this message. 800.519.0234 or
561.417.8980

from the patent attorney at Proskauer

Eliot:

I got the e-mail. I looked over the materials. You have invented a process which appears to be a processing and/or manufacturing process for providing enhanced video images for use on the World Wide Web.

There appears to be no reason why we could not get an application out in a rather short time period to establish patent pending. I'll be out of the office until about 3:00 pm today, but I will call you when I get back.

Ray Joao 516-747-0300 x240

-----Original Message-----

From: Eliot Bernstein [SMTP:alps@netline.net]
Sent: Thursday, March 04, 1999 6:18 PM
To: Raymond A. Joao

Subject: FW: Please call when you receive this message. 800.519.0234 or
561.417.8980

10158 Stonehenge Circle, Boynton Beach, Fla. 33437 • T (561) 364-4240 • www.iviewit.com

Proprietary & Confidential



EXHIBIT C



DEPOSITION OF MR. RUBENSTEIN

1 Rubenstein

2 me, but I am going to put objections on the
3 record, if I want to.

4 Q. That's fine.

5 Now, starting off with, sir, could
6 you please state your full name?

7 A. Kenneth Rubenstein.

8 Q. "Kenneth Rubenstein." And where
9 is your place of employment currently,
10 Mr. Rubenstein?

11 A. Proskauer Rose.

12 Q. Where is that located?

13 A. 1585 Broadway, New York.

14 Q. And how long have you been
15 employed with Proskauer Rose?

16 A. About four, four-and-a-half years.

17 Q. Somewhere between 1997 and 1998
18 was your first date of employment?

19 A. I think it was in 1998.

20 Q. Do you remember a month?

21 A. Possibly June.

22 Q. June. Where were you employed



23 prior to your employment with Proskauer Rose?

24 A. I was with a law firm, Meltzer,

25 M-E-L-T-Z-E-R, Lippe, L-I-P-P-E.

-----Original Message-----

From: Eliot Bernstein [mailto:alps@netline.net]

Sent: Thursday, January 28, 1999 8:42 PM

To: 'agortz@proskauer.com'

Subject: Ken Rubenstein

Al,

I was unable to locate a contact at your firms website for Ken. I did find the following contacts, is he either one or both listed.

KENNETH RUBENSTEIN

[MELTZER LIPPE GOLDSTEIN WOLF & SCHLISSEL PC](#)

190 Willis Ave

Mineola, New York 11501-2639

Phone: (516) 747-0300

Fax: (516) 747-0653

krubenstein@mlg.com

Position: Member

New York Law School, New York, NY

Patent, Trademark & Copyright Law

or

KENNETH A. RUBENSTEIN

[BAER MARKS & UPHAM LLP](#)

805 Third Ave

New York, New York 10022-7513

Phone: (516) 741-5553

Fax: (212) 702-5941

Admitted: New York, 1983 New Jersey, 1983

Education: New York Law School, New York, NY

Areas Of Practice: Patent, Copyright and Trademark Law Trade Secret

Born: 1954



EXHIBIT D



<u>Provisional Application No.</u>	<u>Non- Provisional Application No.</u>	<u>Last Application Title</u>	<u>Greenberg Traurig Evaluation</u>
60,125,824	09,522,721	Apparatus and Method For Producing Enhanced Digital Video Images	Abandoned ²⁷
60,137,297; 60,155,404; 60, 169,559	09,587,734	System and Method For Providing an Enhanced Digital Video File	Description of the invention does not match claims
60,137,297; 60,155,404; 60, 169,559	09,587,026	System and Method For Playing Video	Description of the invention does not match claims
60,137,297; 60,155,404; 60, 169,559	09,587,730	System an Method For Streaming Video	Description of the invention does not match claims
60,125,824; 60, 146,726; 60, 149, 737; 60,155,404; 60, 169,559	09,630,939 continued from 09, 522, 721	System and Method For Producing an Enhanced Digital Image File	Need to revise claims across all communications networks ²⁸
N/A	Combined technologies		Never filed.

²⁷ Abandoned, as a result of the more robust filing of 09,630,939.

²⁸ From the original provisional filing of Mr. Joao, the environments claimed by this application are severely narrower than in the original disclosure of the Company.



EXHIBIT E



JANUARY 1999 LETTER OR RESPONDENT

Christopher C. Wheeler
Member of the Firm

Direct Dial 561.995.4702
cwheeler@proskauer.com

January 8, 1999

Eliot I. Bernstein
500 SE Mizner Boulevard
Suite 102
Boca Raton, FL 33432-6080

Re: Iviewit Legal Work

Dear Elliott:

I apologize for the delay in getting back to you. Our year end was quite hectic, but we are now focusing on your project and we are prepared to devote our full resources to it. We have reviewed your proposed business plan and offering with great interest. In helping you move this matter ahead, we would propose the following:

1. Formation of Corporation

We recommend that we immediately form a Florida corporation on your behalf. We would propose that the corporation be named Iviewit Corp. or Iviewit Corporation. We would also propose that the Florida corporation have 5 million authorized shares of common stock and one class of preferred stock. The common stock would be a 1¢ par value. The corporation would be formed immediately (we anticipate this could be completed within one or two days) and would be a C Corporation. The fees and costs associated with the formation would approximate between \$1,000 and \$1,500;

2. Additional Corporate Documentation

We would recommend that shareholders' agreements and perhaps employment contracts be prepared at this time. The shareholders' agreement is necessary because individuals other than yourselves will be involved as shareholders. The employment agreements, while not absolutely necessary, would help conceptualize your present relationship with the firm and would allow you to define your benefits now prior to the involvement of



Eliot I. Robinson
January 8, 1999
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investors. We anticipate that the preparation of these shareholders' and
agreements would cost approximately \$2,000 to \$3,000 depending upon
their complexity. We would recommend commencing this work immediately and would
anticipate that it could be completed within the next three weeks;

3. Protection of Intellectual Property Rights

We strongly recommend trademark and copyright protection of the Iviewit name under Federal law. This protection should be commenced immediately. In addition, if possible, strong consideration should be given to some patent or proprietary protection of the assemblage of software and the methodology used in connection with the production of Iviewit's services. We are presently discussing this protection with our New York intellectual property attorneys and verifying the appropriate fees and costs of each. We would propose to commence the trademark and copyright work immediately, and we would anticipate that the trademark/copyright matter would take approximately a month. The patent work should also be commenced now and may take considerably longer;

4. Offering Circular

In connection with your fund-raising efforts, we would propose to use your present business plan and offering as a base and revise it to provide the appropriate disclaimers and disclosures. In the event you raise capital from a limited number of accredited investors, we would anticipate that the cost of the revision of the offering memorandum would approximate \$5,000 - \$10,000. In the event that you begin to sell to non-accredited investors, we would need to expand the documents significantly. The cost could approximate \$15,000 to \$25,000. We are prepared to commence this work immediately and anticipate that it could be completed within the next few weeks;

5. Additional Corporate Work

From time to time, there will be additional corporate work most probably involving investment banks, underwriters, contracts, general corporate matters and securities matters. We will be available to handle this work on a daily basis. It is difficult to estimate what this would approximate dollar-wise since it will depend on what matters arise.

6. Staffing

We are prepared to dedicate whatever portion of our professionals' time is necessary to handle your matters successfully. We are prepared to offer you continuing corporate, intellectual property and other support as you may require in the years ahead. Your business is important to us and we will fully commit whatever resources are necessary to do the work quickly and to build what we hope will be a long-term relationship.

7. Fees

Generally, we will bill you monthly based on our hourly billing rates plus out-of-pocket expenses. All tactical and strategic decisions would be discussed with you and other members of your management team as appropriate.



Eliot I. Bernstein

January 19, 2009
The lawyers who would be assigned to your matter have various billing rates. We would anticipate that most of your work be done by me, Rocky Thompson, Gayle Coleman and Mara Lerner Robbins. Our billing rates are \$385, \$275, \$220, and \$165 respectively.

Please note that in addition to attorneys' fees, you would also be responsible for out-of-pocket expenses for the cost of mailing, telephone, photocopying, faxes, hand deliveries and the like.

We are in a service business and that is the primary orientation of our Firm; we believe in a thoughtful but rapid response to our clients needs in delivering value for our client's money. We believe we have a non-nonsense approach in providing the best in legal services. We welcome the opportunity to handle Iviewit's initial legal work and look forward to continuing to service your future legal needs.

Please call me at your earliest convenience. We are prepared to form the corporation and commence trademark and copyright protection upon your authorization.

Sincerely,

Christopher C. Wheeler

CCW/gb



LETTER OF RESPONDENT TO ROSSMAN

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



LETTER FROM HASSAN MIAH

> -----Original Message-----

> From: eib [SMTP:alps@netline.net]

> Sent: Saturday, May 29, 1999 8:24 PM

> To: hmiah@xingtech.com

> Subject: iviewit, inc.

>

> <?XML:NAMESPACE PREFIX = O />

>

> Hassan,

>

> Have you heard any news from Kevin? Hope all is going well.

>

> Eliot

-----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



LETTER FROM MR. RUBENSTEIN



PROSKAUER ROSE LLP

1585 Broadway
New York, NY 10036-8299
Telephone 212 969 3000
Fax 212 969 2900

1500 ANGLETS
WASHINGTON DC
BOCA RATON
CLAYTON NJ
PARIS

Kenneth Rubenstein
Member of the Firm
Direct Dial 212 969 3185
krubenstein@proskauer.com

40017.001
Ivickit
GKKKPAK
Call

March 2, 1999

VIA NEXT DAY AIR

Mr. Eliot I. Bernstein
500 S.E. Mizner Blvd.
Suite 102
Boca Raton, Florida 33432-6080

Re: Ivickit

Dear Eliot:

I just thought I would send you a few sample patents so you
required by the patent office.

Please contact me if you would like to discuss

Very truly yours,


Kenneth Rubenstein

KR/jw
Enclosures

cc: Christopher C. Wheeler, Esq.
Albert W. Gortz, Esq.

Patent
file?
Correspondence

Enclosure is

23 2:42 PM



LETTER FROM COMPANY TO MR. RUBENSTEIN

-----Original Message-----

From: Eliot Bernstein [mailto:alps@netline.net]
Sent: Tuesday, [February 23, 1999 7:53 AM](#)
To: Kenneth Rubenstein (E-mail); Christopher C. Wheeler (E-mail)
Subject: Please call when you receive this message. 800.519.0234 or
561.417.8980

[Ken,](#)

[Per our discussion, I have attached the following file = process.doc.](#)

Eliot

<< File: ATT00027.html >> << File: PROCESS.doc >>



PROSKAUER BILLINGS

02/18/99 C WHEELER .25 Conf with Mr. Rubenstein

01/14/99 C WHEELER .50 Follow up on status on intellectual property review and new incorporation

01/28/99 A GORTZ .75 Ken Rubenstein call, cf call Eliot Bernstein & Ken Rubenstein, cf Mara Robbins re confidentiality agreement

02/01/99 C WHEELER .25 Conf as to status of intellectual property work

02/16/99 C WHEELER .25 Conf with Mr. Bernstein; call to Mr. Rubenstein

02/17/99 C WHEELER .25 Call to Mr. Rubenstein re patent advice; call with Ms. Coleman re financial advisor

02/18/99 C WHEELER .25 Conf with Mr. Rubenstein

03/16/99 M ROBBINS .50 Inter-office conference with Wheeler re: intellectual property matters.

03/29/99 K HEALY 1.25 Tc w/C. Wheeler; tcs w/Eliot Bernstein re intellectual property protections; tc w/Raymond Joao re patent pending; tcs w/E. Bernstein and Jerry Levin re license business models; review protectability of web-sites

03/31/99 K HEALY .25 Tc w/K. Rubenstein re Patent advice

04/22/99 K HEALY .25 Tc w/R. Joao; e-mail to E. Bernstein

05/12/99 C WHEELER 1.00 Conf with Messrs Bernstein and Lewin; call to R. Joao; transmittal of agreement

05/12/99 C WHEELER .50 Conf with Mr. Joao re stock ownership, subsidiary and patent protection

05/12/99 C WHEELER 2.00 Conf with Joao; meeting with Thompson to arrange for confid. agreements and generic agreements



05/20/99 C WHEELER .75 Conf with Mr. Joao

05/20/99 C WHEELER 2.00 Call to Mr. Lewin; conf with Ken Rubenstein;
conf with Mara Lerner; numerous conf with
Elliot Bernstein

05/20/99 C WHEELER 1.00 Conf with Mr. Joao

05/25/99 C WHEELER 11.00 Trip to Orlando for meeting with Real 3D
technology staff

05/26/99 C WHEELER 1.00 Review of patent; set up patent conference;
arrange follow up on shares;

05/27/99 C WHEELER .50 Conf with Mr. Rubenstein

05/27/99 C WHEELER 1.50 Overview of Iviewit patent matters and
corporate matters

05/28/99 C WHEELER .50 Confirmation on Joao meeting

05/28/99 C WHEELER 2.00 Meeting as to patent issues and management
matters

05/28/99 C WHEELER .50 Conf. w/K.Rubenstein

05/28/99 K HEALY .50 Tcs w/C. Wheeler re IP Issues; review web-site

05/31/99 C WHEELER 1.00 Review of patent and other materials

06/01/99 C WHEELER 4.00 Conf with Mr. Rubenstein; conf with Mr. Lewin;
conf with Mr. Healy; conf with Mr. Joao; conf
with Mr. Akselrod re patents, tax
ramifications, copyright work;

06/01/99 K HEALY 1.50 Conference call w/E. Bernstein, R. Joao, K.
Rubenstein, C. Wheeler, and others re iviewit
I.P. issues; review cd.rom

06/03/99 C WHEELER 2.00 Call to Mr. Joao; call to Mr. Healy; conf with
Mr. Bernstein; review of numerous
correspondence; conf with Mr. Lewin

06/04/99 C WHEELER 2.00 Prep of revised confidentiality agreement; call
to Ms. Bibona; conf with Mr. Joao;

06/11/99 C WHEELER .25 Call to R.Joao



06/16/99 C WHEELER 4.00 Meeting with Mr. Joao and Messrs. Bernstein re patent and other matters

06/23/99 S KAPP .50 Conf. with CCW regarding various matters pertaining to structure, patents, confidentiality agreements

06/18/99 C WHEELER 3.50 Review of patents with Mr. Joao; conf with Mr. Lewin re status; conf with Mr. Bernstein; Check of status of new corporate documents

06/23/99 S KAPP .50 Conf. with CCW regarding various matters pertaining to structure, patents, confidentiality agreements

07/28/99 C WHEELER 3.50 Conf with Mr. Lewin; conf with Mr. Buchsbaum; review of corporate status; conf with Mr. Thompson; review of corres. from Mr. Epstein; call to Mr. Joao; conf with Mr. Wilson; conf with Mr. Joao; call to Mr. Lewin

07/31/99 C WHEELER 1.50 Review and organization of various matters involving meetings, venture capital, patents and prospects

08/04/99 S KAPP .25 T/c with Ray Joao

09/09/99 K HEALY .50 Review files to prepare IP Materials for E. Bernstein and B. Utley

09/10/99 C WHEELER .25 Arrange for patents

09/10/99 C WHEELER 2.00 Conf with Mr. Brandon; conf with Mr. Brandon; conf with Mr. Rubenstein; transmittal of materials to Mr. Rubenstein; Call to Mr. Joao

09/13/99 C WHEELER 1.00 Conf with Mr. Brandon; conf with Mr. Joao;

09/13/99 J ZAMMAS 1.25 Discuss patents with C. Wheeler's secretary;

09/21/99 C WHEELER .25 Call to Mr. Utley re patent meeting

09/21/99 C WHEELER 1.00 Conf with Mr. Utley re patent meeting and status of negotiations; call to Mr. Brandon



09/22/99 J ZAMMAS 3.00 Work on patent binders and trademark binders for C. Wheeler; telephone Raymond Joao regarding all patents; compile all documents by shareholder/noteholder

09/23/99 J ZAMMAS .25 Telephone Raymond Joao regarding patents.

09/24/99 C WHEELER 1.00 Call on utilities; follow up on space requirements; conf on patent questions

09/24/99 J ZAMMAS .50 Update shareholder list; telephone Raymond Joao's secretary regarding patents; advise C. Wheeler.

09/27/99 J ZAMMAS 2.50 Revise consents to indicate that Brian Utley is elected as Chief Operating Officer of the three entities; telephone calls from Mr. Joao's office regarding patents; complete work on patent binders for C. Wheeler; send stock certificate of uview.com, Inc. to Patricia Daniels; send iviewit.com LLC subscription letters to James Armstrong, Andrew Dietz, Lisa Friedstein and James Osterling.

11/29/99 J ZAMMAS .25 Copy official filing receipts for two patents, insert in patent binders and give two copies to Brian Utley to insert in his binders.

01/11/00 C WHEELER 1.00 Conf with Mr. Bernstein re patents and infringement

01/11/00 C WHEELER 1.00 Conf with Mr. Joao re patents

01/11/00 C WHEELER .50 Conf with Mr. Lewin re patents

10/11/00 C WHEELER 1.50 Conf with Mr. Utley re Ken Rubenstein and Time Warner; conf with Mr. Rubenstein



EXHIBIT F



DEPOSITION OF RESPONDENT

1 A. Well, I reviewed what I had. We came
2 back -- If you noticed, we went on the trip on 5/25.
3 At that meeting, for the first time, Eliot displayed
4 to all of us a new product. A video product. And I
5 was driving with his - with his father and with Jerry
6 Lewin in one car and Eliot was in another car, and as
7 we were driving back I said - I asked the question, I
8 said, this new product, is this - what have you done
9 on the patent on this? And Eliot told us all - he was
10 on the phone, he was in another car - he told us all
11 that they hadn't done any work on that yet.

12 So what I did was, I - Eliot had - as he
13 had the patents, he wanted us to lock them up, so I
14 had them locked up. So I pulled - when we returned, I
15 pulled up the locked up patents out to make sure I had
16 them. So I was reviewing them, and we determined we
17 were going to have to set up a conference to make sure
18 he was covered with Joao and everybody to see what to
19 do in view of this new development.



Eliot I. Bernstein

Subject: FW:
Importance: High
Sensitivity: Confidential

-----Original Message-----

From: EIB [mailto:alps1@bellsouth.net] **On Behalf Of** iviewit, inc. (E-mail)

Sent: Tuesday, May 04, 1999 7:29 AM

To: James F. Armstrong (E-mail); Simon L. Bernstein (E-mail); Andrew R. Dietz (E-mail); Donna Dietz (E-mail); Theodore D. Lanzaro (E-mail); Guy Iantoni (E-mail); James A. Osterling (E-mail); Kevin J. Healy (E-mail); Christopher C. Wheeler (E-mail); Jude Rosario (E-mail)

Subject: Business plan revisions

iviewit intends to establish itself as a global leader in virtual multimedia display by licensing its patented virtual imaging and streaming video technologies as well as utilizing these proprietary technologies to build an e-commerce portal with production values exceeding those of any existing portals. **iviewit** will generate revenues from the licensing of proprietary technologies, strategic e-commerce revenue sharing agreements, strategic advertising agreements, and by establishing an image and video production capability. In the **iviewit** web site, products are represented in a high definition virtual reality environment where the end user can control and manipulate the product environment to view multifaceted dimensions with high-powered magnification. **iviewit** video technology enables the user to see TV quality full motion and full screen Internet video without the standard grainy picture and lengthy download times. Simply put, **iviewit** technology redefines the quality of the virtual viewing experience.



EXHIBIT G



Atty. Dkt. No. 57103/123

U.S. PROVISIONAL PATENT APPLICATION

for

**ZOOM AND PAN IMAGING
DESIGN TOOL**

Inventors:

Brian G. Utley
1930 SW 8th Street
Boca Raton, FLORIDA 33486
Citizenship: U.S.

FOLEY & LARDNER
Attorneys at Law
777 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202
(414) 271-2400



EXHIBIT H



BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

A LIMITED LIABILITY PARTNERSHIP
INCLUDING LAW CORPORATIONS

TELEPHONE (310) 207-3800

FACSIMILE (310) 820-5988
(310) 820-5270

BSTZ_MAIL@BSTZ.COM
WWW.BSTZ.COM

INTELLECTUAL PROPERTY LAW

12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1026

OTHER OFFICES

AUSTIN, TX
SUNNYVALE, CA
COSTA MESA, CA
SAN DIEGO / LA JOLLA, CA
PORTLAND / LAKE OSWEGO, OR
SEATTLE / KIRKLAND, WA
DENVER / ENGLEWOOD, CO

August 4, 2001

Confirmation Copy

CONFIDENTIAL COMMUNICATION
ATTORNEY-CLIENT PRIVILEGED

VIA E-MAIL
(And Confirmation By Mail)

Eliot Bernstein
IVIEWIT.COM, INC.
505 North Brand Boulevard, Suite 1420
Glendale, California 91203

Re: Powers of Attorney for Six PCT Applications:

Apparatus and Method for Producing Enhanced Digital Images Serial No. PCT/US00/07772 Our File No. 005707.P009PCT Foley's Reference No. 110	System and Method for Playing a Digital Video File Serial No. PCT/US00/15406 Our File No. 005707.P012PCT Foley's Reference No. 113
System and Method for Streaming an Enhanced Digital Video File Serial No. PCT/US00/15408 Our File No. 005707.P010PCT Foley's Reference No. 111	System and Method for Video Playback Over a Network Serial No. PCT/US00/15602 Our File No. 005707.P016PCT Foley's Reference No. 118
System and Method for Providing an Enhanced Digital Video File Serial No. PCT/US00/15405 Our File No. 005707.P011PCT Foley's Reference No. 112	System and Method for Providing an Enhanced Digital Image File Serial No. PCT/US00/21211 Our File No. 005707.P018PCT Foley's Reference No. 120

Dear Eliot:

Being e-mailed (and enclosed herewith) are six (6) Powers of Attorney for the subject PCT Patent Applications, one Power for each inventor named in any one or more of the PCT patent applications, and one Power for the corporation, Iviewit Holdings, Inc. Three of the Powers require your signature, as follows: (i) one by you in your individual capacity; (ii) a second by you in your capacity as designee of the corporation to sign on behalf of Brian Utley (we hope the PCT Office will recognize Utley's having granted a Power of Attorney to his corporate employer); and (iii) a third by you for the corporation in your capacity as its Secretary. Kindly sign where your



BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

A LIMITED LIABILITY PARTNERSHIP
INCLUDING LAW CORPORATIONS

Eliot Bernstein
IVIEWIT.COM, INC.
August 4, 2001
Page 2 of 2

signature is indicated on the three Powers of Attorney and return the original executed Powers to our office via mail (we need to have each Power with an original signature). Also fax each Power to us at (310) 820-5988, to expedite the process.

As we discussed, we request that you also forward each of the three remaining Powers to Jude R. Rosario, Jeffrey S. Friedstein and Zakirul A. Shirajee, respectively, for their signatures. Kindly instruct each of them to execute the Powers and to return the originals to our office by mail. In order to expedite the matter, request each of them to fax a copy to us, if possible.

If you have any questions, please feel free to contact my Assistant, Jan Gass. We appreciate your attention to getting the subject Powers executed and returned to us. We will then attend to their filing with the PCT Office.

Best personal regards,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Digitized Signature

Norman Zafman

NZ/jg
Enclosures

cc: Ross Miller (w/Enclosures via E-Mail) ✓

P.S. to Ross Miller:

Ross, please attend to getting a Board Resolution appointing Eliot as the corporation's designee for signing the subject Power on behalf of Brian Utley. We talked about this in the context of giving Eliot comfort; however, the PCT Office may well request such a Resolution (in addition to a copy of Utley's Employment Agreement, which we already have).



EXHIBIT I



LETTER FROM MR. COLTER

-----Original Message-----

From: David.Colter@warnerbros.com [mailto:David.Colter@warnerbros.com]
Sent: Wednesday, August 01, 2001 10:28 PM
To: HeidiKrauel@aol.com
Cc: HPowell@cb-ventures.com; Eliot@iviewit.com
Subject: Re: Today -- iviewit

Heidi,

Here is the info for Hank Powell from Crossbow Ventures. I have copied him above to make the introduction.

iviewit has undergone a restructuring of their business from an encoding focused business to a technology licensing business focus over the past 4-5 months. They are in the process of establishing a new executive team to handle this 'new' direction and have been working on the new business plan. They have indicated that we should have the revised plan next week.

They currently are finalizing a contract with WB Online to provide encoding services as a hold over from our original collaboration, and as a showcase for the technologies and patents.

Their site www.iviewit.com contains good demonstrations of the zooming and video encoding technologies. I have also copied the inventor/founder Eliot Bernstein, who I will ask to provide some specific links on the site to see the best representation of their work and technical capabilities.

Their patents are pending, but have received favorable opinions from people such as Ken Rubenstein on the merit of the patents, as well as thorough review by Greg Thagard and myself.

Let's talk further after you see the business plan and connect with Hank.

Thanx,
David



**LETTER OF MR. UTLEY LETTER ADVISING OF RUBENSTEIN'S ACTIVITY
AS ADVISORY BOARD MEMBER**

From: Brian G. Utley [brian@iviewit.com]
Sent: Wednesday, April 18, 2001 8:17 AM
To: Eliot I. Bernstein; 'simon@adelphia.net'; 'kanderson@myCFO.com'; 'dg_kane@msn.com'; 'glewin@goldsteinlewin.com'; 'hankpow@gate.net'; 'bprolow@tiedemannfunds.com'; Maurice Buchsbaum
Cc: 'Christopher C. Wheeler (E-mail)'
Subject: RE: Minutes of the Board Meeting of April 14, 2001

I was advised by Proskauer Rose that anyone who was in an active due diligence stage and who was reviewing our intellectual property as part of that due diligence should receive a copy of the examiners opinion. Therefore the opinion was forwarded to the same people who have received copies of the patent filings namely, Warner Brothers and Irell & Manella. Ken Rubenstein, as our advisor, was also copied. Your father suggested that, because of the importance of our intellectual property, our own Board of Directors should be aware of the current status of our applications. With respect to Irell & Manella, it is quite likely that we will need to engage them or some other alternative counsel in order to respond to the opinion. I have a copy of Alvear's book if you need it.

With respect to processing the requested demo tape, you may recall that you actually set the standard by processing similar demo material for igallery some time ago. This job was handled discreetly and the 18 year old employee referred to had already been released from the business. We are not in the business of processing adult entertainment material and have consistently represented this position. I trust this clarifies both matters.
Brian



DECEMBER 2000 PRIVATE PLACEMENT MEMORANDUM FOR WACHOVIA SECURITIES

Advisors

Alan J. Epstein

Partner, Armstrong Hirsch Jackoway Tyerman & Wertheimer, P.C.

Mr. Epstein's law practice consists of advising Internet companies on various issues pertaining to the entertainment and sports industries, including the creation, licensing and acquisition of content, the introduction and negotiation of strategic partner relationships, and various other matters relating to the convergence of technology and content. Mr. Epstein also advises his firm's numerous celebrity clients on the exploitation and protection of their name and likeness rights and content on the Internet, as well as merchandising, endorsement and sponsorship deals. Prior to entering the UCLA School of Law, Mr. Epstein was a certified public accountant at Deloitte Haskins & Sells in Dallas, Texas.

Kenneth Rubenstein

Partner, Proskauer Rose LLP

Mr. Rubenstein is a partner at Proskauer Rose LLP law firm and is the patent attorney for iviewit. He is a registered patent attorney before the U.S. Patent & Trademark Office. Mr. Rubenstein counsels his clients with respect to the validity and infringement of competitors' patents, as well as prosecutes patent applications. For the past several years he has worked on the formation of a patent pool, for MPEG-2 technology, involving large consumer electronics and entertainment companies. He is also a former member of the legal staff at Bell Laboratories. Mr. Rubenstein received his law degree, cum laude, from New York Law School, and his Ph.D. in physics from the Massachusetts Institute of Technology where he also graduated with a B.S. Degree.

Christopher C. Wheeler

Partner, Proskauer Rose LLP

Mr. Wheeler is a member of Proskauer Rose LLP's Corporate Department and as a partner in the Florida office has a versatile transactional practice. He has had extensive experience in real estate and corporate law, institutional lending and workouts, administrative law and industrial revenue bond financing. Moreover, he serves as a strategist and counselor to many clients in handling their other legal and business matters. Mr. Wheeler is well-versed in general corporate law as well as mergers and acquisitions and securities matters. He has guided companies from startup through initial private placements to public offerings. A graduate of Hamilton College and Cornell Law School, Mr. Wheeler was a member of the managing Board of Editor of the Cornell Law Review.



Company has retained Foley & Lardner to shepherd its patent development and procurement. In addition, the Company has retained Kenneth Rubenstein of Proskauer Rose, LLP to oversee its entire patent portfolio – Mr. Rubenstein is the head of the MPEG-2 patent pool.

iviewit has assembled a complementary and seasoned, management team with executive rank, Fortune 100 and early-stage, entrepreneurial experience. The Company has retained Korn / Ferry to assist in the identification and recruitment of a high impact Chief Executive Officer (preferably from the media or entertainment industry) and an experienced Chief Technical Officer.

Since its June 1999 inception, the Company has raised over \$4.3 million of venture capital from Crossbow Ventures, Huizenga Holdings, and individual investors.

Management

Whereas the Company has retained Korn / Ferry to assist in the identification and recruitment of a high impact Chief Executive Officer (preferably from the media or entertainment industry) and Chief Technical Officer, iviewit has assembled a complementary and seasoned, management team with Fortune 100 and early-stage, entrepreneurial experience. This team consists of the following personnel:

Brian G. Utley, President (67) — For over 30 years, Mr. Utley was responsible for the development and world-wide management of many of IBM's most successful products such as the AS400 and the PC. His career with IBM culminated with his responsibility as Vice President and General Manager of IBM Boca Raton with a work force of over 6,000 professionals. He is a graduate of San Francisco City College.



DEPOSITION OF MR. UTLEY

(11) Q. In New York. Okay. Now, going back
(12) to something that Mr. Prusaski started but I
(13) don't think he completed with was some of your
(14) background information about your education. If
(15) you can just tell me from undergraduate onward
(16) what your educational background is, Sir, schools
(17) you attended, years of attendance and degree.

(18) A. I don't have a degree.

(19) Q. Okay.

(20) A. I attended Weaver State University,
(21) which was then Weaver College, 1950.

(22) Q. Okay.

(23) A. San Francisco City College, 1957,
(24) 1958.

(25) Q. Okay. And you graduated from San

(1) Francisco College or did not?

(2) A. I don't have a degree.

(3) Q. Okay. So you never completed your
(4) course at San Francisco then?

(5) A. Right.



DEPOSITION OF MR. RUBENSTEIN

2 Q. Do you have any information at all
3 with regard to any of the IViewIt entities?

4 A. Not at this time, no.

5 Q. "Not at this time." Did you have
6 any information at any time in the past, sir?

7 A. Not that I know of right now.

8 Q. Do you have any files or records
9 indicating that you had any dealings with --
10 and I will go through a list here --

11 IViewIt.com, Inc.?

12 A. Not that I know of.

13 Q. IViewIt, LLC?

14 A. Not that I know of.

15 Q. UViewIt?

16 A. Not that I know of.

17 Q. IViewIt, Inc.?

18 A. Not that I know of.

19 Q. Have you ever heard of an
20 individual named Eliot Bernstein?

21 A. I might have.

22 Q. Well, sir, that's either a "Yes"
23 or "No" question.

24 A. Like I said, I think he works for
25 IViewIt, and I may have heard his name.



2 Q. How about what is called the MPEG
3 Patent Pool, have you heard of that?

4 A. Yes, I have.

5 Q. why don't you tell me what that
6 is.

7 A. Decline to answer at this time.

8 Q. why do you decline to answer?

9 A. Irrelevant to this deposition.

10 Q. I'm sorry, irrelevancy is not an
11 objection that would allow you not to answer,
12 sir.

13 A. Make a motion to the judge. If he
14 orders me to tell you about it, I will tell
15 you.

1

2

3 IN THE CIRCUIT COURT OF THE
4 15th JUDICIAL CIRCUIT IN AND
5 FOR PALM BEACH COUNTY, FLORIDA

6 -----X

7 PROSKAUER ROSE L.L.P.,

8 Plaintiff,

9 vs. CA 01-04671 AB

10 IVIEWIT.COM, INC., a Delaware
11 corporation, IVIEWIT HOLDINGS,
12 INC., a Delaware corporation,
13 and IVIEWIT TECHNOLOGIES,
14 INC., a Delaware corporation,

15 Defendants.

16 -----X

17

18

19

20 DEPOSITION OF KENNETH RUBENSTEIN

21 New York, New York

22 Wednesday, November 20, 2002

23

24

25

26 Reported by:
27 WENDY D. BOSKIND, RPR
28 Job No. 142586

29

□

Ken Rubenstein Deposition

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November 20, 2002
11:06 a.m.

Deposition of KENNETH RUBENSTEIN,
held at the offices of Proskauer Rose
LLP, 1585 Broadway, New York, New York,
pursuant to Notice and Agreement,
telephonically pursuant to a Court
Order, before Wendy D. Boskind, a
Registered Professional Reporter and
Notary Public of the State of New York.

□

3

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4

A P P E A R A N C E S :

PROSKAUER ROSE LLP

5 Ken Rubenstein Deposition
Attorneys for Plaintiff
6 2255 Glades Road
7 Suite 340 West
8 Boca Raton, Florida 33431-7360
9 BY: CHRISTOPHER W. PRUSASKI, ESQ.

10
11
12 SELZ & MUVDI SELZ, P.A.
13 Attorneys for Defendants
14 214 Brazilian Avenue
15 Suite 220
16 Palm Beach, Florida 33480
17 BY: STEVEN M. SELZ, ESQ.
18 (telephonically)

19
20
21 ALSO PRESENT:
22 ELIOT BERNSTEIN, ESQ.
23 (telephonically)

24
25

□

1
2 K E N N E T H R U B E N S T E I N ,
3 business address at Proskauer Rose
4 LLP, 1585 Broadway, New York, New York,
5 having first affirmed before the Notary
6 Public, (Wendy D. Boskind), was examined
7 and testified as follows:

Ken Rubenstein Deposition

8

9 EXAMINATION BY

10 MR. SELZ:

11 Q. Mr. Rubenstein, my name is
12 Attorney Steve Selz, I represent the
13 Defendants in the case of Proskauer Rose
14 versus IViewIt.com.

15 I am going to ask you a series of
16 questions in this deposition, and the first
17 thing I need to know is whether or not you
18 have had your deposition taken previously.

19 A. I have had my deposition taken
20 previously.

21 Q. On how many occasions has that
22 taken place, sir?

23 A. Several.

24 Q. "Several", more than a dozen?

25 A. No.

□

5

1 Rubenstein

2 Q. More than five?

3 A. No.

4 Q. Can you give me an approximate
5 number? Two or three?

6 A. I would say three or four.

7 Q. Okay, three or four. So you are
8 familiar with the way a deposition works; is
9 that correct, sir?

10 A. Yes.

11 Q. So if I ask you a question, unless
12 you ask me to rephrase it or somehow revise
13 the structure of the question, I will presume
14 then that you have understood what I have
15 asked you as it is posed.

16 A. If I think your question is of
17 improper form, unclear, or harassment, I am
18 going to object.

19 Q. Okay, I believe that would be not
20 for you to do but Mr. Prusaski, as your
21 counsel.

22 A. I will put any objection I want on
23 the record, in addition to Mr. Prusaski.

24 Q. So, you are representing yourself?

25 A. No, I am not, he is representing

□

6

1 Rubenstein
2 me, but I am going to put objections on the
3 record, if I want to.

4 Q. That's fine.

5 Now, starting off with, sir, could
6 you please state your full name?

7 A. Kenneth Rubenstein.

8 Q. "Kenneth Rubenstein." And where
9 is your place of employment currently,
10 Mr. Rubenstein?

11 A. Proskauer Rose.

12 Q. Where is that located?

13 A. 1585 Broadway, New York.

14 Q. And how long have you been
15 employed with Proskauer Rose?
16 A. About four, four-and-a-half years.
17 Q. Somewhere between 1997 and 1998
18 was your first date of employment?
19 A. I think it was in 1998.
20 Q. Do you remember a month?
21 A. Possibly June.
22 Q. June. Where were you employed
23 prior to your employment with Proskauer Rose?
24 A. I was with a law firm, Meltzer,
25 M-E-L-T-Z-E-R, Lippe, L-I-P-P-E.

□

7

1 Rubenstein
2 Q. Meltzer Lippe is located where?
3 A. Mineola, New York.
4 Q. Do you have an address that you
5 can recall?
6 A. On Willis Avenue, but I don't have
7 the address right now.
8 Q. Prior to Meltzer Lippe -- and
9 approximately what were the dates of your
10 employment at Meltzer Lippe?
11 A. About 1993 to 1998.
12 Q. And what did you do at Meltzer
13 Lippe?
14 A. I was an attorney.
15 Q. Did you have any specialization?
16 A. I was a patent attorney.

- 17 Q. Are you still a patent attorney?
18 A. Yes.
19 Q. Is that your role at Proskauer
20 Rose currently, is a patent attorney?
21 A. Yes.
22 Q. Are you a partner of Proskauer
23 Rose?
24 A. Yes.
25 Q. Are you a shareholder of Proskauer

□

8

- 1 Rubenstein
2 Rose?
3 A. One or the other, either partner
4 or shareholder.
5 I think it's a partnership.
6 Q. It's a partnership. Do you have
7 any ownership interest in the partnership in
8 the sense of obligations that go beyond what
9 some of the other partners have? In other
10 words, do you have an equity share? Do you
11 have any other claims with regard to an
12 interest in Proskauer Rose?
13 A. I have no idea.
14 Q. Prior to Meltzer Lippe, where were
15 you employed, sir?
16 A. Another law firm.
17 Q. Do you remember the name of that
18 law firm?
19 A. Marmorek, M-A-R-M-O-R-E-K,

Ken Rubenstein Deposition
20 Guttman, G-U-T-T-M-A-N, & Rubenstein.

21 Q. Were you the "Rubenstein" in the
22 name of the firm?

23 A. Yes.

24 Q. And you were a partner in that
25 firm?

9

1 Rubenstein

2 A. Yes.

3 Q. What were the dates of your
4 employment in that firm --

5 A. Oh --

6 Q. -- Marmorek Guttman & Rubenstein.

7 A. -- probably starting in the
8 Eighties, mid-Eighties, until 1993.

9 Q. And what was the area of your
10 practice, when you were with Marmorek --

11 A. M-A-R-M-O-R-E-K.

12 Patent law.

13 Q. Patent law. And your dates -- you
14 say you left Marmorek Guttman & Rubenstein and
15 went to Meltzer Lippe and then to Proskauer
16 Rose, but at all times you were a patent
17 lawyer --

18 A. Yes.

19 Q. -- is that a correct statement?

20 A. Yes.

21 Q. Is that a correct statement, sir?

22 A. Yes.

23 Q. You have to wait until I finish
Page 8

Ken Rubenstein Deposition

24 the question.

25 A. No, you are not getting the

□

10

1 Rubenstein

2 answers clearly in your head. You should take
3 better notes.

4 MR. SELZ: Move to strike as
5 non-responsive.

6 (MOTION TO STRIKE.)

7 A. That's fine, move to strike it.

8 Q. Sir, during that entire period of
9 time, then, you were a patent lawyer; is that
10 a correct statement of fact?

11 A. Yes.

12 Q. Are you familiar with something
13 that's called "pan and zoom technology"?

14 A. I am not sure what you mean by
15 that.

16 Q. Well, let me start very simply,
17 and say this. Are you familiar with a concept
18 that an image can be enlarged while being
19 transmitted on a narrow bandwidth?

20 A. I don't know what you are talking
21 about.

22 Q. Okay. Well, let me go back to
23 this, then, sir. Are you familiar at all with
24 the technology involved with IViewIt.com?

25 A. No.

□

1 Rubenstein

2 Q. Do you have any information at all
3 with regard to any of the IViewIt entities?

4 A. Not at this time, no.

5 Q. "Not at this time." Did you have
6 any information at any time in the past, sir?

7 A. Not that I know of right now.

8 Q. Do you have any files or records
9 indicating that you had any dealings with --
10 and I will go through a list here --
11 IViewIt.com, Inc.?

12 A. Not that I know of.

13 Q. IViewIt, LLC?

14 A. Not that I know of.

15 Q. UViewIt?

16 A. Not that I know of.

17 Q. IViewIt, Inc.?

18 A. Not that I know of.

19 Q. Have you ever heard of an
20 individual named Eliot Bernstein?

21 A. I might have.

22 Q. Well, sir, that's either a "Yes"
23 or "No" question.

24 A. Like I said, I think he works for
25 IViewIt, and I may have heard his name.

□

Ken Rubenstein Deposition
Rubenstein

1

2 Q. How about what is called the MPEG
3 Patent Pool, have you heard of that?

4 A. Yes, I have.

5 Q. Why don't you tell me what that
6 is.

7 A. Decline to answer at this time.

8 Q. Why do you decline to answer?

9 A. Irrelevant to this deposition.

10 Q. I'm sorry, irrelevancy is not an
11 objection that would allow you not to answer,
12 sir.

13 A. Make a motion to the judge. If he
14 orders me to tell you about it, I will tell
15 you.

16 MR. SELZ: Chris, are you
17 instructing your client not to answer?

18 MR. PRUSASKI: I am going to put
19 an question for relevancy based on the
20 court's granting of the motion and
21 limiting on the record, and if
22 Mr. Rubenstein declines to answer then
23 he is declining to answer.

24 And, just so I don't have to keep
25 objecting, Mr. Selz, to make this

□

13

1

Rubenstein

2 easier, my objection is continuing in
3 nature as to any questions regarding any

4 Ken Rubenstein Deposition
5 transactions for IViewIt that you are
6 going to ask Mr. Rubenstein if he was
7 involved in based on the court's
8 granting of the motion and limiting.

8 MR. SELZ: Let me go on the record
9 and say the discovery documents that
10 have been produced by the Defendants --
11 Plaintiff in this matter indicate
12 various dealings in which Proskauer Rose
13 was affiliated including dealings with
14 H. Wayne Huizenga, CrossBow Ventures,
15 Wachovia, a number of other entities
16 which are part of the discovery and have
17 been produced by the Plaintiffs pursuant
18 to a valid request for production, so to
19 the extent you are claiming it's subject
20 to any motion and limited, that's fine
21 with regard to the trial, and the
22 discovery you produced on your own
23 pursuant to a request for production
24 which has not been held invalid includes
25 these very matters.

□

14

1 Rubenstein
2 A. So why don't you tell me more
3 particularly what you want to know.

4 MR. PRUSASKI: Mr. Selz, let me
5 just respond to that.

6 There were never any affirmative

7 Ken Rubenstein Deposition
8 defenses asserted by the Defendants in
9 this matter that have anything to do
10 with particular transactions, the
11 defenses involved whether the bills
12 were --

13 MR. SELZ: Let's go --

14 MR. PRUSASKI: I get to finish
15 because --

16 MR. SELZ: Go ahead and finish.

17 MR. PRUSASKI: Thank you.

18 There were never any affirmative
19 defenses asserted by the Defendants in
20 this matter relating to anything other
21 than the amount of the bills. And, so,
22 to the extent that the court granted our
23 motion limiting it, the Defendants can't
24 put any evidence of any particular
25 transactions or alleged wrongdoing by
Proskauer on at trial, but to that

□

15

1 Rubenstein
2 extent I am going to ask Mr. Rubenstein
3 to answer your questions. If I feel
4 that they are becoming overreaching, I
5 will make -- or if you are extending too
6 far into what I think is a violation of
7 the court's granting of the motion of
8 limiting, I will make another objection.

9 MR. SELZ: And let me go on the

10 Ken Rubenstein Deposition
11 record, the motion of limiting is fine
12 with regard to anything presented at
13 trial. It certainly does not preclude
14 the scope of discovery from including,
15 in a deposition, questions which may
16 lead to discoverable evidence concerning
17 the bills and the services that were
18 provided, which is the basis for the
19 affirmative defenses.

19 MR. PRUSASKI: And I am aware that
20 you have some latitude with respect to
21 discovery under the rules.

22 MR. SELZ: And I think we have
23 pretty significant latitude under the
24 rules.

25 And with regard to your client,

□

16

1 Rubenstein
2 Mr. Rubenstein, indicating he is
3 refusing to answer, I believe you should
4 instruct him right now, under Florida
5 law, he doesn't have the right to refuse
6 to answer.

7 A. All right, I will answer the
8 question.

9 MR. PRUSASKI: I just said a
10 minute ago we will go ahead.

11 A. Anything you want to know about
12 the MPEGLA patent pool, that's public

13 information, it's is on a web site,
14 MPEGLA.com. You should go look at that
15 web site. Any public information that I am
16 entitled to tell you is on that web site.

17 Q. Well, I am going to ask you, sir,
18 in this deposition to give me that
19 information.

20 A. And I am just telling you to go
21 look at the web site.

22 MR. SELZ: Let the record show the
23 witness is refusing to respond to a
24 direct question.

25 A. That is an incorrect

□

17

1 Rubenstein
2 characterization of the record.

3 The record shows that I told you a
4 place where you can get the answer very
5 easily. There is no reason for you to make me
6 sit here and waste my time repeating to you
7 things you can easily read about.

8 Q. Well, sir, this is your testimony
9 at your deposition.

10 A. That's right, which you are making
11 me do. I consider the deposition nothing but
12 harassment, considering that I had nothing to
13 do with the company. It's just a form of
14 harassment.

15 You go read the web site, if you

16 want to know about it.

17 Q. Okay, so you are refusing to
18 answer?

19 A. I am not refusing.

20 Q. Other than advising me to go to a
21 web site --

22 A. I am not refusing to answer. I
23 did answer. Please stop characterizing my
24 testimony. I told you the answer. I told you
25 all publicly-available information about the

□

18

1 Rubenstein

2 MPEG patent pool can be found at
3 www.MPEGLA.com. You are free to go read it.
4 Please go read it and you will learn all you
5 need to know about it.

6 Q. So you are not going to tell me
7 what the "MPEG patent pool" is?

8 A. I told you you could go read it.

9 Q. Okay.

10 MR. SELZ: Chris, do you want to
11 instruct your witness, or deponent, or
12 client, at all in that matter?

13 MR. PRUSASKI: Do you have any
14 specific questions with respect to
15 IViewIt in the MPEG patent pool?

16 MR. SELZ: Yes.

17 A. All right, so why don't you ask me
18 those questions.

19 MR. SELZ: I want Mr. Rubenstein
20 to first explain to me what the "MPEG
21 patent pool" is, and then I will ask him
22 questions concerning exactly how it
23 relates to IViewIt.
24 In other words --
25 A. Okay, I will answer both your

□

19

1 Rubenstein
2 questions.
3 Q. Go ahead.
4 A. The "MPEG patent pool" is a
5 collection of patents owned by a group of
6 companies related to the MPEG 2 video
7 compression standard and, as far as I know, it
8 has nothing whatsoever to do with IViewIt.
9 Q. So it has no technology -- the
10 MPEG patent pool uses no technology in any way
11 related to any of the IViewIt entities or
12 their intellectual properties; is that your
13 testimony?
14 A. No, it's not my testimony.
15 Q. Okay.
16 A. My testimony is, it's a group of
17 patents chosen according to very specific
18 criteria related to the MPEG 2 standard and,
19 to my knowledge, has nothing to do with
20 IViewIt.
21 And please do not characterize my

22 words. Please do not rephrase them. If you
23 don't know what I said, you can ask the
24 reporter to read it back. But do not
25 characterize my testimony.

□

20

1 Rubenstein

2 MR. SELZ: Again, let the record
3 reflect the deponent is not being
4 responsive.

5 A. I am being very responsive.
6 Please stop characterizing my testimony. And
7 please stop putting things on the record that
8 are incorrect.

9 Q. Mr. Rubenstein, I am asking you
10 questions, and I am asking --

11 A. And you are not listening to the
12 answers very carefully, so -- I don't know how
13 much experience you have taking depositions --

14 MR. SELZ: Again, let the record
15 reflect that --

16 A. Stop interrupting my answers. Do
17 not interrupt me.

18 Q. Mr. --

19 A. Do not interrupt me.

20 Q. Mr. Rubenstein --

21 A. Let me finish.

22 Are you going to proceed to
23 continue to interrupt me or not?

24 Q. If you want to answer the

Ken Rubenstein Deposition
25 questions, I have no problem.

□

21

1 Rubenstein

2 A. Look, I answered your questions.

3 You are unable to keep track of what I am

4 saying.

5 So, please, if you don't know what

6 I said, ask the reporter to read it back, but

7 please do not characterize my testimony in

8 your own words.

9 Q. Okay --

10 A. Just don't do it.

11 Q. What I am asking you is this. Do
12 any of the members of the MPEG patent pool use
13 any of the technologies of IViewIt?

14 A. I would have no idea.

15 Q. Who is the person in charge of the
16 MPEG patent pool, sir?

17 A. Like I say, I advise you to check
18 their web site if you want to know information
19 about that patent pool.

20 Q. Well, again --

21 A. It's not me.

22 Q. Are you involved with the MPEG
23 patent pool, sir?

24 A. Yes.

25 Q. What is your position --

□

22

Ken Rubenstein Deposition

1 Rubenstein

2 A. I am counsel to MPEG, LLC.

3 Q. Do you advise the MPEG patent pool
4 with regard to legal issues?

5 A. That's privileged information.

6 Q. Not whether or not you advised
7 them on legal issues.

8 A. You are asking me -- I am not
9 going to discuss with you anything about
10 anything I do with any other client in this
11 law firm.

12 Q. Well, sir, I am not asking you the
13 substance of what you have advised them, I am
14 simply asking you whether or not you advised
15 them.

16 A. I told you, I am their counsel.

17 Q. Okay. Have you ever seen any of
18 the intellectual properties or technologies
19 that IViewIt has developed for scaled video?

20 A. Not that I recall at this time.

21 Q. Were you ever involved in any
22 patent applications for scaled video
23 technologies for IViewIt.com?

24 A. No.

25 Q. Did you ever review any patent

□

23

1 Rubenstein

2 application at all for IViewIt --
Page 20

Ken Rubenstein Deposition

3 A. Not that I recall.

4 Q. Did you ever opine with regard to
5 the validity of any patent applied for or
6 received by IViewIt.com?

7 A. Like I say, I was not in any way
8 involved with getting patents for IViewIt.

9 Q. What were you involved with, if
10 you were, with IViewIt?

11 A. The only thing I did for IViewIt
12 is I referred them to another patent lawyer.

13 Q. And who is that?

14 A. A guy named Ray Joao.

15 Q. And where did Mr. Joao work?

16 A. I believe he was working at the
17 time at my former law firm, Meltzer Lippe.

18 Q. And what date was this?

19 A. I don't recall.

20 Q. So, you were employed by Proskauer
21 Rose at this time?

22 A. Yes.

23 Q. And you referred IViewIt to
24 Meltzer Lippe?

25 A. I referred IViewIt to Ray Joao,

□

24

1 Rubenstein
2 who I believe was working at Meltzer Lippe at
3 that time.

4 Q. Who did you speak to at IViewIt,
5 sir?

Ken Rubenstein Deposition

6 A. I don't recall.

7 Q. Did you keep any notes of your
8 conversation with regard to this referral?

9 A. No.

10 Q. Did you speak to Mr. Joao with
11 regard to this referral?

12 A. I don't recall.

13 Q. Why did you refer this matter to
14 Meltzer Lippe?

15 A. Because it wasn't work I wanted to
16 undertake myself.

17 Q. And why was that?

18 A. Because I am not generally in the
19 patent prosecution business, in most cases.

20 Q. Did you ever meet with any members
21 of the board of directors of IViewIt.com?

22 A. Not that I know of.

23 Q. Were you ever involved in any
24 meetings with anyone concerning IViewIt.com?

25 A. No, not that I know of.

□

25

1 Rubenstein

2 Q. How about any representative from
3 Real 3 D?

4 A. Never heard of it.

5 Q. How about Warner Bros.?

6 A. Warner Bros. is a client here.

7 Q. Okay. Did you have any
8 discussions with Warner Bros. about IViewIt?

Ken Rubenstein Deposition

9 MR. PRUSASKI: Objection.
10 A. Any --
11 MR. PRUSASKI: Instruct him not to
12 answer.
13 (DIRECTION NOT TO ANSWER.)
14 A. Any conversation I made or had
15 with Warner Bros. would be confidential. I am
16 not saying there was or was not such a
17 conversation, it would be privileged.
18 Q. I am not asking you for the
19 contents of the conversation, I want to know
20 if there was one.
21 A. I am not saying -- I don't know if
22 there was one.
23 And if there was, I wouldn't tell
24 you about it, anyway.
25 Q. How about Hollywood.com?

□

26

1 Rubenstein
2 A. Never heard of it.
3 Q. Did you ever have any discussions
4 with anyone at Proskauer Rose concerning the
5 IViewIt Technologies?
6 A. Not that I recall.
7 Q. Did you have any discussions with
8 anyone -- let's say Chris Wheeler,
9 particularly, at Proskauer Rose with regard to
10 anything at IViewIt?
11 A. I might have, but I don't recall

Ken Rubenstein Deposition

12 anything about it at this time, if I did.

13 Q. Did you ever counsel anyone at
14 IViewIt concerning any matters regarding the
15 patent or patent applications?

16 A. Not that I recall.

17 Q. Did you keep any files yourself
18 with regard to IViewIt and any communications
19 with IViewIt?

20 A. I don't think so, no.

21 MR. PRUSASKI: Objection, asked
22 and answered.

23 Q. Did you ever play a role as an
24 advisory board member for IViewIt?

25 A. Not that I know of, no.

□

27

1 Rubenstein

2 Q. Well, sir, I am a little
3 confused. You normally would recall that you
4 would be on a board of directors --

5 A. I don't think I was on any such
6 board.

7 To my knowledge, I was on no such
8 board.

9 Q. And you never had any
10 communications with any board member from
11 IViewIt; is that a correct characterization --

12 A. I had a -- probably a phone call
13 or two with Brian Utley. I am not sure if
14 he's a board member or not.

Ken Rubenstein Deposition

15 Q. And what were the contents of your
16 conversation with Mr. Utley?

17 A. I don't recall.

18 Q. Did you ever talk to anyone at
19 Warner Bros. with regard to IViewIt?

20 A. You are asking for privileged
21 information, sorry.

22 Q. Well, whether or not you had
23 communications --

24 A. No, you are asking for the content
25 of communications.

□

28

1 Rubenstein

2 Q. No, I am not asking for the
3 content.

4 A. Yes, you are.

5 Q. Please listen to my question.

6 MR. PRUSASKI: Mr. --

7 Q. The question was, did you ever
8 discuss any matters concerning IViewIt with
9 anyone from Warner Bros., period. I am not
10 asking you for the content because, clearly,
11 if you want to assert a claim of privilege on
12 that, and Warner Bros. is a client of yours,
13 then you can assert it, but I am asking you
14 whether or not you had any discussions at
15 all. I am not asking you for the contents.

16 A. I am --

17 MR. PRUSASKI: Mr. Selz, I am
Page 25

Ken Rubenstein Deposition

18 going to object. I am instructing
19 Mr. Rubenstein not to answer. It's
20 privileged attorney/client
21 communication.

22 (DIRECTION NOT TO ANSWER.)

23 MR. SELZ: Not the fact of whether
24 or not he had any discussions --

25 MR. PRUSASKI: I am not arguing.

□

29

1 Rubenstein

2 We are not allowed, under the Florida
3 rules, to argue objections. I am
4 instructing him not to answer.

5 MR. SELZ: I understand.

6 MR. PRUSASKI: And I can't argue
7 with you.

8 MR. SELZ: Just so the record is
9 clear, your objection is it's
10 privileged, whether or not he even spoke
11 to Warner Bros.

12 MR. PRUSASKI: Yes, about IViewIt.

13 MR. SELZ: About IViewIt.

14 MR. PRUSASKI: Yes.

15 Q. Do you know who Greg Thagard is?

16 A. Yes, I do.

17 Q. Who is he?

18 A. He used to work at Warner Bros.

19 Q. He doesn't work with Warner Bros.
20 anymore; is that correct?

Ken Rubenstein Deposition

21 A. Correct.
22 Q. When did you represent Warner
23 Bros., sir?
24 A. Oh, that's not -- that's
25 privileged information, sorry.

□

30

1 Rubenstein
2 MR. PRUSASKI: I am going to
3 object for relevancy, and instruct the
4 witness not to answer. It's also
5 privileged.
6 (DIRECTION NOT TO ANSWER.)
7 MR. SELZ: I don't think case law
8 supports the position that when he
9 represented a client --
10 MR. PRUSASKI: Are we going to
11 argue every time there is an objection?
12 MR. SELZ: No, no, no.
13 A. We will litigate out the issue.
14 We will litigate it out. You know, make a
15 motion. We will fight it. We will see who
16 wins.
17 Q. Mr. Rubenstein again, you know,
18 this is your deposition --
19 A. I don't --
20 Q. -- I appreciate the fact that you
21 want to express your opinion. However,
22 Mr. Prusaski can tell you, this is not how
23 depositions are conducted in the state of

Ken Rubenstein Deposition

24 Florida.

25 A. Fine. I am not discussing

□

31

1 Rubenstein
2 anything about Warner Bros. The objection has
3 been put on the record. Let's move on.

4 MR. PRUSASKI: And, Mr. Selz, just
5 to make it clear, I am going to instruct
6 the client not to answer any questions
7 about any Proskauer clients under claim
8 of privilege and under claim of
9 harassment and under claim of the fact
10 that you are not allowed to put any of
11 this on at trial.

12 MR. SELZ: Well --

13 MR. PRUSASKI: And we can litigate
14 that with Judge Labarga.

15 Q. Now, I am asking you specifically,
16 sir, with regard to any specific meetings, how
17 about Real 3 D?

18 A. I never heard of Real 3 D.

19 Q. You never heard of them, okay.
20 That's what I was going to say.

21 Are you aware of any meeting that
22 happened between yourself and any
23 representatives of IViewIt, other than you
24 have already described?

25 A. Not that I recall. I may have

□

1 Rubenstein
2 also had a conversation with Lamont, but I am
3 not sure.
4 Q. Lamont, you spoke to Stephen
5 Lamont?
6 A. Possibly, yes.
7 Q. And that was concerning IViewIt?
8 A. Maybe, yes.
9 Q. Do you recall what the contents of
10 that conversation were?
11 A. No.
12 Q. How about Zackirul Shirajee, do
13 you know who he is?
14 A. No.
15 Q. How about Jude Rosario?
16 A. Don't know who he is.
17 Q. How about any awareness on your
18 part of any IViewIt inventions regarding zoom
19 imaging?
20 A. I have no knowledge at this point
21 in time of IViewIt technology.
22 Q. So you have no knowledge of scaled
23 video?
24 A. I didn't say that. I said I have
25 no knowledge of what IViewIt technology is at

□

Ken Rubenstein Deposition
Rubenstein

1

2 this point in time.

3

Q. Okay, why don't you explain to me
4 "scaled video", to the best of your
5 knowledge.

6

A. I don't know what you mean by
7 "scaled video".

8

why don't you explain to me what
9 you are talking about.

10

Q. well, what does that mean to you?
11 You seemed to indicate earlier in your answer
12 that you had some idea of what I was talking
13 about.

14

A. well, "scaled video" might refer
15 to changing the sizes of video images.

16

Q. And how is that accomplished?

17

A. I don't know. At this point in
18 time, I am sure there is a variety of
19 techniques to do it.

20

Q. Are you aware of any such
21 techniques that IViewIt was using?

22

A. No.

23

Q. Are you aware of any camera zoom
24 applications used in the IViewIt technology?

25

A. No.

□

34

1

Rubenstein

2

Q. How about combined scaled video
3 zooming video applications?

4 A. Not that I know of.
5 I am not saying they don't or do
6 exist, I am saying I don't know.
7 Q. Of course, it's to the best of
8 your knowledge, sir, I am not expecting you to
9 be on omniscient.
10 How about game applications?
11 A. I have no knowledge of what
12 IViewIt's doing.
13 Q. How about what they have done in
14 the past?
15 A. I have no knowledge of what they
16 have done in the past at this point in time.
17 Q. Is it that you have no knowledge
18 or you can't recall?
19 A. I don't know if I knew in the past
20 or didn't know in the past, I don't know now.
21 Q. So, in other words, sir, you have
22 no knowledge as to any technology that IViewIt
23 uses; is that correct?
24 A. At this point in time, that is
25 correct.

□

35

1 Rubenstein
2 Q. Did you have such knowledge in the
3 past?
4 A. I don't know whether I did or did
5 not, I don't know now.
6 Q. So, then, sir, you wouldn't have

7 any ability to know whether or not any of your
8 clients are using IViewIt technology; is that
9 correct?

10 A. I would have no idea.

11 Q. So it is possible, then, they
12 might be infringing on IViewIt's technologies?

13 MR. PRUSASKI: Object to the form.

14 A. What do you mean by "infringing"?

15 Q. Well, making use of IViewIt
16 technologies without the benefit of royalties
17 or some other kind of licensing.

18 A. I have no knowledge that IViewIt
19 has any proprietary rights in anything. And I
20 have no knowledge about what IViewIt's
21 technology is. So I have no knowledge about
22 who could be doing what.

23 Q. If IViewIt had technologies
24 concerning scaled video, let's say, and there
25 was some legally-protected interest in that

□

36

1 Rubenstein
2 technology, as a patent lawyer, would you
3 opine that the use of that by any other third
4 party would require either a licensing or
5 payment of a royalty?

6 A. I --

7 MR. PRUSASKI: Object to the form.

8 Q. You may answer the question.

9 A. I will answer the question. I

10 would not have an answer to that question in
11 the abstract, you are asking for complex legal
12 analysis of a situation where you are only
13 giving a vague hypothetical fact pattern, so
14 it's not possible to give an answer to that
15 question.

16 Q. well, let me restate it, then,
17 maybe I can make it clearer for you, sir.

18 Let's say that IViewIt has
19 technology for camera zoom applications and
20 that technology is patented, and a client of
21 yours is making use of that technology without
22 the benefit of paying either a royalty or a
23 licensing agreement. would there be legal
24 liability?

25 MR. PRUSASKI: Object to the

□

37

1 Rubenstein

2 form.

3 A. why don't you explain more clearly
4 what you are trying to say.

5 Q. I thought I was trying to be
6 clear. Okay, let me try again.

7 Let's say specifically, and I
8 don't know if this particular entity is a
9 client of yours or not, but Sony used camera
10 zoom applications which were subject to a
11 patent or a patent pending by IViewIt.com, and
12 Sony made use of these technologies without

13 either a licensing agreement or without paying
14 a royalty. Would Sony be liable for damages
15 for use of this patented technology to
16 IViewIt?

17 A. Well, Sony's a client of the firm,
18 so I am not going to discuss what kind of
19 advice I might or might not give to Sony in
20 particular circumstances, you are asking for
21 privileged information.

22 Q. Okay. Then, instead of Sony we
23 will make it company X.

24 A. Like I say, you are asking for a
25 legal conclusion of mine, how I might advise a

□

38

1 Rubenstein
2 client in a particular fact pattern without
3 knowing the details. In order to answer that
4 question, I would have to study the patent in
5 question, the file history of the patent
6 before The Patent Office, the prior art of
7 record. I might have to look for other prior
8 art. I would also have to study what the
9 particular client is doing. I might have to
10 study what other proprietary rights the
11 company in question who owns those rights
12 might have before I would even conceive and
13 think about answering a question like that.
14 Q. We are doing this -- obviously,
15 you have the right to object if it's Sony.

16 what I am saying assuming, arguendo, this is a
17 valid and binding patent intellectual
18 property, that it is only enforceable under
19 the patent that's in place, and that there is
20 a clear case of infringement.

21 A. I answered the question to the
22 best of my ability already. It's on the
23 record.

24 If you want, we can ask the
25 reporter to read it back.

□

39

1 Rubenstein

2 Q. Your statement to me in response,
3 sir, was that you needed more specifics and
4 that you were unclear, and that you would have
5 to --

6 A. No, I told you that in order for
7 me -- I am going to repeat this once, just so
8 we are understanding it -- I told you in order
9 to advise a client in a particular situation,
10 I would have to study the patents in question,
11 the file histories of the patents before the
12 U.S. Patent Office, I would have to study the
13 prior art of record, I might study other prior
14 art, I would have to study the claims of the
15 patent, I would have to try to understand
16 their scope, I would have to try to understand
17 the technology that someone was trying to
18 apply the patents to, I would try to

19 understand whether there were other
20 proprietary rights besides patents in
21 question, and before I could answer the
22 question. I can't answer your question in the
23 abstract, it doesn't have a simple
24 straightforward "Yes" or "No" answer.

25 Q. well, assuming that all your

□

40

1 Rubenstein
2 review of the prior art and your review of the
3 application of the Patent Office and your
4 review of all those other documents that you
5 just mentioned indicated that it was a valid
6 and duly-enforceable patented right with
7 regard to a technology that was clearly
8 infringing on that patent right, would your
9 answer remain the same?

10 A. I answered the question to the
11 best of my ability.

12 Q. How long have you been a patent
13 lawyer, sir?

14 A. You know how long, at least --

15 Q. Go back --

16 A. -- more than 20 years.

17 Q. And how many patent cases have you
18 litigated?

19 A. I have litigated a number of them.

20 Q. How many is "a number of them"?

21 A. Quite a few.

22 Q. More than 50?
23 A. Probably not.
24 Q. More than 20?
25 A. Maybe.

□

41

1 Rubenstein

2 Q. Have any of those patent cases
3 dealt with an infringement claim?

4 A. They generally deal with
5 infringement claims.

6 Q. Could you tell me about the cases
7 that you have been involved with? Just naming
8 the cases.

9 MR. PRUSASKI: Objection.

10 Don't answer the question, it's
11 privileged.

12 (DIRECTION NOT TO ANSWER.)

13 MR. SELZ: The name of the cases
14 are privileged?

15 MR. PRUSASKI: Yes. And it's
16 harassment. He is a 20-year patent
17 lawyer at one of the largest law firms.
18 Why don't we need to go over this?

19 MR. SELZ: It seems to me he is
20 being very evasive about a lot of these
21 things.

22 MR. PRUSASKI: I don't think so.
23 You are asking a really simple
24 question that doesn't have a simple

25 answer.

□

42

1 Rubenstein

2 A. Yes, you are asking a question
3 that doesn't have a simple "Yes" or "No"
4 answer.

5 MR. PRUSASKI: And it is a
6 hypothetical, and he is not an expert.

7 Q. Have you ever met with Mr. Chris
8 wheeler?

9 A. I don't think I ever met him, no.

10 Q. Did you ever speak with him?

11 A. Possibly, yes.

12 Q. Do you have any specific
13 recollection as to when you spoke with him?

14 A. No.

15 Q. Have you ever billed any services
16 to IViewIt or any of the IViewIt entities?

17 A. As far as I know, I have not.

18 Q. Have you been included on a
19 billing statement for IViewIt --

20 A. As far as --

21 Q. -- on Proskauer Rose.

22 A. As far as I know, I have not.

23 Q. Did Mr. wheeler ever consult with
24 you, to the best of your recollection, with
25 regard to any issues concerning IViewIt?

□

43

Ken Rubenstein Deposition

1 Rubenstein

2 A. He might have, but I would not
3 recall the details at this time.

4 Q. would you have taken any
5 contemporaneous notes of those conversations?

6 A. Probably not.

7 Q. would you keep any other records
8 of those conversations?

9 A. I am not a big note taker of phone
10 conversations, so the answer would be no.

11 Q. would those conversations have
12 been reflected in any billing records that you
13 might keep?

14 A. Like I say, to my knowledge, I
15 never billed any services to IViewIt.

16 Q. well, I don't think that was my
17 question.

18 My question was, sir, if you did
19 have a conversation with Christopher wheeler
20 with regard to IViewIt, would it have been
21 reflected on your billing records?

22 A. Probably not, because it would
23 have been a minor short conversation.

24 Q. Did you ever come down to Florida
25 to meet with anyone from IViewIt?

□

44

1 Rubenstein

2 A. No.

Ken Rubenstein Deposition

3 Q. Did you ever make any
4 representation to any party that you can
5 recall with regard to IViewIt or its
6 technologies?

7 A. Not that I recall.

8 MR. PRUSASKI: Object to the form.

9 Q. Let me rephrase that. Have you
10 ever spoken to any third party with regard to
11 IViewIt's technologies?

12 A. Not that I recall at this time.

13 Q. Did you ever meet with anyone
14 named Stephen Filipek?

15 A. I don't know who he is.

16 Q. Were you ever included in any
17 business plan of IViewIt as a consultant or
18 any other representation as being involved
19 with the company?

20 A. Not that I know of at this time.

21 Q. If you were included on that
22 business plan as a consultant or advisor to
23 IViewIt, would you have consented to that or
24 would you have had to have consented to that?

25 A. I don't know whether I would have

□

45

1 Rubenstein
2 had to consent to it or not, and I don't know
3 if I would have consented or not.

4 Q. Have you ever seen a business plan
5 for IViewIt?

Ken Rubenstein Deposition

6 A. I don't know, I might have. I
7 might not have, I don't know.

8 Q. How about, did you ever speak to
9 anyone at Brian Utley?

10 A. I did have one or two phone
11 conversations with him.

12 Q. With regard to IViewIt?

13 A. Yes.

14 Q. And what were the contents of
15 those conversations?

16 A. I --

17 MR. PRUSASKI: Asked and answered.

18 MR. SELZ: I'm sorry.

19 A. And I will just answer it again,
20 for convenience, I don't know the details at
21 this point in time.

22 Q. How about Gerald Stanley?

23 A. I don't know who he is.

24 Q. Wayne Smith?

25 A. I don't think I ever had a

□

46

1 Rubenstein
2 conversation with Wayne Smith about IViewIt.
3 And Wayne Smith is a Warner Bros. in-house
4 attorney and, therefore, any conversation I
5 did have with him would be privileged.

6 Q. How about David Colter?

7 A. I am not sure who he is. I am
8 just not sure.

Ken Rubenstein Deposition

9 You might refresh my recollection
10 and tell me who he is. I am not sure who he
11 is.

12 Q. If you are not sure who he is, I
13 will not go any further.

14 How about a Hassan Miah?

15 A. I don't know who he is.

16 Q. How about Doug Che, with Sony?

17 A. I don't know who he is.

18 Q. Jerry Pierce, from Paramount
19 Viacom?

20 A. I don't know who he is.

21 Q. How about Aden Foley?

22 A. Don't know who he is.

23 Q. Chris Cook?

24 A. I don't know who Chris Cook is.

25 Q. It's Chris Cookson.

□

47

1 Rubenstein

2 A. Any conversation I have had with
3 Chris Cookson would be privileged.

4 Q. Okay. well, you know who Chris
5 Cookson is?

6 A. Yes, I do.

7 Q. Have you ever discussed IViewIt
8 Technologies with him?

9 MR. PRUSASKI: Don't answer the
10 question.

11 I am instructing him not to
 Page 42

Ken Rubenstein Deposition

12 answer.

13 (DIRECTION NOT TO ANSWER.)

14 Q. Did you ever become aware of any
15 problems with Raymond Joao's work as with
16 regard to patents for IViewIt?

17 A. Not that I recall at this time.

18 Q. Does Proskauer Rose maintain
19 patent counsel, other than yourself?

20 A. There are a number of patent
21 people in the law firm.

22 Q. Was there any particular reason
23 why IViewIt's patent applications were not
24 handled by Proskauer Rose?

25 A. Well, like I said, generally, I

□

48

1 Rubenstein

2 don't do patent prosecution work, as a general
3 matter.

4 Q. Did you see anything wrong or
5 faulty with Mr. Joao's work?

6 A. Like I say, I have no knowledge of
7 his work at this time, and don't recall ever
8 seeing anything faulty with it.

9 Q. Was there ever a time when
10 Mr. Joao was no longer employed by Meltzer
11 Lippe, to the best of your knowledge?

12 A. I think he did leave after a
13 certain period of time.

14 Q. And where did he go to work?

Ken Rubenstein Deposition

15 A. I have no idea.
16 Q. Do you have any knowledge as to
17 why Mr. Joao left or --
18 A. No.
19 Q. If you would just let me finish my
20 question, I would appreciate it.
21 MR. PRUSASKI: What was the
22 question?
23 MR. SELZ: I was going to finish
24 the question.
25 Q. Did you have any knowledge as to

□

49

1 Rubenstein
2 why Mr. Joao left or whether or not he was
3 terminated?
4 A. No.
5 Q. Okay. So you have no knowledge,
6 sir, then, of any of the patent applications
7 for IViewIt.com?
8 A. Not at this time, no.
9 Q. How about with regard to any of
10 the trademark or copyright applications?
11 A. No, none whatsoever.
12 Q. Have you ever heard of a company
13 called Zeosync, Z-E-O-S-Y-N-C?
14 A. I am not sure at this time.
15 Q. You are not sure whether or not
16 you have ever heard of it?
17 A. Yeah. Yeah, I don't think I know

Ken Rubenstein Deposition

18 at this time. I am not sure. What do they
19 do?

20 Q. Well, if you don't know what they
21 do and you don't know who they are, then
22 that's your answer.

23 A. All right, that's fine.

24 Q. Who recommended that IViewIt go to
25 Meltzer Lippe for their patent work?

□

50

1 Rubenstein

2 A. I probably suggested it.

3 Q. And was that suggestion
4 communicated in writing?

5 A. Probably not.

6 Q. And, if you can recall, who did
7 you communicate with at IViewIt concerning
8 your recommendation?

9 A. I don't recall.

10 Q. Did you ever meet with Eliot
11 Bernstein?

12 I think you might have said that
13 you never met with him before.

14 A. I don't think I ever met with him.

15 Q. Okay, and you said you don't know
16 who Jude Rosario is; correct?

17 A. Correct.

18 Q. And you don't know who Zackirul
19 Shirajee is; correct?

20 A. Correct.

Ken Rubenstein Deposition

21 Q. How about Jeffrey Friedstein?
22 A. I don't know who he is.
23 Q. Are you aware of whether or not
24 Proskauer Rose accepted any stock from
25 IViewIt?

□

51

1 Rubenstein
2 A. I would have no knowledge of that.
3 Q. Were you ever asked to evaluate
4 for Proskauer Rose the inventions that IViewIt
5 had?
6 A. Not that I recall, no.
7 Q. Did you ever see a video that led
8 you to believe that a company called Visual
9 Data was infringing upon IViewIt?
10 A. I never heard of Visual Data.
11 Q. Are you aware of any of the
12 billings that Proskauer Rose presented to
13 IViewIt for services?
14 A. To my knowledge, I have never seen
15 any such bill.
16 Q. Did you have any discussions with
17 any other partner or associate at Proskauer
18 Rose concerning the billings to IViewIt?
19 A. Not that I could recall.
20 Q. Okay. When I refer to "IViewIt",
21 I mean --
22 A. You mean all of those entities.
23 Q. Correct.

Ken Rubenstein Deposition

24 A. And the answer is, not that I
25 could recall.

□

52

1 Rubenstein

2 Q. Did Mr. Wheeler talk with you at
3 all about any infringement problems or patent
4 rights at IViewIt?

5 A. Not that I recall.

6 Q. And you earlier testified you have
7 never heard of a company called Visual Data;
8 is that correct?

9 A. Not that I can recall at this
10 time.

11 Q. Do you know an individual named
12 Gerald Lewin?

13 A. Gerald Lewin?

14 Q. Yes.

15 A. You mean the former CEO of Time
16 Warner?

17 Q. Yes.

18 A. Well, I know the name, but I don't
19 know him personally.

20 Q. How about Brian Utley?

21 A. Well, I told you already I had a
22 few telephone conversations with him.

23 Q. Other than those telephone
24 conversations, do you know anything of
25 Mr. Utley?

1 Rubenstein

2 A. No.

3 Q. How about Gerald Stanley, of
4 Real 3 D?

5 A. I never heard of him and never
6 heard of Real 3 D.

7 Q. You said that earlier.

8 How about Boca Research?

9 A. Never heard of Boca Research.

10 Q. How about Wayne Huizenga Jr. or
11 Sr.?

12 A. Well, I know the name, I don't
13 know them personally.

14 Q. How about Chris Brandon?

15 A. Never heard of him.

16 Q. Robert Henniger?

17 A. Never heard of him.

18 Q. Sportsline?

19 A. Sportsline, S-P-O-R-T-L-I-N-E?

20 Q. Correct.

21 A. I never heard of it.

22 Q. Hollywood.com, I think you
23 testified to earlier.

24 A. You asked me about that, and I
25 answered it already.

Ken Rubenstein Deposition
Rubenstein

1

2 Q. Correct.

3 How about Big E?

4 A. I never heard of it.

5 Q. Sensormatic?

6 A. S-E-N-S-O-R-M-A-T-I-C?

7 Q. Right.

8 A. I never heard of it.

9 Q. How about Sensormatics? I'm
10 sorry.

11 A. I don't think I heard of it,
12 either way, to my knowledge right now.

13 Q. How about CrossBow Ventures?

14 A. Well, I only know about it because
15 it was mentioned in some conversation to me
16 prior to this deposition, but I don't have any
17 knowledge of them, never met with them, never
18 had any dealing with them.

19 Q. And what conversation was this,
20 prior --

21 A. In preparation for this
22 deposition.

23 Q. Okay. Do you have any idea who
24 they are?

25 A. I know they are a venture

□

55

1 Rubenstein

2 capitalist, something like that.

3 Q. Are they a client of Proskauer

Ken Rubenstein Deposition

4 Rose?

5 A. I don't know.

6 Q. When Proskauer Rose would
7 represent a new client, would a conflict check
8 be run?

9 A. I think that's the normal
10 procedure of this and most other law firms.

11 Q. When you were contacted or spoke
12 to Mr. Wheeler with regard to IViewIt.com, did
13 you either request that Mr. Wheeler confirm
14 the conflict check had been run or did you
15 conduct one yourself?

16 A. I did not conduct one myself
17 because the client came in through Mr. Wheeler
18 and he -- in the normal procedure, it would be
19 up to him to do the conflict check.

20 Q. Okay, so you relied on the fact
21 that Mr. Wheeler had done one?

22 A. I relied on the fact that it would
23 be the normal procedure in this law firm for
24 him to have done it.

25 Q. But you can't tell me whether or

□

56

1 Rubenstein

2 not today, as you sit here, whether or not one
3 was done.

4 A. I would say it would be the normal
5 procedure in this law firm for it to be done.

6 Q. But do you have any personal

7 knowledge which would indicate to you directly
8 that a conflict check had been run with regard
9 to IViewIt?

10 A. Well, the fact is, in this law
11 firm they would not assign a client billing
12 number to the client without a conflict check
13 being done, and I understand the client
14 billing number was assigned, so that means a
15 conflict check was done --

16 Q. And --

17 A. -- or would normally have been
18 done.

19 Q. Normally, but what I am asking you
20 very specifically is, sir, you do not know for
21 a fact whether or not a conflict check was
22 run?

23 A. Not at this point in time, I do
24 not know.

25 Q. And if there was a conflict found,

□

57

1 Rubenstein
2 what would be the normal procedure?

3 A. It would go to the -- there is a
4 committee that -- in this law firm, that deals
5 with those issues.

6 Q. Does that committees ever obtain
7 waivers of conflicts from clients?

8 A. They might.

9 MR. PRUSASKI: Don't answer the

10 Ken Rubenstein Deposition
question, it's privileged.

11 (DIRECTION NOT TO ANSWER.)

12 Q. Do you maintain any files or any
13 documents concerning IViewIt?

14 MR. PRUSASKI: Him personally?

15 MR. SELZ: In his business records
16 or in his records for Proskauer Rose at
17 the offices in New York.

18 A. Not that I know of, no.

19 Q. Do you know of any patenting of
20 inventions for IViewIt?

21 A. Like I say, I was not involved as
22 their patent counsel, other people served as
23 their patent counsel.

24 Q. Are you aware of any of the
25 particulars of any of those patents?

□

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1 Rubenstein

2 A. I was not --

3 MR. PRUSASKI: This --

4 A. I will repeat it again, I was not
5 involved as their patent counsel, other people
6 were. And, at this point in time, I have no
7 knowledge of their patent applications.

8 MR. PRUSASKI: Mr. Selz, you are
9 repeating yourself now.

10 MR. SELZ: I'm sorry, Chris.

11 MR. PRUSASKI: Eliot needs to type
12 some new questions.

Ken Rubenstein Deposition
13 A. Maybe he didn't get a good night's
14 sleep.

15 (Pause.)

16 MR. PRUSASKI: Do you have
17 anything else?

18 MR. SELZ: Yes, I do. Just give
19 me a minute. (Pause.)

20 Q. Sir, do you have any knowledge or
21 have you reviewed any of the billing
22 statements that Proskauer Rose provided to
23 IViewIt in this matter?

24 A. No.

25 MR. PRUSASKI: Objection, asked

□

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1 Rubenstein

2 and answered.

3 Q. Are you aware of any of the
4 services provided by Proskauer Rose to IViewIt
5 in this matter?

6 A. I have no idea.

7 Q. (Pause.)

8 MR. PRUSASKI: Do you have
9 anything else?

10 MR. SELZ: Yes. Just give me a
11 couple of minutes, I am just thinking
12 through this stuff.

13 MR. PRUSASKI: Nothing personal,
14 Mr. Selz, but you are really repeating
15 yourself at this point.

Ken Rubenstein Deposition

16 MR. SELZ: I am trying not to.
17 MR. PRUSASKI: I mean, you asked
18 him twice if he has seen the bills
19 within like three minutes.
20 MR. SELZ: (Pause.)
21 Q. Are you aware of any individuals
22 involved in the MIT Multimedia Lab?
23 A. Personally, no, not at this point.
24 Q. When was the last time you spoke
25 to Brian Utley? You indicated you had a

□

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1 Rubenstein
2 couple of conversations with him. When was
3 the last discussion held, that you can recall?
4 A. I am not sure.
5 Q. Was it more than a year ago?
6 A. Probably.
7 Q. Do you remember the contents of
8 that conversation at all?
9 A. No. And you asked me that
10 already.
11 Q. I know I did. I am trying to help
12 to refresh your recollection.
13 A. You asked me at least three times
14 that question, so now you are at the point of
15 wasting my time, so I would appreciate it, if
16 you want to ask me some questions, please ask
17 me questions you did not ask me already.
18 Q. Is there anyone else, other than

19 Brian Utley at IViewIt, that you ever had any
20 discussions with?

21 MR. PRUSASKI: You have asked
22 that, about five times.

23 A. You asked me that already.

24 MR. PRUSASKI: And he said no.

25 A. And I answered it already. You

□

61

1 Rubenstein
2 will see the transcript, and you will see the
3 answer.

4 Q. Okay, fine.

5 MR. PRUSASKI: Mr. Selz, is your
6 client sending you questions over the
7 computer?

8 MR. SELZ: No, no, I have got my
9 notes that I have made to ask questions,
10 and I am just trying to correspond
11 Mr. Rubenstein's answers with my
12 questions.

13 MR. PRUSASKI: Are you
14 communicating with him electronically?

15 MR. SELZ: No, I am not.

16 MR. PRUSASKI: Has he been on the
17 phone the whole time?

18 MR. SELZ: Yes.

19 MR. PRUSASKI: He is in
20 San Diego?

21 MR. SELZ: Yes.

22 Ken Rubenstein Deposition
MR. PRUSASKI: Let the record
23 reflect he is taking out time --
24 MR. SELZ: He is sitting in the
25 room next to his wife, waiting for his

□

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1 Rubenstein
2 wife to go into labor and go into the
3 hospital and --
4 MR. PRUSASKI: And he could have
5 sat in the same room a week-and-a-half
6 ago to have his deposition taken. If he
7 is able to appear at depositions on the
8 telephone, he could have had a
9 deposition taken at his house.
10 MR. SELZ: He can cut out any
11 minute he wants with me, but he can't do
12 it with you, if you have a deposition
13 scheduled.
14 MR. PRUSASKI: We could have
15 accommodated him just fine.
16 MR. SELZ: I am going to put you
17 on hold for a minute.
18 (Pause in proceedings.)
19 MR. SELZ: Okay, Chris, I have
20 been talking to Eliot, he is going to
21 check on his wife, who is in the next
22 room. Let's take a ten-minute break and
23 come right back.
24 MR. PRUSASKI: Okay. I expect you

25 Ken Rubenstein Deposition
both to have some new questions or I

□

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1 Rubenstein
2 need to go, because we are both very
3 busy.

4 MR. SELZ: I understand, so is
5 everyone.

6 MR. PRUSASKI: So, it's 12:02, we
7 will see you promptly at 12:12 with new
8 questions.

9 Do you want to call us back at
10 this number?

11 MR. SELZ: I will call you back at
12 this number.

13 (Recess taken: 12:04 p.m.-
14 12:16 p.m.)

15 Q. Did you ever receive a letter from
16 Stephen Lamont with regard to IViewIt
17 technology?

18 A. A letter from Stephen Lamont?

19 Q. Yes.

20 A. Not that I know of at this time.

21 Q. Okay.

22 MR. SELZ: Chris, can you give me
23 the fax number there? I will fax you a
24 copy of this letter, for the witness --
25 for the deponent to review.

□

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Ken Rubenstein Deposition

1 Rubenstein

2 A. I don't know how we are going to
3 orchestrate that.

4 Q. You have got a fax up there?

5 A. We do. We've just got to --

6 MR. PRUSASKI: It's not something
7 that can be delivered immediately?

8 THE WITNESS: Right.

9 MR. SELZ: What I will do is, I
10 will continue with other questions until
11 it's delivered.

12 MR. PRUSASKI: The fax number is
13 969-2900. And you will need to have it
14 delivered to Mr. Rubenstein's office
15 immediately.

16 A. It will probably come out in my
17 E-mail, so we will have to have someone print
18 it out.

19 MR. SELZ: Let me just go and take
20 care of that.

21 Hold on for a moment.

22 (Pause in proceedings: 12:17 p.m.-
23 12:25 p.m.)

24 MR. SELZ: Okay, we are back on.

25 A. Okay.

□

65

1 Rubenstein

2 Q. Okay.

Ken Rubenstein Deposition

3 Now, Mr. Rubenstein, have you
4 looked at any of the billing statements that
5 Proskauer Rose produced to IViewIt in this
6 matter at all?

7 A. Okay, so, number one, you asked me
8 that, I answered it already.

9 Number two, I would like to note,
10 for the record, that we took a break at 12:02,
11 you were supposed to come back at 12:12, you
12 were late, and the first thing you did, upon
13 coming back, was take another break of about
14 nine or ten minutes so you could send me a
15 fax, which could have been sent here in
16 advance. And you are wasting my time by
17 asking me questions that I have already
18 answered.

19 Q. What did you do to prepare for
20 this deposition?

21 A. I met with my attorney.

22 Q. Did you review any documents?

23 A. I reviewed answers to
24 interrogatories briefly that were prepared by
25 Mr. Bernstein.

□

66

1 Rubenstein

2 Q. Did you review any other
3 documents?

4 A. I reviewed a brief segment of
5 Mr. Utley's deposition -- actually, I did not

Ken Rubenstein Deposition

6 review anything from Mr. Utley's deposition,
7 that's a mistake. I may have discussed it
8 with my attorney, but you are getting into
9 privileged information, so I cannot answer it
10 any further.

11 Q. So those are the only things that
12 you reviewed?

13 A. The only thing I looked at was
14 Mr. Bernstein's answers to interrogatories,
15 and I did meet with my attorney.

16 Q. Are you aware, sir, that your name
17 is referenced in billing statements from
18 Proskauer Rose to IViewIt more than a dozen
19 times?

20 A. No, I am not.

21 MR. PRUSASKI: Object to the form.

22 Q. Can you think of any reason, sir,
23 why your name would be mentioned more than a
24 dozen times in billing statements from
25 Proskauer Rose to IViewIt?

□

67

1 Rubenstein

2 A. I had a few conversations with
3 different people about the company over time,
4 as I have testified.

5 Q. And you testified that the
6 conversations took place between you and Chris
7 wheeler and you and Brian Utley.

8 A. Right.

Ken Rubenstein Deposition

9 Q. Correct?
10 A. Possibly -- I don't know if there
11 was anyone else.
12 Q. Do you have any recollection now
13 as to any other conversations?
14 A. No.
15 Q. Now, with regard to E-mails, were
16 you aware of any E-mails that you received
17 from anyone concerning IViewIt?
18 A. I don't know at this point in
19 time.
20 Q. Do you have records of E-mails
21 that you received?
22 A. I would not know at this point in
23 time.
24 Q. Are they normally kept as part of
25 your files?

□

68

1 Rubenstein
2 A. I don't know at this point in
3 time.
4 Q. I had asked you previously, sir,
5 whether or not you had any information on
6 Mr. David Colter.
7 Do you recall that?
8 A. Yes, and I said I wasn't sure who
9 he was, and I suggested you might want to
10 refresh my recollection, and you declined to
11 do so.

Ken Rubenstein Deposition

12 Q. Okay. would it refresh your
13 recollection, sir, if I tell you that
14 Mr. Colter was with Warner Bros.?

15 A. You know, I may have heard the
16 name, but I don't think I ever had any
17 dealings with him, although I am not sure.

18 Q. But you do have dealings with
19 Warner Bros.; is that correct?

20 A. Like I said, Warner Bros. is a
21 client.

22 Q. Right. would there be any reason
23 why your name would be mentioned in E-mails,
24 that you can think of, from Warner Bros. to
25 someone at AOL?

□

69

1 Rubenstein

2 A. I don't know.

3 I mean, I do work -- they are part
4 of the same company, they are clients of the
5 firm, and so, I can't really discuss it
6 because of privilege.

7 Q. Sir, you had indicated earlier you
8 had no idea with regard to any of the
9 intellectual properties or patents for
10 IViewIt; is that correct?

11 A. Not at this point in time.

12 Q. Did you ever issue any opinion to
13 anyone as to the validity of those patents?

14 A. Not that I know of.

Ken Rubenstein Deposition

15 Q. Did you ever provide any
16 information at all with regard to the validity
17 of any of these patents?

18 A. Not that I know of.

19 Q. So it's possible that you have in
20 the past but you don't recall?

21 A. I don't recall having involvement
22 with these patents. I was not the patent
23 counsel.

24 Q. Now, sir, we have faxed you a copy
25 of a letter. I don't know if you have

□

70

1 Rubenstein
2 received it.

3 A. We don't have it yet.

4 Q. Okay, could you find out if that's
5 available?

6 A. All right. We will put you on
7 hold.

8 Q. Thank you.

9 (Pause in proceedings.)

10 Q. Okay, are you with me?

11 A. Yes.

12 Q. Do you have the fax?

13 A. No, I do not. Like I say, you
14 should have sent it up here yesterday or in
15 advance.

16 Q. That's fine, that's fine. I was
17 expecting that maybe you would have a better

Ken Rubenstein Deposition

18 recollection of some of these events, and
19 maybe that was my incorrect presumption,
20 considering that I guess the communication
21 from Stephen Lamont occurred relatively
22 recently --

23 A. Well, when did it occur?

24 Q. Well, that's what I was going to
25 ask you, first of all, if you can recall.

□

71

1 Rubenstein

2 A. Well, you asked me about that, and
3 I told you I may have spoken to him once, but
4 I don't recall the details right now.

5 Q. Now, with regard to what we talked
6 about earlier was the conflict of interest and
7 whether or not Proskauer Rose's position in
8 representing IViewIt constituted a conflict
9 with other clients, I think you mentioned that
10 you expected Mr. Wheeler to do the conflict
11 check; is that correct?

12 A. Yes.

13 Q. Are you aware of any conflict of
14 interest between IViewIt and any of your own
15 clients?

16 A. No.

17 MR. PRUSASKI: What's the
18 relevancy of that, Mr. Selz?

19 MR. SELZ: I think it goes to
20 whether or not IViewIt should have been

Ken Rubenstein Deposition

21 represented by Proskauer Rose in the
22 first place.

23 MR. PRUSASKI: Oh, is that a new
24 theory that you haven't pled?

25 MR. SELZ: Is that an objection?

□

72

1 Rubenstein

2 MR. PRUSASKI: Yes, it's objection
3 to relevance.

4 MR. SELZ: Okay, so noted for the
5 record.

6 Q. Mr. Rubenstein, you had indicated
7 that you are not aware of any conflicts
8 between IViewIt and any of your other clients;
9 is that correct?

10 A. Not at this point in time, no.

11 Q. Were you aware of any conflicts in
12 the past?

13 A. Not that I know of.

14 Q. Would there be any records kept of
15 any conflict check that was run by Mr. Wheeler
16 or any other --

17 A. I don't know.

18 Q. Would you let me finish my
19 question, please.

20 -- Mr. Wheeler or any other
21 partner or associate of your firm.

22 A. I don't know what records there
23 might be.

Ken Rubenstein Deposition

24 Q. You indicated there was a conflict
25 committee. Does that conflict committee meet

□

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1 Rubenstein
2 in New York or do they meet in Florida or is
3 there any particular location for their
4 meetings?

5 MR. PRUSASKI: Objection,
6 relevance.

7 You can answer this question, but
8 it's not going to get much further.

9 A. I assume they meet in New York.

10 Q. Is there any particular reason for
11 that assumption?

12 A. Most of the law firm is in
13 New York.

14 Q. Sir, I am a little confused about
15 some of your earlier testimony. I had asked
16 you whether or not you had spoken with any of
17 your clients concerning IViewIt and its
18 technology, and your response was to claim
19 privilege. Is that still the case, you are
20 claiming privilege with regard to any of those
21 communications?

22 MR. PRUSASKI: Yes.

23 A. Yes.

24 Q. Okay. I am going to just say at
25 this point that you testified that there were

1 Rubenstein
2 only two occasions that you had spoken with
3 third parties Mr. Utley and Mr. Wheeler that
4 you can recall with regard to IViewIt; is that
5 correct?

6 MR. PRUSASKI: I don't recall that
7 being his testimony.

8 A. That's not my testimony.

9 Q. What was your testimony?

10 A. We will have to have it read
11 back. I don't remember exactly what I said --

12 Q. Okay.

13 A. -- in response to which particular
14 question right now.

15 Q. Well, let me pose a new question,
16 sir, and I think I have asked you this before,
17 and I am going to pose it again because I am
18 unclear now.

19 You have communicated with third
20 parties with regard to IViewIt; is that
21 correct?

22 A. Well, what do you mean by "third
23 parties"?

24 Q. People or entities other than
25 IViewIt.

Ken Rubenstein Deposition
Rubenstein

1

2 A. Uh -- I might have, I might not
3 have, I am not sure right now.

4 Q. And those third parties you are
5 saying are clients of yours, is that why you
6 are asserting a privilege?

7 A. Well, it depends who you mean by a
8 "third party". You know, "third party" is a
9 vague term.

10 why don't you name some particular
11 third parties and I will answer the question,
12 if I have haven't answered it already.

13 Q. I think you said that you were
14 asserting a privilege with regard to Warner
15 Bros., I think you said --

16 A. Well, Warner Bros. is a client
17 here.

18 Q. Right. And Sony.

19 A. Sony is a client here.

20 Q. Right. So you refuse to answer
21 whether or not you had communicated to those
22 parties with regard to IViewIt; is that
23 correct?

24 A. Correct, or anything else I might
25 have communicated to them.

□

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1 Rubenstein

2 Q. Well, I am not asking you about
3 anything else, because, really, frankly, sir,

4 that's not only not relevant but, clearly,
5 that would be privileged, but I am asking you
6 with regard to simply IViewIt --

7 A. Well, you know, that's our
8 position, our position is that any
9 conversation with those entities is
10 privileged.

11 Q. Okay, and if there was a
12 discussion -- are you saying there was no
13 discussion or are you saying there was a
14 discussion that was privileged?

15 A. I am not saying there was a
16 discussion, I am not saying there was not a
17 discussion, I am saying it's privileged.

18 Q. So you can't simply answer no,
19 there was no discussion --

20 A. I am not saying there was, I am
21 not saying there was not, I am saying it's
22 privileged.

23 MR. SELZ: I am going to certify
24 that question, we will take it up with
25 Judge Labarga and see what his

□

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1 Rubenstein
2 determination is about that.

3 (RULING SOUGHT.)

4 Q. Now, with regard to any other
5 issues concerning IViewIt.com or any IViewIt
6 entities, have you had any communications

7 since the filing of this lawsuit with anyone
8 concerning IViewIt?

9 A. Well, I don't know when the
10 lawsuit was filed.

11 Q. Since 2001, have you had any
12 communications with anyone concerning IViewIt
13 Technologies or any of the IViewIt entities?

14 A. Not that I recall at this time.

15 Q. Have you spoken to Ray Joao with
16 regard to it?

17 MR. PRUSASKI: Asked and
18 answered.

19 A. You asked me about Ray Joao
20 already.

21 Q. Since 2001.

22 A. Not that I know of at this time.

23 Q. Sir, have you ever been involved
24 in setting up corporations for clients?

25 A. No.

□

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1 Rubenstein

2 Q. Have you ever made any
3 representations to any company or any entity
4 with regard to the advisability of setting up
5 corporations for them?

6 A. Not that I know of.

7 Q. Who would you refer that to at
8 Proskauer Rose if there was --

9 A. I am not sure, it would depend on

10 the particular situation.
11 Q. Do you have any idea what
12 Mr. Wheeler's specialization is?
13 A. No.
14 Q. Have you ever spoken with him with
15 regard to the legal services he was providing
16 to IViewIt?
17 A. You asked me that --
18 MR. PRUSASKI: Asked and
19 answered.
20 A. -- already and I answered it.
21 Q. And what was your answer again,
22 sir, "No"?
23 A. I don't remember the exact
24 question you asked, so I don't remember the
25 exact wording of my answer, what the question

□

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1 Rubenstein
2 was -- but the question was asked and
3 answered.
4 Q. Do you have that fax yet?
5 A. No. We will call my secretary
6 again.
7 I will put you on hold.
8 Q. Okay.
9 (Pause in proceedings.)
10 A. Okay, the fax is coming, so we are
11 just going to put you on hold for a minute.
12 Q. Thank you?

13 Ken Rubenstein Deposition
(Pause in proceedings: 12:35 p.m.-
14 12:41 p.m.)
15 A. All right. We have your letter.
16 Q. Do you ever recall seeing this
17 letter?
18 MR. SELZ: Let's get it marked,
19 first of all, by the court reporter as
20 Defendants' 1.
21 A. The letter is dated today, and I
22 never saw it before.
23 Q. Have you ever seen the contents of
24 this letter?
25 A. No. I haven't read the letter

□

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1 Rubenstein
2 yet.
3 Q. Okay.
4 A. I note that the letter is two-plus
5 pages long, I haven't read it. The letter is
6 dated today, November 20, 2002, and it's
7 unsigned, so this is a letter you guys,
8 IViewIt, created today.
9 Q. Well, I think that's a presumption
10 that you are putting into the record, sir.
11 A. Well, the letter I have in front
12 of me is dated today.
13 Q. Let me go ahead.
14 First of all, let's get it marked
15 as Number 1, Defendants' 1.

Ken Rubenstein Deposition

16 MR. PRUSASKI: Objection to the
17 predicate, he has never seen it before.
18 MR. SELZ: Let me ask him a
19 question about it first. I haven't even
20 examined him on it. Let me -- Chris,
21 this is my deposition of him, and I
22 appreciate the fact that he wants to get
23 this over, but that isn't an excuse for
24 him to jump the gun.
25 MR. PRUSASKI: I have a right to

□

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1 Rubenstein
2 make objections as I see fit, and I am
3 not taking instructions out of practice
4 law from you.
5 MR. SELZ: That's fine. I am just
6 saying, let me get it marked first.
7 (Deposition Exhibit Defendants' 1,
8 letter dated, November 20, 2002, with
9 fax transmittal cover sheet, was marked
10 for identification, as of this date.)
11 Q. Mr. Rubenstein, do you have in
12 front of you what's been marked as Defendants'
13 Number 1? Is that correct?
14 A. Yes.
15 Q. Okay, could you please read it for
16 me?
17 MR. PRUSASKI: Out loud?
18 Q. No, to yourself.

19 A. well, I will scan it, but I want
20 to note it's a two-page letter, I have not had
21 an opportunity to study it. So if you ask me
22 questions about the letter, I am going to tell
23 you I have not had an opportunity to study it.
24 Q. Okay, then I will go through the
25 letter paragraph by paragraph with you to see

□

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1 Rubenstein
2 if you recall any of it.

3 Do you ever recall receiving a
4 correspondence from Stephen Lamont?

5 A. Like I say, I haven't had a chance
6 to study your letter.

7 Q. I am not talking about this
8 particular --

9 A. I don't recall any correspondence
10 from Stephen Lamont at this point in time.

11 Q. Do you ever recall a request by
12 Wayne Smith of Warner Bros. as to IViewIt's
13 pending patents?

14 A. No. It might be that somebody at
15 IViewIt asked me to talk to Warner Bros. and I
16 declined. That might be the fact.

17 Q. Are you aware of any
18 confidentiality agreement executed by Warner
19 Bros. with regard to IViewIt?

20 A. No.

21 Q. Have you ever seen any such

22 agreement?

23 A. Not that I could recall.

24 Q. Again, sir, this letter refers to
25 you being on the advisory board of IViewIt

□

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1 Rubenstein

2 between fall of 1999/spring of 2000.

3 A. I was never on any advisory board
4 of IViewIt.

5 Q. Did Stephen Lamont ever meet with
6 you in person?

7 A. I think I -- as I testified, I may
8 have had a conversation with him, I don't know
9 if it was in person or not.

10 Q. You previously testified that you
11 had never reviewed any of IViewIt's
12 technologies; is that correct?

13 A. I never testified to that. What I
14 told you is, I don't have any knowledge of it
15 right now.

16 Q. Okay.

17 A. I don't know whether I reviewed it
18 or not.

19 Q. So it's possible, then, sir, that
20 you did review it.

21 A. Like I said, I answered the
22 question. You asked me, I answered it. I
23 don't know whether I reviewed it or not. I
24 have no knowledge of it right now. I was not

Ken Rubenstein Deposition

25 their patent attorney, I was not involved with

□

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1 Rubenstein

2 their patents.

3 Q. Okay, if you don't have a
4 recollection of reviewing it, but then it's
5 possible that you had; is that correct?

6 MR. PRUSASKI: Anything's
7 possible. I think we could stipulate to
8 that.

9 A. Right, I don't think it's possible
10 but -- and I don't think it happened.

11 Q. Do you have any clearer
12 recollection of it because of this letter?

13 A. No, I don't have a detailed
14 recollection or any recollection of it at this
15 point in time.

16 Q. And, again, I think you had
17 testified that you don't know anyone -- Greg
18 Thagard, you don't know Greg Thagard?

19 A. I do know Greg Thagard.

20 Q. Who is Greg Thagard?

21 A. He used to work at Warner Bros.

22 Q. Does Mr. Thagard, to the best of
23 your knowledge, have any information
24 concerning IViewIt?

25 A. I don't know at this point in

□

85

Ken Rubenstein Deposition

1 Rubenstein

2 time.

3 Q. What, to the best of your
4 recollection, was Greg Thagard's role with
5 regard to IViewIt?

6 A. I don't know what he might or
7 might not have done with respect to IViewIt.

8 Q. Who is Greg Thagard?

9 A. He is a person who worked at
10 Warner Bros.

11 Q. Well, what was his position --

12 A. He was in technical -- in the
13 technology side of the company.

14 Q. Do you have any idea where
15 Mr. Thagard is currently?

16 A. No. I believe he left the
17 company.

18 Q. How about Chris Cookson, did you
19 ever have any conversations with Chris Cookson
20 concerning IViewIt Technologies?

21 A. Like I say, Chris Cookson works
22 for Warner Bros., and any conversations I had
23 with Warner Bros. are privileged. So, I am
24 not saying I had a conversation, I am not
25 saying I did not have a conversation, I am

□

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1 Rubenstein

2 saying you are asking for privileged material.

Ken Rubenstein Deposition

3 Q. And David Colter?

4 A. I am not sure I ever had any
5 dealings with him.

6 Q. And who is David Colter?

7 A. You asked and I answered that
8 question already.

9 Q. So you have never seen this
10 correspondence, you don't recall seeing this
11 correspondence from Mr. Lamont; is that
12 correct?

13 MR. PRUSASKI: It's dated today.

14 A. It's dated today.

15 MR. PRUSASKI: It's marked
16 "Draft". It's impossible for us to
17 have seen it before. And the return
18 address is an empty house in Los Angeles
19 County.

20 Q. Have you ever seen the contents of
21 this letter before?

22 A. I have never --

23 MR. PRUSASKI: He answered these
24 questions, no?

25 A. I have never seen the letter

□

87

1 Rubenstein

2 before.

3 Q. How about the E-mails that were
4 faxed over to you, as well? There is an
5 E-mail that's dated August 6, 2001. Have you

Ken Rubenstein Deposition

6 ever seen that E-mail before?

7 A. Is this an E-mail from David
8 Colter to Heidi Krauel?

9 Q. Correct.

10 MR. PRUSASKI: The one dated
11 August 1, 2001?

12 MR. SELZ: Correct.

13 A. Right, I see the E-mail.

14 Q. Okay.

15 MR. SELZ: Let's get it marked as
16 2.

17 (Deposition Exhibit Defendants' 2,
18 fax transmittal cover sheet and E-mails,
19 was marked for identification, as of
20 this date.)

21 Q. Sir, do you have any reason to
22 know why your name is mentioned in that
23 E-mail?

24 A. No, because I don't recall giving
25 any opinions about the patents.

□

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1 Rubenstein

2 Q. And you never, to the best of your
3 recollection, had any discussions with
4 Mr. Thagard with regard to same, either?

5 A. Like I say, any discussion I might
6 have or might not have had with Mr. Thagard
7 would be privileged.

8 Q. I am going to put you on hold for
Page 79

Ken Rubenstein Deposition

9 just a minute.

10 (Pause.)

11 MR. SELZ: Okay, we are back on.

12 Okay, I have got nothing further
13 at this time. However, we are going to
14 have to go to Judge Labarga with regard
15 to your refusal to answer on some of
16 these issues with your claim of
17 privilege, so we may have to come back
18 and conclude with those questions at a
19 later date.

20 MR. PRUSASKI: Fine.

21 THE WITNESS: We will take it
22 under advisement.

23 We are not committing to come back
24 or not.

25 MR. SELZ: That's fine.

□

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1

2 (Time noted: 12:48 p.m.)

3

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5

6

KENNETH RUBENSTEIN

7

8 Subscribed and affirmed

9 before me this ____ day

10 of _____, 2002.

11

Ken Rubenstein Deposition

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C E R T I F I C A T E

STATE OF NEW YORK)
 : ss.
COUNTY OF NEW YORK)

I, WENDY D. BOSKIND, a Registered
Professional Reporter and Notary Public
within and for the State of New York,
do hereby certify:

That KENNETH RUBENSTEIN, the
witness whose deposition is hereinbefore
set forth, affirmed before me, and
that such deposition is a true and
accurate record of the testimony given

Ken Rubenstein Deposition

15 by the witness.

16 I further certify that I am not
17 related to any of the parties to this
18 action by blood or marriage, and that
19 I am in no way interested in the
20 outcome of this matter.

21 IN WITNESS WHEREOF, I have
22 hereunto set my hand this 26th day
23 of November, 2002.

24
25 _____
WENDY D. BOSKIND, RPR

□

1
2 November 20, 2002

3 I N D E X

4 WITNESS	EXAMINATION BY	PAGE
5 Kenneth Rubenstein	Mr. Selz	4
6		
7 -----	EXHIBITS-----	
8 Defendants' 1, letter dated, November 20,		
9 2002, with fax transmittal cover sheet.....		81
10 Defendants' 2, fax transmittal cover		
11 sheet and E-mails.....		87
12		
13		
14 (DIRECTION NOT TO ANSWER.).....		25
15 (DIRECTION NOT TO ANSWER.).....		28
16 (DIRECTION NOT TO ANSWER.).....		30
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18 (DIRECTION NOT TO ANSWER.)..... 47
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20
21 (MOTION TO STRIKE.) 10
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23 (RULING SOUGHT.)..... 77
24
25

□

1
2 STATE OF NEW YORK) Pg__of__Pgs
3 ss:
4 COUNTY OF NEW YORK)
5 I wish to make the following changes,
6 for the following reasons:
7 PAGE LINE
8 ____ ____ CHANGE: _____
9 REASON: _____
10 ____ ____ CHANGE: _____
11 REASON: _____
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20 ____ ____ CHANGE: _____

Ken Rubenstein Deposition

21 REASON: _____
22 _____ CHANGE: _____
23 REASON: _____
24 _____ CHANGE: _____
25 REASON: _____

□



PROPOSED RYJO, INC. AGREEMENT

4.3 Ownership of Java Applet.

(a) The Parties acknowledge that Developer has developed, on behalf of Customer, the Java computer program task specific application “applet” that facilitates zooming and panning of JPEG images (the “Java Applet”). The Parties further acknowledge that the Java Applet is part of the Deliverables hereunder and does not include Developer Software. Customer shall pay Developer for the cost of developing the Java Applet in the amount set forth in Exhibit D attached hereto. The Java Applet is the exclusive property of the Customer, as it is part of the Customer Materials set forth in Section 4.1 above. Subject to the license granted under Subsection (b) below, Customer retains all right, title, interest in and to the Java Applet.

(b) Customer hereby grants to Developer a royalty free, worldwide, perpetual, irrevocable, non-exclusive right and license, with full rights to sublicense, to make, have made, use, offer for sale, sell, import, reproduce, distribute, modify, publicly perform, and publicly display the Java Applet.



COMMENTS ON PROPOSED RYJO AGREEMENT BY DOUGLAS BOEHM OF FOLEY AND LARDNER.

-----Original Message-----

From: Boehm, Douglas A. [mailto:daboehm@foleylaw.com]

Sent: Friday, June 09, 2000 1:31 AM

To: 'Brian Utley (Iviewit)'

Subject: Ryjo Agreement

Brian--

Here's a Word version (.doc) and an Acrobat version (.pdf) of the Ryjo agreement. Please don't send them any electronic version -- only paper copies. Otherwise they may take liberties with the language and it will take a lot longer to review. If you don't meet with them in person, you can send them only the Acrobat version (its not as easy to modify).

I didn't write alternative language for the Java Applet ownership Section 4.3 yet, because if you can negotiate this language, you will save the cost of my time in doing so (which could be put toward the payment for the Java Applet per Exhibit D). Besides, it would be more efficient to make this change with any other changes that may be required.

It is important that this agreement cover all the PAST development work done by Ryjo for Iviewit, so you'll have to BACK-DATE the agreement in the preamble to a date BEFORE ANY WORK WAS DONE. If you are not sure of the date, I see no reason why you can't back-date it to January 1st of the appropriate year. I also assume that you paid them for the past work, otherwise you may be in breach of the agreement as soon as you sign it. Note that the specifications are a very important part of any development agreement, particularly since they are the basis for determining whether or not a breach of the agreement has occurred. Please be sure that the specifications are accurate and complete. I'd be concerned about signing anything without the Specifications.

If Developer had anything to do with the preparation of the Specification (which is the basis of the performance warranty) such that Customer is relying on Developer's skill or judgment in selecting, defining, or designing the Deliverables or the hosting equipment or personnel, then we should re-think whether we should let the Developer disclaim the implied warranties of merchantability and fitness of a particular purpose in Section 6.6.

If the value of the development Services is sufficient, I recommend that staggered payments be made in accordance with the Developer meeting particular development milestones. Such development milestones should be set forth in detail on Exhibit B and probably take the place of the Delivery Schedule set forth on Exhibit A. If the delivery dates have past, just put down the past dates or today's date or something. I wouldn't suggest that you write "completed" or something equivalent because that may be interpreted as an acceptance under Section 3.2 (which only gives you ten days to reject it anyway).

This version assumes that the Developer will NOT be providing Hosting



Services. If this is not correct, changes need to be made to this agreement.

The issue of confidentiality of the Java Applet may still cause some problems. Since Section 4.3(a) states that the Java Applet was created by Developer specifically for use in connection with its services provided under this Agreement, it qualifies as Confidential Information under the definition of Section 5.1 of the Agreement. However, Section 5.2 prevents the Developer from using the Java Applet elsewhere and from disclosing it to any third party. Nevertheless, the exclusions under Section 5.3 may apply if the Developer developed the Java Applet before the Effective Date. If you think the Java Applet does contain any Confidential Information, we should address this issue. If not, which is what I presume is the case, I suggest that we ignore it.

Please be sure to re-read it before you sign it. I'd be happy to make any changes for you.

Let me know how it goes tomorrow.

--Doug

Douglas A. Boehm

Foley & Lardner

777 East Wisconsin Avenue

Milwaukee, Wisconsin 53202

Tel: (414)297-5718

Fax:(414)297-4900

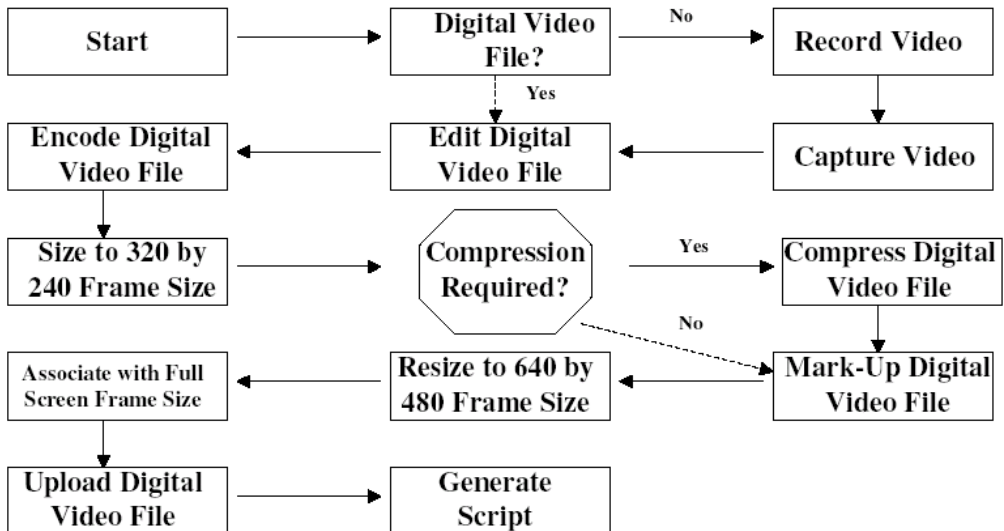
Email: daboehm@foleylaw.com



EXHIBIT J

COMPANY'S TECHNOLOGY SPECIFICATION FOR VIDEO SCALING

VIDEO WORK FLOW



RESPONDENT'S SUBMISSION OF VIDEO DISCLOSURE TO MR. JOAO

PROSKAUER ROSE LLP

2295 Greco Road
Suite 340 West
Socastone, FL 33431-1360
Telephone 561.241.7400
Nowhere in Florida
432.7745
Fax 561.241.7145

NEW YORK
LOS ANGELES
WASHINGTON DC
CHICAGO IL
PARIS

PERSONAL AND CONFIDENTIAL

Fax Transmittal

Date June 1, 1999	Client-Matter 0894/40017/001	Sender's Room Number
Total Pages (including Cover) 2		Main Fax Operator 561.241.7400
From Christopher C. Wheeler		Fax No. 516.747.9363
Sender's Voice Number 561.995.4702		Voice No. 516.747.0300.x240
To Ray Joao		
Company Meltzer, Lippe		

Message

The attached is from Eliot Bernstein.

*EB
561-417-4470*

*6/1/99
B.W.I
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0894/40017-001 BRLB 1/23/1297 v1

06/01/99 01:07 PM (27/3)



PATENT FOR VIDEO TECHNOLOGY

- > Step 1. Is to record the video under any format, beta, VHS, digital, any of the standard file formats. *VHS, digital, beta, VHS, digital, any of the standard file formats.*
- > Step 2. After the video is shot, the second step is to capture the video using any capture device and capture software. *Adobe Premier ~~5.1~~ VERSION 5.1 or Real Producer 5.2*
- > Step 3. Is to edit the video, if necessary, using any standard video editing tools. *Final Cut Pro*
- > Step 4. Is to convert to real video format. *Real Producer 5.2*
- > Step 5. Then we manually set the size of the video within the HTML code to 640 by 480. *Frame Resolution or size can be 600x400, 1024x768, 1280x1024, 1600x1200*
- > Step 6. We then post to the Web using any Web FTP software. *WS FTP 4.00*
- > Step 7. We then write an Ascii file that calls the real video to stream. This makes it a streaming real at full screen with very good clarity and quality. Under Step 7 we write a separate script saved as our *.rm (star.rm) file that will call the original real video file. This script is included in the HTML codes. For MPEG videos, we follow Steps 1 through 3 the same, then we, in Step 4, convert, if not already, to the MPEG format. 5, insert the video in the HTML codes and expand to 640 by 480. Then we upload the video file to the Web in Step 6. Step 7, this MPEG file is played from the Web by first downloading a small portion of the file and played through the necessary player or any player, actually, that supports AVI, MPEG-type video formats.

This tape was recorded on 6/1/99 at the law firm of Proskauer Rose LLP.



PROVISIONAL PATENT FILING 60/137,297 BY MR. JOAO UNDER SUPERVISION OF RESPONDENT THE EVIDENCE OF WHICH IS ATTESTED TO BY SECTION 3.A. ABOVE

PFD-105P (Rev. 8-88)

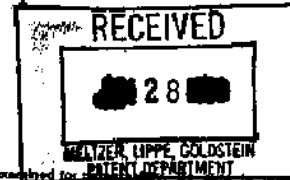
PROVISIONAL APPLICATION FILING RECEIPT



UNITED STATES DEPARTMENT OF COMMERCE Patent and Trademark Office ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231

Table with columns: APPLICATION NUMBER, FILING DATE, FEE REC'D, ATTORNEY DOCKET NO., DRWGS. Row 1: 60/137,297, 06/03/99, \$75.00, 5865-3, 0

RAYMOND A JOAO MELTZER LIPPE GOLDSTEIN & SCHLISSEL PC 190 WILLIS AVENUE MINEOLA NY 11501



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Applicant(s) ELIOT BERNSTEIN, BOCA RATON, FL.

IF REQUIRED, FOREIGN FILING LICENSE GRANTED 06/22/99 ** SMALL ENTITY ** TITLE APPARATUS AND METHOD FOR PRODUCING ENHANCED VIDEO IMAGES



Attorney Docket No. 5865-3

**APPARATUS AND METHOD FOR PRODUCING
ENHANCED VIDEO IMAGES**

The present invention is directed to an apparatus and a method for producing enhanced video images. A preferred embodiment of the invention is described in the following manner.

- Step 1. Record the video under any format, i.e., beta, VHS, digital, and/or any of the standard file formats, including, but not limited to, *.AVI, *.MOV, *.MPEG, etc., by utilizing an appropriate recording device such as a video camera, a film camera, a reel-to-reel recording device, and/or a live video recording device.
- Step 2. After the video is shot, the second step is to capture the video using any capture device such as a capture card or capture hardware, such as provided by Dazzle, and also by using capture software such as Adobe Premier version 5.1 or Real Producer G2.
- Step 3. Edit the video, if necessary, by using any standard video editing tools, such as, for example, Adobe Premier 5.1.
- Step 4. Convert the data and/or information obtained to a real video format such as, but not limited to, a *.RM format.
- Step 5. Manually set the size of the video within the HTML code to a 640 x 480 frame resolution, or any other suitable resolution, such as, but not limited to, 800 x 600, 1024 x 768, 1280 x 1024, 1600 x 1200.
- Step 6. Post the obtained file to a Web page, Web site and/or to the Web, by using any Web FTP software, such as, but not limited to, WS FTP PRO.
- Step 7. Generate or write an ASCII file that calls the real video to stream. This results in streaming real video at full screen with very good clarity and quality. Under Step 7 a separate ASCII file is written and saved as an *.RPM file, or other suitable format, that will call the original real video file. This script is included in the HTML codes. For MPEG videos, Steps 1 through 3 are followed as described above. In Step 4, the file is converted, if not previously converted, to an MPEG format. Next, the video is inserted into the HTML codes and expanded to a 640 by 480 resolution, or higher resolution. Then the video file is uploaded to the Web page Web site, and/or the Web in Step 6. Thereafter, at Step 7, the MPEG file is played from the Web page, Web site and/or from the Web, by first downloading a small portion of the file and playing the file through a suitable player which supports AVI, MPEG-type, etc., video formats and/or other suitable formats.

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**NON-PROVISIONAL PATENT FILING U.S. 09,587,734 BY FOLEY AND
LARDNER UNDER SUPERVISION OF RESPONDENT THE EVIDENCE OF
WHICH IS ATTESTED TO BY SECTION 3.A. ABOVE AND EXHIBIT E IN
COLLUSION WITH MR. UTLEY**

57103/116

UNITED STATES PATENT APPLICATION

for

SYSTEM AND METHOD FOR PROVIDING

AN ENHANCED DIGITAL VIDEO FILE

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TITLE OF THE INVENTION

SYSTEM AND METHOD FOR PROVIDING AN
ENHANCED DIGITAL VIDEO FILE

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional
Application No. 60/137,297, filed June 3, 1999, U.S. Provisional
Application No. 60/155,404, filed September 22, 1999, U.S.
5 Provisional Application No. 60/169,559, filed December 8, 1999,
and PCT International Application No. _____, filed June 2,
2000.

FIELD OF THE INVENTION

The present invention relates generally to video
10 imaging. More specifically, the present invention relates to a system
and method for providing high quality digital video files for streaming
across a network.

BACKGROUND OF THE INVENTION

Streaming video is a technique by which video is played
15 in real time as it is downloaded over the Internet, as opposed to
storing it in a local file first. A video player decompresses and plays
the data as it is transferred to a user computer over the World-Wide
Web. Streaming video avoids the delay entailed in downloading an
entire file and then playing it with a plug-in application. Streaming
20 video requires a communications connection (e.g., a network,
Internet, etc.) and a computer powerful enough to execute the
decompression algorithm in real time.

In the field of streaming video, the primary design challenge is that the viewer desires perfect video quality over a limited-bandwidth network. Perfect video quality requires an enormous amount of digital data. Today's networks are not capable
5 of providing life-like, full motion, full screen streaming video.

It is known to capture video using a capture device, compress the resulting captured video, store the compressed video, and send the compressed video across the Internet. However, prior attempts have failed to produce high quality streaming video that
10 can be transmitted over the Internet. For example, prior attempts at streaming video have been unable to produce full-screen, real video frame rate video at any acceptable quality.

Several teachings have emerged that attempt to improve the quality and decrease the file size of streaming video.
15 One teaching in the art is to reduce the number of frames per second that are being encoded, from the 25 to 30 fps of standard television to 6 or 7 fps or less for streaming video. While this reduces the amount of data that is being sent, the video appears jittery and corresponding voice appears asynchronous with the jittery video.
20 Another teaching in the art is to capture the video at a small frame size of 160 x 120 or less. The small frame size of 160 x 120 is the widely used standard in Internet streaming video. Further teachings are directed to reducing the amount of data that is provided prior to compressing to reduce the file size resulting from compression.
25 Other teachings in the art have pointed toward compressing a digital video file as much as possible prior to transmission. Full-screen, full-motion video has historically been viewed as requiring far too much data for transmission over a limited-bandwidth network.

Accordingly, there is a need for an improved system and method for providing an enhanced digital video file for streaming across a network. Further, there is a need for a digital video file having high quality at various screen sizes with minimal quality loss when the video is expanded to full screen size. Further still, there is a need for a digital video file having a real video frame rate that can be streamed across a limited bandwidth network, such as the Internet. Further yet, there is a need for a video transmission which, once commenced, need not be stopped.

10 BRIEF SUMMARY OF THE INVENTION

According to an exemplary embodiment, a method of providing a streaming video file includes providing digital video data having a capture frame size of at least 69,300 pixels per frame and converting the digital video data to a streaming video file having a converted frame size of at least 69,300 pixels per frame.

According to another exemplary embodiment, a method of providing a streaming video file includes providing digital video data having a capture frame rate of at least 24 frames per second and converting the digital video data to a streaming video file having a converted frame rate of at least 24 frames per second.

According to yet another exemplary embodiment, a method of providing a streaming video file includes obtaining a source video signal having a predetermined source video parameter; capturing the source video signal while maintaining substantially the same source video parameter to provide a captured digital video file; and encoding the captured digital video file while maintaining substantially the same source video parameter to provide a streaming video file.

According to still another exemplary embodiment, a method of generating a streaming video file for streaming over the Internet includes providing digital video data having a capture frame size of at least 320 x 240 pixels; compressing the digital video; data; encoding the digital video data into a streaming video file, wherein the streaming video file has a frame size of at least 320 x 240 pixels; uploading the streaming video file to an Internet server.

According to still another exemplary embodiment, a system for providing a streaming video file includes means for providing digital video data having a capture frame size of at least 320 x 240 pixels and means for converting the digital video data to a streaming video file having a converted frame size of at least 320 x 240 pixels.

According to still another exemplary embodiment, a system for providing a streaming video file includes means for providing digital video data having a capture frame rate of at least 24 frames per second and means for converting the digital video data to a streaming video file having a converted frame rate of at least 24 frames per second.

BRIEF DESCRIPTION OF THE DRAWINGS

The invention will become more fully understood from the following detailed description, taken in conjunction with the accompanying drawings, wherein like reference numerals refer to like parts, in which:

FIG. 1 is a block diagram of a system for generating an enhanced digital video file according to an exemplary embodiment;

FIG. 2 is a flowchart of a method for generating an enhanced digital video file according to the exemplary embodiment of FIG. 1; and

FIG. 3 is a block diagram of a system for playing a digital video file across a network.

DETAILED DESCRIPTION OF THE INVENTION

Referring to FIG. 1, a system 10 for generating an enhanced digital video file is shown. System 10 may be used as shown, or portions of system 10 may be integrated with other video processing systems, such as medical imaging equipment, motion picture production equipment, etc. System 10 generates a digital video file expandable to a full screen size and having a real video frame rate (i.e., life-like, smooth, not jerky, comparable with recorded video formats, such as, NTSC (National Television Standards Committee) at 29.97 frames per second (fps), PAL (Phase Alternative Line) at 25 fps, and SECAM (Séquentiel Couleur Avec Mémoire) at 25 fps)) with a file size that is suitable for streaming over the Internet, for such uses as high definition television, Web television, computers and servers utilized in wireless environments, etc.

As known in the art, video is recorded having certain standard recorded video parameters, such as, frame rate, and number of lines scanned. For example, it is will known that a source conforming to the NTSC (National Television Standards Committee) standard operates at 29.97 frames per second (fps), a source conforming to the PAL (Phase Alternative Line) standard operates at 25 fps, and a source conforming to the SECAM (Séquentiel Couleur Avec Mémoire) standard operates at 25 fps. It is will known in the

art that the NTSC standard includes two interleaved frames at 240 lines scanned, while the PAL standard is 270 lines scanned. Note that the number of lines scanned corresponds to the number of vertical pixels in a standard 320 x 240 frame size compatible with standard capture cards, such as, a Dazzle LAV-1000S capture device manufactured by Dazzle, Inc. of Fremont, California.

System 10 includes one or more sources, including recording devices 12 or playback device 25, a capture device 14, a computer 16, and a network server 18. Recording devices 12 include a camcorder 20, a digital video camera 22, and a reel-to-reel camera 24, each of which may be hand-held or mounted on a tripod or stand. System 10 may include a playback device 25 (e.g., tape player, VHS (Vertical Helix Scan) player, Beta player, DVD (Digital Versatile Disk) player, etc.). Camcorder 20 may be a VHS recorder, Beta recorder, or other camcorder, and is configured to store video on magnetic tape. Digital video camera 22 may be any type of digital video camera configured to generate video in a digital format. In this exemplary embodiment, digital video camera 22 stores the digital video data to a tape. Digital video camera 22 is configured to provide digital video data in real time or via the tape in a digital format, such as, Beta digital, AVI, MOV, MPEG (Motion Picture Experts Group), or other format compatible with the IEEE 1394 standard, etc., to capture device 14. AVI is an audio/video standard designed by Microsoft Corp., Redmond, Washington. According to one exemplary embodiment, a digital video camera including 3CCD technology is used to record the video. The 3CCD technology (3-chip charge-coupled device) includes a dichroic prism and three CCDs, each CCD being aligned to detect only the red, green, or blue color. A 3CCD camera will provide enhanced color resolution. Reel-

to-reel camera 24 includes recording equipment that uses magnetic tape which must be threaded through the equipment and onto an empty reel. According to one alternative embodiment, a separate audio recording device, such as a microphone, may be utilized in
5 conjunction with recording devices 12, in which embodiment recording devices 12 are used to record only video. Other recording devices may be used, such as, devices optimized for live video-conferencing.

Computer 16 includes a processor, memory, magnetic
10 storage device, input/output devices and circuitry, etc. Computer 16 may include multiple computer at multiple sites, with different portions of the process described hereinafter operating on different computers.

Capture device 14 is coupled to one or more of sources
15 11. Capture device 14 is shown external to computer 16, but may alternatively be an internal capture device coupled within the housing of computer 16 or an internal capture device within the housing of one of recording devices 12 or playback device 25. In this exemplary embodiment, a Dazzle LAV-1000S capture device is
20 utilized, though other capture devices may be used, such as a Pinnacle DC10PLUS or Pinnacle DC30PRO device, both manufactured by Pinnacle Systems, Inc., Mountain View, California, or a MotoDV Mobile capture device, manufactured by Digital Origin, Inc., Mountain View, California. Capture software 26, such as
25 Amigo 2.11, manufactured by Dazzle, Inc. or Adobe Premier 5.1, manufactured by Adobe Systems Inc., San Jose, California, is operable on computer 16 to interface capture device 14 with computer 16. Other capture software may be utilized, such as,

RealProducer G2, manufactured by RealNetworks, Inc., Seattle, Washington.

In conjunction with capture software 26, capture device 14 is configured to receive a video signal from one of recording devices 12 or playback device 25, to digitize the video signal, and to store the video signal as a digital video file. The parameters of the video capture will be discussed below with reference to FIG. 2. The digital video file is an MPEG-1 file in this exemplary embodiment, but may alternatively be generated in other digital video formats, such as, MPEG-2, AVI, etc. Capture device 14 is a combined audio/video capture device, but may alternatively include discrete audio and video capture devices, the audio capture device configured to digitize any audio which corresponds to the video being captured by the video capture device. As a further alternative, audio captured device may be utilized alone without a video capture device. The audio capture device may be, for example, a Montego II device, manufactured by Voyetra Turtle Beach, Inc., Yonkers, New York, and configured to generate a digital audio file in a digital audio format, such as, PCM (Pulse Code Modulation).

Editing software 28 is operable on computer 16. In this exemplary embodiment, Adobe Premier 5.1 is utilized, though other video editing software may be used. Editing software 28 receives the captured digital video file and enables an operator to edit the digital video file by adding or deleting frames, adjusting the color, contrast, and brightness of the frames, etc. The edits are then saved to the digital video file or can be exported to AVI or MOV file types.

Encoding software 30 is operable on computer 16. In this exemplary embodiment, RealProducer G2 is utilized, though

other encoding software may be used. Encoding software 30 receives the edited digital video file and encodes the digital video file into an encoded format, such as, an RM format. Encoding software 30 may also compress the digital video file, if needed, to reduce the size of the digital video file, using a video compression algorithm, such as MPEG-1, MPEG-4, etc.

Markup software 32 is operable on computer 16. In this exemplary embodiment, a hypertext markup language (e.g., HTML, Dynamic HTML, Cold Fusion) is utilized. An operator marks up the encoded digital video file in HTML to prepare the digital video file for uploading to the network server 18. In this exemplary embodiment, a code segment representing a full screen frame size, such as 640 x 480 pixels, is associated with the digital video file in the HTML code. The full screen frame size code segment may alternatively include other screen sizes, such as 800 x 600 pixels, 1024 x 768 pixels, 1280 x 1024 pixels, and 1600 x 1200 pixels. During a subsequent video streaming step, the full screen frame size code segment causes or enables a video player program, such as RealPlayer, manufactured by RealNetworks, Inc., to enlarge the streaming video to a full screen frame size, such as 640 x 480 pixels.

References herein to frame sizes in pixels, such as, 320 x 240 pixels, 640 x 480 pixels, are intended to include equivalent frames sizes thereto. For example, it is known that a frame size of 320 x 240 pixels may include an additional number of unneeded pixels (e.g., which can be as much as 10% of the total pixels) attributed to overscan. Thus, one equivalent to a 320 x 240 pixel frame size is 304 x 228 pixels. As a second example, when rectangular pixels are used, the exact pixel count differs from the

stated frame size. Thus, one equivalent to a 320 x 240 pixel frame size is 352 x 240. Accordingly, references to frame sizes in pixels are intended to include these and other equivalent frame sizes, and the teachings herein include any and all such insubstantial variations.

5 The uploading process utilizes uploading software 33, such as, a Web FTP (file transfer protocol) software (e.g., WS FTP PRO, manufactured by Ipswitch, Inc., Lexington, Massachusetts.) The digital video file is uploaded to network server 18, which includes a computer configured to generate a web page on an
10 internet-protocol network, such as the Internet or a company-wide intranet. A web page is a block of data written in a markup language, such as HTML, and any related files for scripts and graphics. Network server 18 may alternatively be coupled to a non-internet-protocol network, such as, an ethernet, a local area
15 network, a wide area network, a wireless network, etc.

A user computer 34 may access the web page provided by network server 18 via a network, such as, the Internet. Upon actuating a user input device (e.g., a web page button, hypertext link, etc.) associated with the uploaded digital video file, the HTML
20 code launches a suitable video player program (e.g., RealPlayer) at user computer 34, activates the full screen frame size at user computer 34, and streams the video from the digital video file to user computer 34. Alternatively, the video player program may initially play the streaming video at a smaller frame size (e.g., 320 x
25 240), and the user may actuate a user input device on the video player to enlarge the streaming video to a full-screen size, such as 640 x 480. Notably, capture software 26, editing software 28, encoding software 30, markup software 32, and uploading software

33 may be operable on one computer or on different computers during different steps in the process.

According to one alternative embodiment, the encoded digital video file is stored directly to a storage device, such as, a compact disk, a digital video disk, a magnetic storage device, etc., for subsequent viewing on another computer, on a personal digital assistant (e.g., a Palm Pilot manufactured by Palm, Inc., Santa Clara, California), etc. According to another alternative embodiment, digital video data is provided on a storage device (e.g., a floppy disk, a hard disk storage, etc.) which has been pre-captured. The pre-captured digital video data is provided in a compressed or uncompressed digital video format to encoding software 30 for subsequent processing.

Referring now to FIG. 2, a method 50 for generating an enhanced digital video file according to the exemplary embodiment of FIG. 1 is shown. Method 50 is operable using one or more of the elements of system 10, as needed. While the steps of method 50 are explained with reference to captured video, it is understood that captured audio may be processed along with the captured video, or perhaps processed independently in a similar manner. As will be seen, the recorded video will be captured and encoded at near-optimal levels, as determined by the selected parameters in these processes, thereby preserving the highest quality video content. While exemplary values are presented herein for such parameters, it is understood that one of ordinary skill in the art will recognize other combinations of parameters based on these teachings.

According to one exemplary embodiment, a customer provides pre-recorded video saved to a disk or other storage device. At step 52, if the video has been pre-recorded by the customer, the

method proceeds to step 58. If the video has not yet been recorded, at step 54, video is recorded using one or more of recording devices 12 or playback device 25. The video is recorded into any suitable format, such as, VHS or Beta, and is played back using a television standard, such as, NTSC (National Television Standards Committee), PAL (Phase Alternative Line), SECAM (Séquentiel Couleur Avec Mémoire), a digital format, such as, AVI, MOV, MPEG, a digital format compatible with the IEEE 1394 standard, or another format, etc. At step 56, the video is captured by coupling one of recording devices 12 or playback device 25 to capture device 14, which is an external Dazzle LAV-1000 capture device in this exemplary embodiment, but may alternatively be an internal card or other capture devices, such as a Pinnacle DC10 device.

Capture software is also utilized, such as, Amigo 2.11, Adobe Premier 5.1 or Real Producer G2. Capture device 14 and capture software 26 generate a digital video file based on the recorded video. If the recorded video is in an analog format, capture device 14 digitizes the analog video to create digital video data. If the recorded video is in a digital format, capture device 14 merely receives the digital video data and formats a file in the appropriate standard (e.g., AVI, MOV, MPEG1, etc.). According to one exemplary embodiment, capture software 26 is set for real video capture, i.e., having a frame rate of a television or movie standard, such as, 29.97 frames per second. Real video capture may further have a frame rate of between 24 and 30 frames per second, or at least substantially more than the 6 to 9 frames per second conventionally used in streaming video applications. Further, the video is captured with at least approximately 76,800 pixels per frame (at least approximately 69,000 pixels taking into consideration

overscan). For a 4:3 aspect ratio, the frame size of the video capture is at least 320 x 240 in this exemplary embodiment (at least 304 x 228 taking into consideration overscan), or at least more than the 160 x 120 used in conventional streaming video applications.

5 Frame sizes of 480 x 320 and 640 x 480 may also be utilized in the video capture. However, particularly advantageous results are associated with the 320 x 240 capture frame size.

In an alternative embodiment, a separate audio capture device is utilized in parallel with the video capture device. In the
10 alternative embodiment, corresponding audio capture software is operable on computer 16 to digitize the audio into a digital audio format, such as PCM. The sampling rate is between 44 and 48 kiloHertz (kHz); the bus size is 16-bit, allowing an audio resolution of 16-bits; and the audio is sampled in stereo. These parameters may
15 also be set using the video capture software in an embodiment wherein video and audio are captured using one capture device.

The captured video data may be stored as a data file in a storage device (e.g., a hard drive) or may be stored in memory and fed directly to an encoder. The captured video data may further be
20 compressed, for example, to an MPEG-1 file before being saved to the storage device.

At step 58, the digital video file is edited using a video editing software, such as, Adobe Premier 5.1. Adobe Premier 5.1 generates an output file in a MOV or AVI format, but may
25 alternatively generate an output file in any digital video format. The edited digital video file may be stored in the storage device. Step 58 is optional but, if included, preferably Adobe Premier 5.1 maintains a frame size of at least 320 x 240 pixels and a real video frame rate.

At step 60, the edited digital video file is converted or encoded using a video encoding algorithm to create a streaming video file. The edited digital video file is first retrieved from the storage device (unless the digital video data is provided directly from capture device 14). In this exemplary embodiment, the digital video file is encoded to a RealMedia format (i.e., RM) using a RealNetworks encoding algorithm. RM is an audiovisual file format proprietary to RealNetworks, Inc. As a further alternative, Windows Media Encoder, manufactured by Microsoft Corp., may be utilized to encode the captured digital video file, for example, to an ASF format (Advanced Streaming Format) or ASX format. Further still, QuickTime, manufactured by Apple Computer, Inc., Cupertino, California, may be utilized to encode the captured digital video file, for example, to an MOV format.

Encoding may additionally include compression, if a smaller file size is desirable, as indicated by steps 62 and 64. The amount of compression may be selected by the operator using encoding software 30 or alternative compression software. During the encoding process, the digital video file is encoded to have a data rate of between approximately 35 kbps (kilobits per second) to 750 kbps, and a frame rate of between approximately 24 fps (frames per second) and 30 fps (e.g. 29.97 fps.). The number of pixels per frame is set to at least approximately 76,800 (again, at least approximately 69,000 pixels taking into consideration overscan) which, for a 4:3 aspect ratio, is 320 x 240 pixels (again, at least 304 x 228 pixels taking into consideration overscan), or at least more than the 160 x 120 pixels of conventional usage. However, editing, encoding, and compression are optional steps.

At step 66, the digital video file is marked up with a markup language, such as, HTML. At step 68, a full screen frame size is associated with the digital video file. A full screen frame size is at least 640 x 480 pixels, and may also be 800 x 600 pixels, 1024 x 768 pixels, 1280 x 1024 pixels, 1600 x 1200 pixels, etc. In this exemplary embodiment, the markup language associated with the digital video file includes a code segment that causes the digital video file to stream at the desired full screen frame size. While the markup language is used to associate the full screen frame size code segment with the digital video file in this exemplary embodiment, the full screen frame size code segment may be associated with the digital video file in another step of the method, such as the encode step 60, compression step 62, or another step.

At step 70, the digital video file is uploaded to an Internet web page using uploading software, such as, WS FTP PRO. At step 72, a script (e.g., an ASCII file (American Standard Code for Information Interchange)) is associated with the marked-up digital video file. The script calls the video to stream in response to a user actuation from user computer 34. The script is written in a RAM format, such as from a Microsoft Notepad software program. The script is included in the markup language associated with the digital video file. In this exemplary embodiment, an actuatable user input device (e.g., a hypertext link) is associated with the HTML code.

Thus, a user from anywhere in the world may access network server 18 via the Internet, actuate the user input device, and call the video to stream. Upon actuation, the HTML codes launch video playing software (e.g., RealPlayer) at the user computer, enlarge the viewing window of the software to full screen mode (i.e., at least 640 x 480), and begin streaming the video to the

user computer. Alternatively, the user may expand the viewing screen to full screen mode by actuating an input device on the video player software. Other methods of expanding the viewing screen to a full screen are contemplated. The transmission speed of the digital video file is dependent upon the bandwidth of the user's network connection, but may range from approximately 35 kbps to 750 kbps, or as low as 28.8 kbps, with a frame rate of between approximately 24 fps to 29.97 or 30 fps.

According to one alternative embodiment, network server 18 is configured to query user computer 34 to ascertain the network connection used by computer 34 (e.g., 28.8 kbps modem, T1 line, ISDN, etc.). Thereafter, network server 18 determines the appropriate transmission rate based on the ascertained network connection.

EXAMPLE A

A Sony DCR VX-1000 digital video camera, having 3CCD technology, manufactured by Sony Electronics, Inc., Park Ridge, N.J., was utilized to record a video signal. The video camera generated an output signal of 6MHz in NTSC format.

A Dazzle LAV-1000S external capture device was coupled to the video camera. Amigo 2.11, Dazzle's capture software was used. The Dazzle capture device and capture software were programmed with several parameters. The frame size was left at the default setting of 320 x 240 pixels. The frame speed was set to 29.97 frames per second. The bit rate was set to 3.0 Megabits (Mb) per second. The audio capture was set to 44 kHz, 16 bit sampling rate. An MPEG-1 file was generated based on the video

signal using the capture device and software programmed with these parameters.

When the captured MPEG-1 file was provided to RealEncoder G2, the resulting encoded file failed to retain the real
5 video frame rate. Therefore, Adobe Premier 5.1 was utilized to receive the MPEG-1 file and export it to a MOV or AVI or MPEG file, based on several parameters. The frame rate in Adobe Premier 5.1 was set to 29.97 fps. The frame size was set to 320 x 240. The "Quality" setting, representing the number of colors to appear in the
10 edited file, was set to a high setting (e.g., 100%). Adobe Premier 5.1 generated an AVI file or an MOV file or a MPEG file, depending upon the operator selection.

RealEncoder G2 software was used to encode the AVI or MOV file into a streaming video file in RM format. The
15 RealEncoder G2 software was programmed with several parameters. The bitrate was set to 220 kbps. The frame rate was set to 30 fps. The "Surestream" option was selected. "Surestream" technology adjusts the playing speed of the encoded digital video file to accommodate the network connection speed of the user. For sound
20 quality, "stereo/music", the highest quality, was selected. For image quality, "sharpest image", the highest quality, was selected. Regarding frame size, this version of RealEncoder generated an output signal having a frame size equal to that of the frame size of the MOV or AVI input file. RealEncoder compressed the MOV or AVI
25 input file using the RealNetworks compression algorithm. An RM file was generated based on the these parameters.

The RM file was uploaded to an Internet server. Using Microsoft Notepad, a script was written in RAM format to 1) identify the location of the RM file, 2) launch RealPlayer on the user

computer, 3) resize the viewing screen on the user computer to 640 x 480, and 4) begin the video stream. The result was unexpectedly high-quality, full-screen, real video frame rate, streaming video. The RM file was subsequently streamed to a client computer via a
5 telephone modem and via other broadband connections. The same unexpectedly high-quality, full-screen, real video frame rate, streaming video was experienced. The streaming playback was intermittent due to the need to buffer to accommodate the lower bit-rate of transmission.

10

EXAMPLE B

According to another example, an NTSC analog signal is provided to a Pinnacle DC-10PLUS capture device. The Pinnacle
15 capture device and associated software generate a digital video file in AVI format based on several parameters. The capture type is set to NTSC. The frame size is set to 320 x 240 pixels, or "1/4 full frame size". Brightness, sharpness, and color are adjusted, as desired. The compression rate is set to 2.5:1. The frame rate is set
20 to 29.97. Square pixel ratio is selected. Audio is set to stereo format, 44 kHz, 16 bit sampling. The data rate is set to 1739 kbps. The capture device utilizes a Miro codec to create a digital video file in AVI format.

Optionally, a header and footer is provided to the
25 beginning and end of the digital video file. The header and footer include a trademark for the assignee of the present application. Adobe Premier is used to render the header, footer, and watermark to the digital video file. A parameter within Adobe Premier is set to

a frame size of 320 x 240. Adobe Premier further utilizes a Miro codec to create a digital video file in AVI format.

The edited AVI file is encoded by RealProducer software. The following parameters are programmed in the RealProducer software. One set of parameters was used for a low-speed network connection at the user computer (hereinafter designated "LO"), and another set of parameters was used for a high-speed network connection at the user computer (hereinafter designated "HI"). RealNetworks "Surestream" technology is selected. Alternatively, "single-stream" can be selected, and an RAM file can be generated to query the connection speed of the user computer and stream the video at the proper connection speed. The encoding speed is set to, for LO, 28 kbps or 56 kbps, and for HI, LAN, DSL, Cable Modem, or T1. Sound quality is set to "voice only" or "stereo music" or "CD quality". Video quality is set to "sharper image". Frame rate is set to 29.97 fps. Target bit rate is set to 350 kbps. The target player is specified as RealPlayer G2. Frame size is set to 320 x 240. Based on these parameters, the RealEncoder software generates an RM file or other streaming video data file, which is subsequently uploaded to RealServer.

The exemplary embodiments disclosed herein provide greatly enhanced streaming video suitable for streaming over a limited-bandwidth network, such as the Internet. Several discoveries have enabled various aspects of this technology. The first discovery was that the efficiency of encoding from a captured digital video file to a streaming video file is increased with an increase in the frame size of the captured digital video file. Thus, while conventional teachings pointed toward minimizing the capturing and encoding

frame sizes (typically to 160 x 120 pixels, which has widely become an Internet standard for streaming video) to reduce the size of the resulting file, the present inventors turned away from these teachings and increased the capturing and encoding frame sizes to 320 x 240 pixels. Second, one goal of the present inventors was to achieve full-screen, real video frame rate, streaming video. Conventional teachings would point toward encoding at a frame size of 640 x 480 pixels to achieve full-screen streaming video. However, with today's technology, enlarging the frame size of a captured digital video file during encoding to 640 x 480 (for example, from 160 x 120 pixels) pixels causes an enormous increase in the amount of data in the resulting encoded digital video file and requires enormous bandwidth to stream. Therefore, the present inventors discovered that encoding at 320 x 240 pixels (or its equivalent) provided greatly improved results when doubled to full-screen for viewing.

These conventional teachings were evidenced in the capabilities of the encoder used at the time of invention, namely, RealProducer G2. RealProducer G2 taught away from real video streaming since digital video files that were captured at a real video frame rate (e.g., 30 fps) would be automatically reduced to a lower, non-real video frame rate (e.g., 15 fps) to reduce the size of the streaming video file. Furthermore, digital video files which were captured directly from a capture device using RealProducer G2 were encoded at a frame rate of only 6-7 fps and had no option to adjust frame size. Therefore, to obtain a real video frame rate, the inventors followed the steps in EXAMPLE A above to achieve the first high quality, full-screen, real frame rate streaming video file.

Referring now to FIG. 3, a system 80 for playing a digital video file across a network is shown, and a corresponding method is described. System 80 includes a network server 82 having a processor 84, a storage device 86, and a network interface 88. A capture device 90 is coupled to network server 82 and is configured to capture a video signal, as described hereinabove. Processor 84 controls capture device 90 and provides various parameters to capture device 90 regarding frame size, bit rate, etc. For example, one or more of the methods for capturing video and generating a digital video file described hereinabove may be implemented by processor 84, storage device 86, and capture device 90. Processor 84 and capture device 90 generate a digital video file in a digital video format (e.g., MPEG, AVI, etc.) and store it to storage device 86. As used in this description of FIG. 3, the term "storage device" includes such devices as magnetic tape, a hard drive, a floppy disk, magnetic disk, or other similar non-volatile storage media, but not including random access memory or other temporary memory. The capture process may alternatively be carried out on another computer, after which the resulting digital video file is stored in (e.g., uploaded to) storage device 86.

Network server 82 is coupled through network interface 88 to a network 92, such as the Internet, a LAN, etc. Processor 84 is configured to generate a web page having a hypertext link to the digital video file stored in storage device 86. A network client 94 includes a processor 96, a storage device 98, an input device 100, a display 102, and a network interface 104. Network client 94 is operable via a user to access the web page generated by network server 82 and to actuate the hypertext link to begin downloading the digital video file from storage device 86.

One drawback of downloading video files is that, for very large files, the delay before any portion of the digital video file can be viewed can be on the order of minutes, hours, or longer. Thus, according to one advantageous aspect of system 80, while
5 the digital video file is being downloaded to network client 94 and stored in storage device 98, some of the digital video file which has already been downloaded and stored is being simultaneously played on display 102. A suitable player which supports AVI, MPEG, and other digital video formats is utilized for the video play. This
10 procedure may be referred to as viewing/downloading. Stated another way, a first portion of the digital video file is played from storage device 98 while later portions of the digital video file are still downloading from storage device 86 via network 92 to storage device 98.

15 One method of launching the player and beginning the play of the first portion is for a user to simply select these steps via input device 100 (e.g., a mouse, a keyboard, etc.) a certain time after the downloading has begun. Alternatively, an algorithm may be provided, either attached to the digital video file (e.g., HTML, Java, a
20 macro, etc.) or as part of the player (e.g., QuickTime, RealPlayer, etc.) which begins playing the digital video file at a predetermined time after the download to storage device 98 has begun. This predetermined time may be pre-programmed or adjusted in real-time based on inputs from client server 94 or network server 82.
25 According to one example, the algorithm calculates the predetermined time based on the download speed (e.g., including network connection speed of network interface 104, etc.), the viewing speed (e.g., frames per second, etc.), and the size of the digital video file. For example, if the viewing speed is four times the

download speed, the algorithm monitors the amount of the file (e.g., in bytes) which is downloaded until 75% of the file is downloaded. When 75% of the file is downloaded, the algorithm begins playing the digital video file from storage device 98. By playing the file at this predetermined time, the digital video file will play substantially without delays for buffering. Of course, other predetermined times are contemplated, including those earlier and later than that set forth in this exemplary embodiment.

Thus, one can view a digital video file shortly after clicking on the hypertext link and before the entire digital video file has downloaded to storage device 98. Once the entire digital video file is finished playing, network client 94 retains a copy of the digital video file in storage device 98 for later playing.

According to one alternative, the digital video data is captured in real-time and streamed in real-time across network 92 (i.e., without first storing to storage device 86) to storage device 98.

While the embodiments and applications of the invention illustrated in the FIGS. and described above are presently preferred, it should be understood that these embodiments are offered by way of example only. For example, while the steps of the exemplary embodiments contemplate recording audio and video at one time and streaming the audio and video at another time, the audio and video may alternatively be fed through system 10 in real-time, thereby facilitating real-time audio/video transmissions. Furthermore, the exemplary software programs mentioned may be replaced by newly developed versions and/or programs in the future. Accordingly, the present invention is not limited to a particular embodiment, but extends to various modifications that nevertheless fall within the scope of the appended claims.

WHAT IS CLAIMED IS:

- 1 1. A method of providing a streaming video file,
2 comprising:
3 providing digital video data having a capture frame size
4 of at least 69,300 pixels per frame; and
5 converting the digital video data to a streaming video
6 file having a converted frame size of at least 69,300 pixels per
7 frame.

- 1 2. The method of claim 1, wherein the capture frame size
2 has an aspect ratio of 4:3 and the converted frame size of has an
3 aspect ratio of 4:3.

- 1 3. The method of claim 2, wherein the capture frame size
2 is at least 304 x 228 pixels and the converted frame size is at least
3 304 x 228 pixels.

- 1 4. The method of claim 3, wherein the capture frame size
2 is approximately 320 x 240 pixels and the converted frame size is
3 approximately 320 x 240 pixels.

- 1 5. The method of claim 1, wherein the step of providing
2 includes capturing a video signal.

- 1 6. The method of claim 5, wherein the step of providing
2 includes digitizing the video signal to generate the digital video data.

1 7. The method of claim 6, wherein the step of providing
2 includes storing the captured video data as a data file in a storage
3 device, and wherein the step of converting includes retrieving the
4 stored data file from the storage device.

1 8. The method of claim 1, wherein the step of providing
2 includes retrieving the digital video data from a storage device.

1 9. The method of claim 1, further comprising compressing
2 the digital video data.

1 10. The method of claim 9, wherein the digital video data is
2 compressed to an MPEG file format.

1 11. The method of claim 1, wherein the streaming video file
2 is converted to an RM format or an ASF format.

1 12. The method of claim 1, wherein the converted frame
2 size is approximately 320 x 240 pixels.

1 13. The method of claim 1, wherein the digital video data
2 has a capture frame rate of at least 24 frames per second and the
3 streaming video file has a converted frame rate of at least 24 frames
4 per second.

1 14. The method of claim 1, further comprising streaming
2 the streaming video file across a network.

1 15. The method of claim 14, wherein the network is the
2 Internet.

1 16. A method of providing a streaming video file,
2 comprising:
3 providing digital video data having a capture frame rate
4 of at least 24 frames per second; and
5 converting the digital video data to a streaming video
6 file having a converted frame rate of at least 24 frames per second.

1 17. The method of claim 16, wherein the capture frame rate
2 is between 29 and 30 frames per second and the converted frame
3 rate is between 29 and 30 frames per second.

1 18. The method of claim 16, wherein the step of providing
2 includes capturing a video signal.

1 19. The method of claim 17, wherein the step of providing
2 includes digitizing the video signal to generate the digital video data.

1 20. The method of claim 18, wherein the step of providing
2 includes storing the captured video data as a data file in a storage
3 device, and wherein the step of converting includes retrieving the
4 stored data file from the storage device.

1 21. The method of claim 16, wherein the step of providing
2 includes retrieving the digital video data from a storage device.

1 22. The method of claim 16, further comprising
2 compressing the digital video data.

1 23. The method of claim 21, wherein the digital video data
2 is compressed to an MPEG file format.

1 24. The method of claim 16, wherein the streaming video
2 file is converted to an RM format or an ASF format.

1 25. The method of claim 16, wherein the digital video data
2 has a capture frame size of at least 69,300 pixels per frame and the
3 streaming video file has a converted frame size of at least 69,300
4 pixels per frame.

1 26. The method of claim 25, wherein the capture frame size
2 has an aspect ratio of 4:3 and the converted frame size has an
3 aspect ratio of 4:3.

1 27. The method of claim 26, wherein the capture frame size
2 is at least 302 x 228 pixels and the converted frame size is at least
3 302 x 228 pixels.

1 28. The method of claim 27, wherein the capture frame size
2 is approximately 320 x 240 and the converted frame size is
3 approximately 320 x 240 pixels.

1 29. The method of claim 16, further comprising streaming
2 the streaming video file across a network.

1 30. The method of claim 29, wherein the network is the
2 Internet.

1 31. A method of providing a streaming video file,
2 comprising:
3 obtaining a source video signal having a predetermined
4 source video parameter;
5 capturing the source video signal while maintaining
6 substantially the same source video parameter to provide a captured
7 digital video file; and
8 encoding the captured digital video file while
9 maintaining substantially the same source video parameter to provide
10 a streaming video file.

1 32. The method of claim 31, wherein the source video
2 parameter includes the frame rate.

3 33. The method of claim 32, wherein the source video
4 frame rate is at least 24 frames per second.

5 34. The method of claim 32, wherein the source video
6 frame rate is a real video frame rate.

7 35. The method of claim 31, wherein the source video
8 parameter includes the number of scanned lines of video per frame.

9 36. The method of claim 35, wherein the number of
10 scanned lines of video per frame is at least 240.

11 37. The method of claim 31, wherein the streaming video
12 file has a capture frame size of at least 304 x 228 pixels.

1 38. The method of claim 37, wherein the streaming video
2 file has a capture frame size is approximately 320 x 240 pixels.

1 39. The method of claim 31, further comprising editing the
2 captured digital video file using video editing software.

1 40. The method of claim 31, wherein the step of encoding
2 includes compressing the captured digital video file.

1 41. The method of claim 31, wherein the captured digital
2 video file is in an MPEG file format.

1 42. The method of claim 31, wherein the source video
2 signal is provided from a video playback device.

1 43. A method of generating a streaming video file for
2 streaming over the Internet, comprising:
3 providing digital video data having a capture frame size
4 of at least 320 x 240 pixels;
5 compressing the digital video data;
6 encoding the digital video data into a streaming video
7 file, wherein the streaming video file has a frame size of at least 320
8 x 240 pixels; and
9 uploading the streaming video file to an Internet server.

1 44. The method of claim 43, wherein the streaming video
2 file has a real video frame rate.

1 45. The method of claim 44, further comprising associating
2 a hypertext link with the streaming video file.

1 46. The method of claim 45, further comprising running a
2 video player program on an Internet client computer.

1 47. The method of claim 46, further comprising configuring
2 the video player program for full-screen streaming video.

1 48. A system for providing a streaming video file,
2 comprising:
3 means for providing digital video data having a capture
4 frame size of at least 320 x 240 pixels; and
5 means for converting the digital video data to a
6 streaming video file having a converted frame size of at least 320 x
7 240 pixels.

1 49. The system of claim 48, wherein the digital video data
2 has a capture frame rate of at least 24 frames per second and the
3 streaming video file has a converted frame rate of at least 24 frames
4 per second.

1 50. The system of claim 48, further comprising means for
2 capturing a video signal.

1 51. The system of claim 48, wherein the means for
2 converting includes means for encoding the digital video file into an
3 RM file format.

1 52. A system for providing a streaming video file,
2 comprising:
3 means for providing digital video data having a capture
4 frame rate of at least 24 frames per second; and
5 means for converting the digital video data to a
6 streaming video file having a converted frame rate of at least 24
7 frames per second.

1 53. The system of claim 52, wherein the capture frame size
2 is at least 302 x 228 pixels and the converted frame size is at least
3 302 x 228 pixels.

1 54. The system of claim 52, further comprising means for
2 capturing a video signal.

1 55. The system of claim 52, wherein the means for
2 converting includes means for encoding the digital video data into an
3 RM file format.

57103/116

ABSTRACT OF THE DISCLOSURE

A system and method of providing a streaming video file includes providing digital video data having a capture frame size of at least 69,300 pixels per frame and converting the digital video data to a streaming video file having a converted frame size of at least 69,300 pixels per frame. According to another exemplary embodiment, a method of providing a streaming video file includes providing digital video data having a capture frame rate of at least 24 frames per second and converting the digital video data to a streaming video file having a converted frame rate of at least 24 frames per second.

001.793764.1

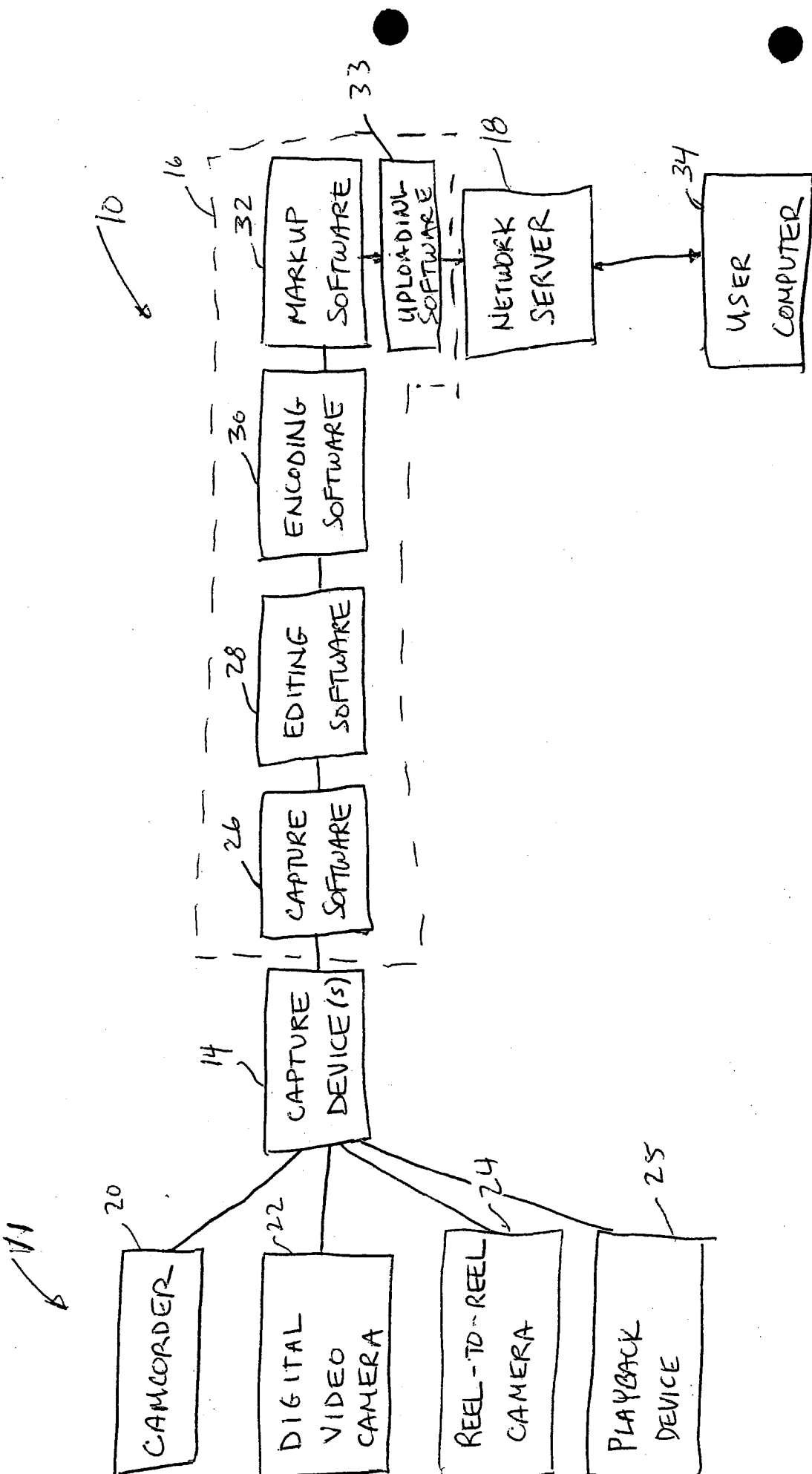
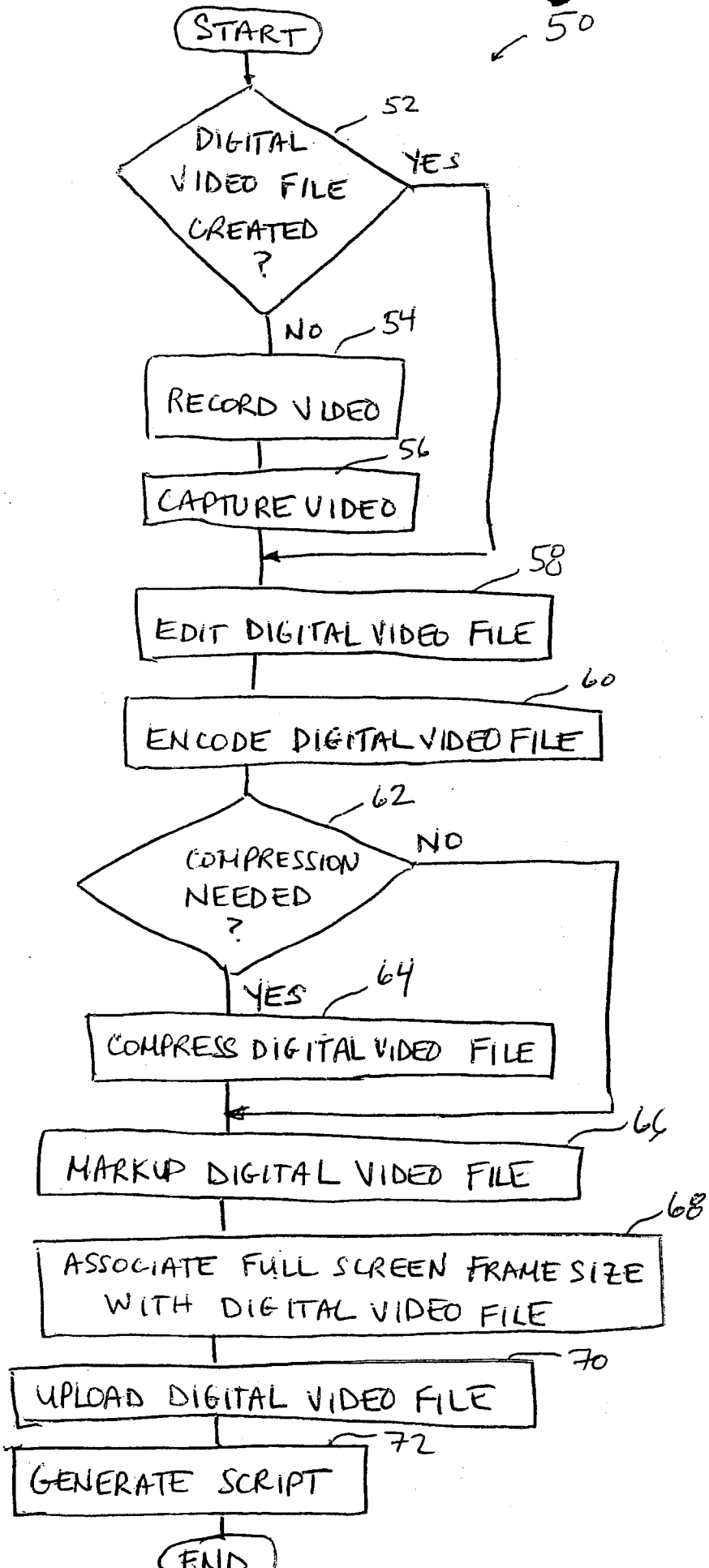


FIG. 1



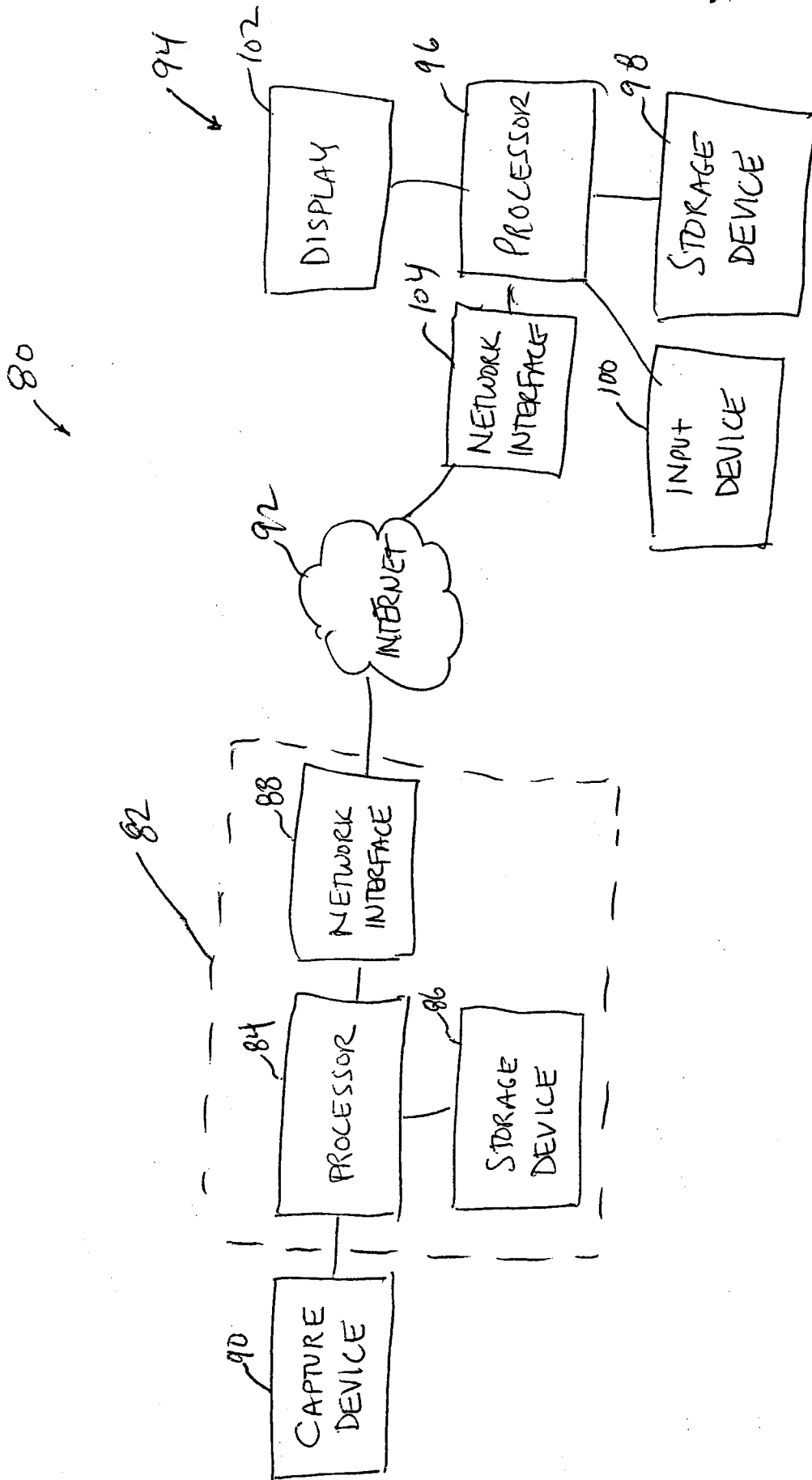


FIG. 3



EXHIBIT K



<u>PARTIAL LIST OF INTRODUCED CLIENTS OF RESPONDENT BREACHING CONFIDENTIALITY AGREEMENTS</u>
Visual Data Corp.
Warner Bros.
AOL Time Warner
Deutsche Telekom
Boca Research
Intel Corp. (acquired Real 3D)
SGI, Inc. (prior to Intel's acquisition of Real 3D)
Lockheed Martin Corp (prior to Intel's acquisition of Real 3D)
Eclipsys Corp.
SONY
Viacom
Blockbuster
Citrix Systems
Columbia/Tri-Star
Disney
Ronald G. Assaf and Sensormatic Electronics Corp.
Teranex



LETTER OF MR. COLTER

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 iviewit 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 iviewit (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 iviewit as two solid players who could deliver full screen full frame rate web video. All who saw it were impressed. Greg and I visited iviewit 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 iviewit, and Chris Cookson asked Greg and I to continue to work with iviewit 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 iviewit a number of times and requested the patents, along with specifics of the iviewit process to evaluate what they were doing. I was not part of these meetings, but was aware they had occurred, 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 iviewit by Morgan as they were establishing the company as an outsourcing facility for encoding our content.

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

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

We have an opportunity to establish a license with iviewit for a modest fee at this time, and establish a MFN. In good faith we signed the confidentiality agreement, iviewit revealed their processes and techniques, and we now use those techniques in encoding. As we have discussed on a few occasions, these techniques now appear in the public domain to some extent in documentation for Real Producer, WMP Developer Guides, Media Cleaner Pro, etc, but they were not available in 2000. I would not suggest we learned the techniques completely from iviewit (I actually do not know the answer), but a modest licensing fee may be appropriate and honorable considering our good faith relationship in signing the confidentiality doc.

If we choose to pass at this time the risk is primarily from iviewit's main investor, Crossbow Ventures, gaining control of the IP and approaching WB later for a license -- I do not believe they will be as friendly considering their dealings with iviewit and its employees since Feb of 2001. It is estimated that the patents will be completed in 8-12 months.



As you are all aware I have a personal relationship with Eliot Bernstein, the founder of iviewit, and as a result, I left the evaluations and decisions to Greg, and others, and only assisted iviewit to get to the correct people in WB and AOLTW. I wanted to add this perspective as we consider if there is an option to pursue with iviewit -- they are facing continued financial pressure right now. There are many other threads to our interaction with iviewit and I would be happy to discuss.

Thanx,
David



EXHIBIT L



**TELECONFERENCE TRANSCRIPT OF
JULY 31, 2000
PARTICIPANTS:**

- **DOUGLAS BOEHM OF FOLEY AND LARDNER;**
- **MR. BERNSTEIN, MR. UTLEY, AND MAURICE BUCHSBAUM OF THE COMPANY;**
- **RESPONDENT OF PROSKAUER**

CORRECTED VERSION - CORRECTED ON 5/14/2003
Transcription of Telephone Conference
Conducted July 31, 2000

Participants:

Simon Bernstein, Eliot Bernstein, Maurice Buchsbaum,
Brian Utley, Doug Boehm, Chris Wheeler

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 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 Joao, 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 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 Joao's work of the formal filing that he filed. Do we have a copy of that?

Utley: I do have 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.

Simon Bernstein: I just have one question. Does anybody have, or are we allowed to get, the files of Ray Joao?

Boehm: I have them.

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

Bernstein: No, not all of it.

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 the firms' files.

<Inaudible comment.>

Utley: 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

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

Boehm: No, I have the application. I have things that you could get from the US patent office—that I could get from the US patent office. I have very few notes. I do have some scribbled Ray Joao's notes, but I think you gave me those notes.

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.

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.

Simon Bernstein: If that, in fact, is the case—I've never heard of a lawyer you know other than Nixon destroying anything the work is ours. Am I right Chris when we pay for a lawyer and we pay for the work, the work is ours.

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

Simon Bernstein: Would you say that anything germane to the issue belongs to him?

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 yes, you would be entitled to copies I don't think we disagree.

Bernstein: He's claiming 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 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: Correct.

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

Bernstein: Tons. Hundreds

Wheeler: And did he then produce them on his computer and 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 - now going to that same nature, 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 fails to make mention of.

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

Bernstein: The formal file. So 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 see them...

Bernstein: Well, you saw 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 maintaining it as...

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

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

Simon Bernstein: Any notes should be produced...

Wheeler: We don't throw away anything.

Bernstein: Yeah, I know.

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 had it 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.

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, 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...

Simon Bernstein: Hold on, Eliot, I need to understand this. What you're saying, then, is assuming any negligence on his part, to that point the negligence doesn't become realistically damaging to the company until since he actually made a claim...since he actually made a provisional filing. 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.

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.

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.

Simon Bernstein: Right.

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.

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

Bernstein: No.

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.

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

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...

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

Wheeler: He did say 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—

Simon Bernstein: In the provisional.

Boehm: Uhhuh To that text, or you lose 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: You can't add subject matter. So if he did describe zooming, then it's not in addition.

Bernstein: Did he, ?

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.

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.

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

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

Bernstein: No.

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 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.

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.

E. Bernstein: Not even mention to that concept.

Bernstein: Complete failure. It's not.

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

Bernstein: Nope. Nothing like that.

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

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

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.

Wheeler: Here it is. "The above process can be utilized in order to create higher zoom capabilities 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.

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, explain to him where it's 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 without it being construed as an addition.

Boehm: Yes.

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

Wheeler: Right - sorry

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 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.

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...

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 a fair argument

Simon Bernstein: OK so then I don't know that, at least from 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?

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 Joao. I thought that we had agreements for doing everything, but apparently Joao 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 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 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. Claims do not reference stitching. The patent app does not cover providing enhanced digital image with zoom and pan controls. It covers for creating enhanced images to show zoom and pan functionality without distortion." Those are my notes.

Bernstein: And you told him that.

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

Boehm: Jim wasn't around yet.

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

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 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 file it.

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

Bernstein: Yeah.

Simon Bernstein: So would you say that probably...

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

Utley: Right.

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.

Eliot Bernstein: What day did you give him those 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: 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...

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, 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 feature..."

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?

Simon Bernstein: Someone comes after you the second day after...

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

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 need 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.

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..

Simon: Which might have short-circuited us because of all of the lack of funds.

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

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.

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

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

Buchsbaum: Yeah two things happened during the year. One, 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.

Simon: Here's what we did. We hired Ray Joao 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 made.

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 Joao...just an observation.

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

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 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...

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 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.

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 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 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.

Simon: If it can be amended amend it. There's no problems.

Boehm: There's no problems.

Simon Bernstein: There's always maybe a little money that's been 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...

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.

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 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: whose 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 would, say 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...

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 publicly disclose your invention, you've got one year in the United States to get a patent on file, okay? Even if you don't publicly 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 grace period.

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

Simon: Okay, somebody explain to me, what am I doing here? Why am I sitting here? Are we saying that Ray Joao, 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 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 knowledge, we have swept up all this in this filing, 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 formal filing to strengthen the claims - broaden the claims ... 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.

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?

Buchsbaum: You mean the examiner of the commission

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

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.

Simon Bernstein: It's common then?

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

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...

Wheeler: So that's why he stated it broadly versus narrowly?

Boehm: No.

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

Boehm: No, but as far as, doing it broadly, if you're saying to claim it 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: 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 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 forum of law there's always 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...

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

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

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.

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...

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 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. Correct?

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.

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 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."

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

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 described this

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

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

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.

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 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...

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: 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.

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 Joao 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.

Simon Bernstein: Who owns 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.

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.

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

Boehm: of this? Sure.

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...

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 right, because the company was 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 due diligence for financial reasons or if...and they will say 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?

Buchsbaum: Has everybody signed off on these? Brian?

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 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: So all of the other inventors would have a helluva problem trying to say they owned anything.

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 []?

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

Simon Bernstein: The one that they are held in.

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.

Wheeler: There is a possibility, but that's one of the main reasons... But 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 getting a piece back?

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

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

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

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 note holders

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

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.

Wheeler: The note holders 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: and that would be protected by the courts anyway usually. The court would see this probably as a you know a fraud

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

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: Crossbow.

Simon: No, not from Crossbar...

Bernstein: Crossbow.

Wheeler: Crossbow

Simon: ...is secured by the...

Wheeler: ...the term of the deal, right.

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 lose his?

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

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...??

Simon: We all could have put in another \$10. I mean, at the time we 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.

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

Simon: So it would have been \$10,000...

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 we should have done, or what we maybe we still should do to protect our original group of investors, is to have them pony up a few more thousand or whatever you think is legitimate, and amend the contracts to protect them as well.

Utley: That's new subject matter.

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

Utley: I know but can we finish the patent discussions before we bring 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, who put up \$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 people.

Buchsbaum: This is a business issue for later.

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

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]

Boehm: Yeah, but after...I 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 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.

Boehm: So we have everybody but Jeff, if we can get Jude and Zak.

Buchsbaum: You just have to get people around and sign.

Boehm: No, that should not be an 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 closing it. Right?

Boehm: We'll record what was in the patent office(...???) can do.

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

Wheeler: (...???)

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

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 to have had Mr. Joao 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.

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 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...

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.

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

Bernstein: It gets through.

Boehm: It gets through.

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.

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.

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

Simon: New flesh.

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 Joao 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 here when...

<End Side 1; begin Side 2>

Buchsbaum: That would be conditional, probably.

Simon: Right, they probably will.

Wheeler: Their not going to want in fact their going to say take it off aren't they

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

Si? Of course, and that's gone. And those issues are gone.

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

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.

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[]?

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

Wheeler: But at a point.

Utley: It just becomes a normal stockholder...

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.

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

Utley: There's no stockholders that have a collateralized position.

Simon: That's true.

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

Simon: Except that we seem to feel that we have an obligation to those, 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

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...

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

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 subsequent money.

Simon: Well, but to ask Don Kane 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.

Bernstein: Don had the stock prior to his putting up the money. These are loans. There's \$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.

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.

Simon: One of the issues we tried to do when we raised the last \$80,000 that came from Eliot's two friends Anderson and Mitch Welsch. []

Bernstein: Ken Anderson.

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 pay the taxes?

Simon: Who loaned you?

Bernstein: The company just today?

Utley: So I took 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.

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

Bernstein: No.

Simon: You just made an officer's loan.

Wheeler: Right.

Simon: Is that how you handle it?

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

Bernstein: Right. Correct.

Buchsbaum: That's the way to do that?

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

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

Bernstein: Right. 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

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.

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 to the 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...

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

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

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

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

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

Bernstein: And that protects us better?

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 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 earlier filings?

Boehm: Those other two.

Buchsbaum: 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: Plus you're gonna get an office action back from the patent office on him...

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 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

Boehm 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.

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 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 some office action back on this patent. And when we hear from the patent office, we'll sit down say do we want to fix this, or do we want to 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.

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. We didn't find any close Prior Art; and all I can tell these...

Wheeler: This was on imaging and video?

Boehm: Yeah.

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 recorders 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 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 the patent will have relevance?

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

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.

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.

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. 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 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 approved. The investors are going to say...

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

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

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

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 wasn't able to and got 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.

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 people to get around you. But if the original concept is broad enough and claimed right, Yeah, we can be okay.

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 issues. 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, 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: 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.>



EXHIBIT M



DEPOSITION OF MR. UTLEY

(16) **Q.** Was there ever a time when you were
(17) dissatisfied with Proskauer's representation?

(18) **A.** There were times when I observed
(19) that there appeared to be some duplicative effort
(20) within the organization.

(21) **Q.** Did you address that with Chris
(22) Wheeler?

(23) **A.** I mentioned it to Chris and Chris
(24) made some changes in assignment.



EXHIBIT N



1930 SW 8th Street
Boca Raton, FL 33486

Personal Resume

Professional History:

President, Diamond Turf Equipment, Inc. July, 1995 to July 1999.

In 1995 the company was engaged in refurbishing obsolete and run-out golf course maintenance equipment and had annual sales of \$250K. Since that time the company has been transformed into a manufacturer of new machines which compete favorably with the best of the market leaders and an expected revenue for 1999 of \$6M. The design of the machines was by Brian and was accomplished while putting together a manufacturing and marketing team capable of supporting the rapid growth of the company.

President, Premier Connections, Inc., November, 1991 to present.

Premier Connections provides consultation and support services in computer and related business management. Customers have included IBM and other small businesses.

IBM, October, 1955 to October, 1991.

Brian retired from IBM as Vice-President and General Manager, IBM Boca Raton.

Prior to his assignment in Boca Raton Brian spent 5 years in Europe as Group Director for PC's and small systems. This responsibility covered all aspects of product management for all European, Middle East and African countries.

In 1983 Brian was appointed General Manager, IBM Biomedical Systems and asked by the IBM President, John Opel, to evaluate develop the long range strategy for this business unit. Brian subsequently reported back to the President that the Business Unit, while quite viable, should be sold to a related business in the medical community. Having received approval to do so, he negotiated a profitable sale for IBM.

Between 1965 and 1983 Brian was the project and systems manager for many major IBM computer systems which earned IBM billions of dollars in revenue. The most notable of these was the S/38 and AS400, one of IBM's most technology aggressive development programs ever and still one off IBM's most popular systems.

Brian entered the IBM laboratories in 1959 and immediately became the most prominent engineer on his first project with many innovative designs. As a result of this he was assigned to the German IBM laboratories to train German engineers in computer technology. He has been awarded a number of patents the most recent of which was granted in 1998.

From his start in October 1955 to the time he entered the laboratories Brian was a customer engineer responsible for maintaining IBM equipment on customer premises. During this time he self taught computer technology and transistor theory and developed the first IBM field course in transistors. This is the accomplishment which led to his assignment in the laboratories.

Education:

Having been born in England, he attended Beverley Grammar School and graduated in 1948 at 16. In 1949 he emigrated to the United States and completed his senior year at Ogden High School, Ogden, Utah.

He attended college at Weber College, Ogden, Utah and San Francisco City College completing two years of study.

Hobbies:

Brian is a jogger and for 40 years has been an avid glider pilot with many competitive successes.



DEPOSITION OF RESPONDENT

7 Q. Are you aware of any claims by Diamond
8 Turf that Mr. Utley improperly received intellectual
9 properties or patented them that belonged to Diamond
10 Turf?

11 A. Aware that --

12 Q. Mr. Utley is alleged to have improperly
13 received or taken intellectual properties of Diamond
14 Turf.

15 A. By Diamond Turf? No.



DEPOSITION OF MR. UTLEY

Q. Now, when Chris Wheeler first introduced you to iViewit, was he aware of the situation at Diamond Turf and yourself and

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Mr. Niose Freedkin or what was Mr. Wheeler's view of your position at Diamond Turf, to the best of your knowledge?

MR. PRUSASKI: Objection to form.

MR. SELZ: Okay. I'll restate the question. I'm sorry. Getting a little tired.

MR. PRUSASKI: I'm just objecting to the extent that you're asking him what Chris Wheeler's personal knowledge was.

MR. SELZ: Okay.

By MR. SELZ:

Q. To the extent that you know, what was Chris Wheeler's personal knowledge of that situation?

MR. PRUSASKI: Objection to form.

THE WITNESS: I believe Chris, Mr. Wheeler was fully cognizant of my relationship to Diamond Turf Equipment and to Mr. Freedkin.

we're talking about them because you said billing statements, which could be something totally different, I don't know.

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MR. SELZ: That's the attached exhibits to the Amended Complaint in this matter that we're referring to.

MR. PRUSASKI: Okay. Thanks.

By MR. SELZ:

Q. Now, you had referenced Mr. Dick doing some patent work for yourself; is that correct?

A. Yes.

Q. And was that any patents arising from your employment with Diamond Turf?

A. It was arising from the technology and engineering work that I did, yes.

Q. So the hydro-mechanical work that you had done at Diamond Turf?

A. Yes.

Q. And was there ever a dispute between yourself and the owner of Diamond Turf with regard to the patents involved for that hydro-mechanical work?

MR. PRUSASKI: Objection, relevance and to the form.

THE WITNESS: There was a

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disagreement as to ownership of the intellectual
property.

By MR. SELZ:

Q. There was a dispute?

A. Yes.

Q. Did you ever advise the owner of
Diamond Turf that you were going to patent these
intellectual properties under your own name?

A. I did.

Q. Did you do that prior to patenting
those or after?

A. They were never, they were not
patented.

Q. Okay. They were not patented. Was
the application for patent made?

A. No.

Q. Since your employment with
Iviewit.com or Iviewit, yeah, dotcom, LLC, what
patents have you taken out in your name, sir?

A. I have not taken out any patents in
my name, other than what has been appended to
patents filed by Iviewit and assigned to Iviewit.

Q. Okay. So they're all patents held
by Iviewit and you're named as a co-inventor; is



EXHIBIT O



LETTER OF MR. KANE

-----Original Message-----

From: Donald Kane [mailto:dg_kane@msn.com]
Sent: Sunday, March 18, 2001 6:39 AM
To: Eliot I. Bernstein
Subject: RE: Board meeting on the 3rd

Elliot,

I spoke to Hank yesterday and will do so again today. The company is in a difficult position and the common shareholders risk losing the company to the preferred investors. Here are my thoughts:

1. It sounds like the company is out of money next week.
2. The company has supposedly accepted money from a new investor group without proper documentation/approval on the terms and conditions with Hank or the board. You need to talk to Alan Epstein about this process. I am very uncomfortable with what I am hearing about management.



WARRANT No. _____

**WARRANT CERTIFICATE FOR PURCHASE OF
CLASS B NON-VOTING COMMON STOCK**

THIS WARRANT AND THE CLASS B NON-VOTING COMMON STOCK PURCHASABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR ANY STATE SECURITIES LAW. NEITHER THIS WARRANT NOR THE CLASS B NON-VOTING COMMON STOCK PURCHASABLE HEREUNDER MAY BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO SUCH SECURITIES UNDER SUCH ACT AND ANY STATE APPLICABLE STATE SECURITIES LAWS OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

iviewit Holdings, Inc.
Purchase Warrant for
Class B Non-Voting Common Stock

THIS WARRANT CERTIFICATE certifies that, FOR VALUE RECEIVED, Tiedemann Prolow, LLC, a New York limited liability company having an address of 535 Madison Avenue, 37th Floor, New York, NY 10022 (the "Holder"), is entitled, subject to the terms and conditions set forth in this Warrant Certificate for Purchase of Class B Non-Voting Common Stock (this "Warrant"), to purchase from iviewit Holdings, Inc., a Delaware corporation (the "Company"), up to One Thousand Seven Hundred Eighty (1,780) shares ("Warrant Shares") of Class B Non-Voting Common Stock, \$.01 par value, of the Company ("Class B Common Stock"), commencing on March _____, 2001, and ending at 5:00 p.m., Florida time, on March _____, 2006 (the "Expiration Date"), at an exercise price of One Hundred Fiftv-Five Dollars (\$155.00) per Warrant Share (the "Warrant Exercise Price"), such number of Warrant Shares and Warrant Exercise Price being subject to adjustment from time to time as set forth in Section 3 below. This Warrant may not be exercised after 5:00 p.m., Florida time, on the Expiration Date, at which time this Warrant, unless exercised prior thereto, shall thereafter be void.



EXHIBIT P



LETTER OF TONY FRENDEN, EX-VIDEO ENGINEER²⁹

March 28, 2002.

This is my recollection of the events last year which took place after the Iviewit staff was informed that the company would soon be closing, and we were all losing our jobs:

Shortly after a conference room meeting with people who Scott Murphy brought in, a video tape is brought into the lab. It is made clear that the tape belongs to Scott Murphy's associates, and I am instructed to give the utmost care and attention to encoding this tape, which is of pornographic nature. The number \$7 million is repeatedly mentioned as possible revenue should Iviewit get this pornography account. The tape is initially previewed in the lab when Mike Reale plays it in a VCR. I am present, along with Tammy Raymond, Network Administrator, and Courtney Jurcak, a teenage female technician. I believe Matthew Mink was also there. The tape is played using zero discretion. I am instructed to do my best in encoding this material, because as it was put to me, the deal could possibly serve in saving the company and everyone's job. To make clear, this episode all happened after a conference room meeting, in which Brian Utley announced to all Iviewit employees that the company was closing, effective immediately. After this announcement, and before the porno tape came in, my self-given job responsibilities included make closure to the Iviewit Boca Raton lab by packing away equipment for West Coast shipment, and informing our current clients that we would be doing no more work for them. I ran a very generalized encoding session over the porno tape. I remember meeting one of the main slimeball porno guys during this general time. He pointed at my computer screen and told me he needed the videos to look better than they did so he could offer something on his porno sites that no one else had. I didn't bother to use any special proprietary processes on the video because I

²⁹ Emphasis supplied.

was not personally motivated to do a good job on the tape. Approximately, the next day, I am summoned to the conference room where sits Brian Utley and Raymond Hersh. There is a large TV web monitor at the end of the conference table connected to the Internet, and I am instructed to use it to play the porno video which I encoded, and was now streaming live from our streaming server. I play the video, they watch. Comment on various visualities from the encode. They ask me questions. I am slightly embarrassed and want no part of it, and made a decision to myself that had they asked me to do further work for this client, I would decline. I was very shocked at the casual demeanor of these two men during this conference room porno review. Up to that point, and since the day I began at the company, I was informed that Iviewit would never have anything to do with adult content. The technology simply would not be used for those avenues, and I was made aware that stockholders and board members specifically stipulated these points. **During this general time, (but a bit later, because I remember some of the other technicians had already worked their last day), Mike Reale brings in a gray suitcase into the lab. The suitcase is constructed of a very durable nature and locking mechanisms. He opens it in front of me, and it's the most money I've ever seen in my life. Tammy Raymond was there, and later claimed that she thought it was fake because there was so much of it, but I was inches from it, and it looked like perfectly real stacks and stacks of one hundred dollar bills, and neatly arranged like in the movies. I asked Reale where this came from. I don't remember whom he said, but it was a name familiar to me as someone who didn't work in our office but had direct investment relations with Iviewit.**

I swear the above to be true and complete, to the best of my recollection.

Anthony Frenden
841 Manhattan Avenue #9
Hermosa Beach CA 90254



EXHIBIT Q



DEPOSITION OF MR. BERNSTEIN

5 A. I want to answer that, because the documents --
6 the corporate record was supposed to be transferred in its
7 entirety to the corporation in California by Mr. Utley, and
8 such documents in their entirety and computers containing
9 such documents in their entirety were not transferred to
10 the corporation timely or at all.

11 Then, it is the company's position, I guess that
12 we have to take, is that we are not in possession of our
13 own records because the people who were supposed to
14 transfer them did not transfer the documents to the company
15 as directed by the board of directors.

16 Q. So that's your evidence that Mr. Wheeler destroyed
17 the minutes of the board of directors meetings, the fact
18 that they never showed up when they were supposed to show
19 up to -- by Utley?

20 A. And they're not here --

21 Q. So Wheeler destroyed them?

22 A. -- for many of the meetings -- for many of the
23 meetings that Chris was keeping notes for, yes, I did not
24 find them here. So no, they might not be destroyed, they
25 might be on the other shelves.

1 Q. Well, you are singing a completely different tune
2 than you were two minutes ago.

3 A. No. I'm just saying that if they were part of th
4 work that was on this table, and that they were part of th
5 corporate record that was transferred, many of the minutes
6 of the board meeting are destroyed at this point. We do
7 not have them, possession of them --

8 Q. That means they're destroyed?

9 A. -- and the people in charge of them are not
10 presenting them to us, so they might be in hiding from us.
11 Okay. But I -- to me, they company, they're destroyed,
12 gone, not existent. They're not part of our corporate
13 record.

14 Q. So when you said "destroyed" about documents in
15 this deposition, you meant that you didn't have them; you
16 don't know for a fact that they were actually destroyed?
17 Do you know what destroyed means?

18 A. Well, to us it means --

19 Q. What does destroy mean to you?

20 A. Okay. To the company, we asked for --

21 Q. I don't care about the company. I want to know
22 what Simon Bernstein thinks -- Eliot Bernstein thinks
23 destroyed means.

24 A. Missing from your records, not provided when
25 requested. Missing documents would, to me, represent a

1 destruction of documents.

2 Also, on the destruction side of documents, is the
3 locking out of computer domains and files with the intent
4 so that documents --

5 Q. All I asked you is what destroyed means to you.

6 A. Well, I'm explaining. You know, are the board
7 notes and damaged hard drives or stolen computers that were
8 taken to New Jersey by Mr. Utley; could be, but I'm not --

9 Q. See, when you say Mr. Wheeler destroyed documents,
10 most people would frame an image of a man going over to a
11 shredding machine and putting documents in a shredding
12 machine. But you're saying it means something completely
13 different --

14 A. No. I'm saying that unless they ended up -- we
15 just went through this a little while ago in the
16 deposition, but you said all of the documents were here at
17 this table.

18 Q. Did you say in that counterclaim that Proskauer
19 destroyed documents?

20 A. I am not sure. I believe so. Do we --

21 MR. SELZ: I don't think so.

22 MR. PRUSASKI: Let me see it.

23 A. No.

24 Q. Why didn't you say it in there if it happened?

25 A. I was busy listing the key things.

1 Q. Destroying documents by a law firm isn't very key
2 to you?

3 A. I've notified my counsel that that occurred long
4 ago, so he might have overlooked it in filing the claim to
5 get it on based on the evidence --

6 Q. Okay. So you're still sticking to your story tha
7 Proskauer destroyed documents?

8 A. I'm -- because they're missing, in my
9 interpretation --

10 Q. Because he's missing them -- you let your attorne
11 know, but you didn't put it in the counterclaim?

12 A. Well, he has a lot of it, you know. Yes, I would
13 say --

14 Q. So you are still sticking to your story that
15 Proskauer destroyed documents --

16 A. In my interpretation --

17 Q. -- but you have no personal knowledge of whether
18 they did?

19 A. -- of the word destruction, because they are not
20 present in any records that the company can now get, yes,
21 they have been, since Mr. Wheeler was keeping records of
22 them.

23 Q. So destroyed means missing to you?

24 A. Yes.

25 MR. PRUSASKI: Right. Why don't you go buy a



1 dictionary? There's a Barnes & Noble down the
2 street.
3 I have no further questions. Thank you.
4 THE WITNESS: Okay.
5 Does he want to read or waive?
6 MR. SELZ: He'll read. Hold the
7 transcript.
8 (Thereupon, the deposition was concluded
9 at 4:29 p.m.)
10 - - - - -



EXHIBIT R



GENERAL LEDGER – BILLING OF PROSKAUER

* LEDGER HISTORY *

May 28 2002
16:49:54

CLIENT: 40017

IVIEWIT.COM, INC.

TYPE	NUMBER	DATE	FEES	COSTS/ OTHER	UNALLOCATED	TOTAL
BILL	320581	06/18/99	64837.50	1814.95	.00	<u>66652.45</u>
PAY	320581 1028	09/22/99	-64837.50	-1814.95	.00	-66652.45
BILL	324595	06/30/99	.00	.00	.00	.00
BILL	324596	06/30/99	.00	.00	.00	.00
BILL	324597	06/30/99	.00	.00	.00	.00
BILL	324598	06/30/99	.00	.00	.00	.00
BILL	324599	06/30/99	.00	.00	.00	.00
BILL	327337	08/24/99	92630.00	6248.10	.00	<u>98878.10</u>



EXHIBIT S



PATENT DRAFT CHANGES OF COMPANY

57103/111

DRAFT

PCT INTERNATIONAL PATENT APPLICATION

for

SYSTEM AND METHOD FOR PROVIDING

AN ENHANCED DIGITAL VIDEO FILE

Inventors:

Eliot I. Bernstein
[home address]
[citizenship]

Zachiryl Shivajee
[home address]
[citizenship]

Jude Rosario
[home address]
[citizenship]

Sp. 2
Su 40
Bin 1

FOLEY & LARDNER
Attorneys at Law
777 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202
(414) 271-2400



**INTELLECTUAL PROPERTY DOCKET OF BLAKELY, SOKOLOFF, TAYLOR
& ZAFMAN LLP**

VIEWIT.COM PATENT STATUS REPORT

05707

TITLE	MATTER	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE
Apparatus and Method for Producing Enhanced Digital Images	P001 (fka102)	Eliot I. Bernstein	United States	Serial No. 60/125824	Filed 03/24/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0526
Apparatus and Method for Producing Enhanced Video Images	P002 (fka 103)	Eliot I. Bernstein	United States	Serial No. 60137,297	Filed 06/03/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0494
Apparatus and Method for Playing Video Files Across the Internet	P003 (fka 104)	Eliot I. Bernstein	United States	Serial No. 60/137,921	Filed 06/07/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0497
Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network	P004 (fka 105)	Eliot I. Bernstein	United States	Serial No. 60/141,440	Filed 06/29/99	Iviewit Holdings, Inc. Assigned: 01/03/00 Reel/Frame: 010523/0574
Apparatus and Method for Producing Enhanced Digital Images	P005 (fka 106)	Eliot I. Bernstein	United States	Serial No. 60/146,726	Filed 08/02/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0509
Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	P006 (fka 107)	Eliot I. Bernstein	United States	Serial No. 60/149,737	Filed 08/19/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0506
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P007 (fka 108)	Eliot I. Bernstein	United States	Serial No. 60/155,404	Filed 09/22/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0183



VIEWIT.COM PATENT STATUS REPORT

05707

TITLE	MATTER	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P008 (fka 109)	Eliot I. Bernstein	United States	Serial No. 60/169,559	Filed 12/08/99	Iviewit Holdings, Inc Assigned: 01/06/00 Reel/Frame 010523/0220
Apparatus and Method for Producing Enhanced Digital Images	P009PCT (fka 110)	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/07 772	Filed 03/23/00 Priority 03/24/99	Not assigned.
System and Method for Streaming an Enhanced Digital Video File	P010PCT (fka 111)	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15 408	Filed 06/02/00	Not assigned.
System and Method for Providing an Enhanced Digital Video File	P011PCT (fka 112)	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15 405	Filed 06/02/00 Priority 03/06/99	Applicant Iviewit Holdings, Inc.
System and Method for Playing a Digital Video File	P012PCT (fka 113)	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15 406	Filed 06/02/00 Priority 03/06/99	Applicant Iviewit Holdings, Inc.
System and Method for Streaming an Enhanced Digital Video File	P013 (fka 114)	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,730	Filed 06/05/00	Applicant Iviewit Holdings, Inc.
System and Method for Playing a Digital Video File	P014 (fka 115)	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,026	Filed 06/05/00	Applicant Iviewit Holdings, Inc.

Blakely, Sokoloff, Taylor & Zafman

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VIEWIT.COM PATENT STATUS REPORT

05707

TITLE	MATTER	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE
System and Method for Providing An Enhanced Digital Video File	P015 (fka 116)	Eliot I. Bernstein Brian G. Utley Jude K. Rosario	United States	Serial No. 09/587,734	Filed 06/05/00	Applicant Iviewit Holdings, Inc.
System and Method for Video Playback Over a Network	P016PCT (fka 118)	Eliot I. Bernstein	PCT	Serial No. PCT/US00/15 602	Filed 06/07/00	Applicant Iviewit Holdings, Inc.
Apparatus and Method for Producing Enhanced Digital Images	P017 (fka 119)	Eliot I. Bernstein	United States	Serial No. 09/522,721	Filed 03/10/00	Not assigned
System and Method for Providing an Enhanced Digital Image File	P018PCT (fka 120)	Eliot I. Bernstein	PCT	Serial No. PCT/US00/21 211	Filed 08/02/00	Applicant Iviewit Holdings, Inc.
System and Method for Providing and Enhanced Digital Image File	P019 (fka 121)	Eliot I. Bernstein Brian Utley	United States	Serial No. 09630,939	Filed 08/02/00	Not assigned.
Zoom and Pan Imaging Using a Digital Camera	P020 (fka 122)	Brian Utley	United States	Serial No. 60/223,344	Filed 09/18/00	Not assigned.
Zoom and Pan Imaging Design Tool	P021 (fka 123)	Brian Utley	United States	Serial No. 60/233,341	Filed 09/18/00	Not assigned.

Blakely, Sokoloff, Taylor & Zafman

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EXHIBIT T



MOTION AND COUNTERCLAIM³⁰

³⁰ 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)

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY,
FLORIDA

PROSKAUER ROSE L.L.P.,
a New York limited partnership,

CA 01-04671 AB

Plaintiff,

v.

IVIEWIT.COM, INC., a Delaware
corporation, IVIEWIT HOLDINGS,
INC., a Delaware corporation, and
IVIEWIT TECHNOLOGIES, INC.,
a Delaware corporation.

Defendants.

COPY / ORIGINAL
RECEIVED FOR FILING

JAN 28 2003

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION

**DEFENDANTS MOTION FOR LEAVE TO AMEND TO ASSERT
COUNTERCLAIM FOR DAMAGES**

Defendants, IVIEWIT.COM, INC., IVIEWIT HOLDINGS,
INC. and IVIEWIT TECHNOLOGIES, INC., by and through their undersigned
counsel, hereby move this Court for Leave to Amend their Answer so as to assert a
counterclaim in this matter pursuant to Rule 1.170(f) of the Florida Rules of Civil
Procedure and as grounds therefore would state as follows:

1. That the Defendants move to amend their answer in this matter so as to
include a counterclaim in this matter, which by its nature appears to be a compulsory
counterclaim to the extent that the issues arise out of the same nexus of events, as

justice requires that the counterclaim be tried at the same time as the complaint and answer so that all pending issues between the parties may be adjudicated in this action.

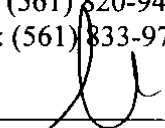
2. That as a result of fact that additional evidence in support of the Defendants' counterclaims is found in the Plaintiff's own files and records, the Plaintiff will not be prejudiced by the amendment of the Defendants' answer in this matter, nor will this matter be delayed as to the trial of same.

3. Defendants have attached hereto a copy of the proposed counterclaim.

WHEREFORE the Defendants, move this Honorable Court for the entry of an order permitting the Defendants to amend their answer in this matter.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 20th day of January, 2003 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

SELZ & MUVDI SELZ, P.A.
214 Brazilian Avenue, Suite 220
Palm Beach, FL 33480
Tel: (561) 820-9409
Fax: (561) 833-9715

By: 

STEVEN M. SELZ
FBN: 777420

IN THE CIRCUIT COURT OF THE
15th JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY,
FLORIDA

PROSKAUER ROSE, LLP, a New York
limited partnership,

CASE NO.: CA 01-04671 AB

Plaintiff,

vs.

IVIEWIT.COM, INC., a Delaware
corporation, IVIEWIT HOLDINGS,
INC., a Delaware corporation and,
IVIEWIT TECHNOLOGIES, INC.,
a Delaware corporation,

Defendants,

COUNTERCLAIM FOR DAMAGES

COME NOW the Counter Plaintiffs, IVIEWIT.COM, INC., IVIEWIT
HOLDINGS, INC., IVIEWIT TECHNOLOGIES, INC. and IVIEWIT LLC,
hereinafter collectively referred to as “IVIEWIT” or Counter Plaintiffs, and hereby
sues Counter Defendant, PROSKAUER ROSE, LLP, hereinafter “PROSKAUER”,
a New York limited partnership, and alleges as follows:

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

1. This is an action for damages in a sum greater than \$15,000.00, exclusive

of interest, taxable costs and attorneys fees.

2. Counter Plaintiff, IVIEWIT.COM, INC., is a Delaware corporation, formed by PROSKAUER, which at all times relevant hereto was authorized to conduct and conducted business in Palm Beach County Florida and the State of California.

3. Counter Plaintiff, IVIEWIT HOLDINGS, INC., is a Delaware corporation, formed by PROSKAUER, which at all times relevant hereto was authorized to conduct and conducted business in Palm Beach County Florida and California.

4. Counter Plaintiff, IVIEWIT TECHNOLOGIES, INC., is a Delaware corporation, formed by PROSKAUER, which at all times relevant hereto was authorized to conduct and conducted business in Palm Beach County Florida and the State of California.

5. IVIEWIT LLC, is a Florida limited liability company, formed by PROSKAUER, which, at all times relevant hereto, was authorized to conduct and conducted business in the Palm Beach County Florida and the State of California.

6. Counter Defendant PROSKAUER ROSE, LLP, (hereinafter "PROSKAUER") is a New York limited partnership, operating a law office in Boca Raton, Palm Beach County, Florida.

Boca Raton, Palm Beach County, Florida.

7. BRIAN G. UTLEY, (hereinafter “UTLEY”) was at all times relevant hereto a sui juris resident of the State of Florida and who on or about September of 1999 was the president of Counter Plaintiff, IVIEWIT LLC.

8. CHRISTOPHER WHEELER, (hereinafter “WHEELER”) is a sui juris individual and resident of Palm Beach County, Florida, who at all times relevant hereto was a partner of PROSKAUER and who provided legal services to the Counter Plaintiffs.

9. KENNETH RUBENSTEIN, (hereinafter “RUBENSTEIN”) is a sui juris individual believed to be a resident of the State of New York and who various times relevant hereto was initially misrepresented by WHEELER as a partner of PROSKAUER and later became a partner of PROSKAUER, and who provided legal services to the Counter Plaintiffs both while at Meltzer, Lippie, et al., and PROSKAUER.

10. RAYMOND JOAO, (hereinafter “JOAO”) is a sui juris individual believed to be a resident of the State of New York and who at all times relevant hereto was represented to be RUBENSTEIN’s associate at PROSKAUER, when in fact JOAO has never been an employee of PROSKAUER but in fact was an employee of Meltzer, Lippie, et al.

11. That beginning on or about November of 1998, the Counter Plaintiff, IVIEWIT, through it's agent and principal, Eliot I. Bernstein ("Bernstein"), held discussions with WHEELER with regard to PROSKAUER providing legal services to the company involving specific technologies developed by Bernstein and two others, which technologies allowed for:

i) Zooming of digital images and video without degradation to the quality of the digital image due to what is commonly refereed to as "pixilation"; and,

ii) The delivery of digital video using proprietary scaling techniques; and,

iii) A combination of the image zoom techniques and video scaling techniques described above; and,

iv) The remote control of video cameras through communications networks.

12. That Bernstein engaged the services of PROSKAUER to provide legal services to the company to be formed, including corporate formation and governance for a single entity and to obtain multiple patents and oversee US and foreign filings for such technologies including the provisional filings for the technologies as described in Paragraph 11 above, the "Technology", and such

other activities as were necessary to protect the intellectual property represented by the Technology.

13. That at the time of the engagement of PROSKAUER, Bernstein was advised and otherwise led to believe that WHEELER was the PROSKAUER partner in charge of the account.

14. Upon information and belief, WHEELER, RUBENSTEIN and JOAO upon viewing the technologies developed by Bernstein, and held by IVIEWIT, realized the significance of the technologies, its various applications to communication networks for distributing video data and images and for existing digital processes, including, but not limited to digital cameras, digital video disks (DVD), digital imaging technologies for medical purposes and digital video, and that WHEELER, RUBENSTEIN and JOAO conspired to undertake and in fact undertook a deliberate course of conduct to deprive Bernstein and IVIEWIT of the beneficial use of such technologies for either the use of third parties, who were other clients of PROSKAUER and WHEELER, or for WHEELER, RUBENSTEIN and JOAO's own financial gain, to the detriment and damage of the Counter Plaintiffs.

15. That WHEELER, who was a close personal friend of UTLEY, recommended to Bernstein and other members of the board of directors of

IVIEWIT that the IVIEWIT engage the services of UTLEY to act as President of the Iviewit.com, LLC based on his knowledge and ability as to technology issues.

16. That at the time that WHEELER made the recommendation of UTLEY to the board of directors, that WHEELER knew that UTLEY was in a dispute with his former employer, Diamond Turf Products and the fact that UTLEY had misappropriated certain patents on hydro-mechanical systems to the detriment of Diamond Turf Products.

17. Additionally, WHEELER was fully aware of the fact that UTLEY was not the highly qualified “engineer” that UTLEY represented himself to be, and that in fact UTLEY lacked real engineering expertise or even an engineering degree and that UTLEY had been fired from Diamond Turf Products due to his misappropriation of patents.

18. That despite such knowledge, WHEELER never mentioned such facts concerning UTLEY to any representative of IVIEWIT and in fact undertook to “sell” UTLEY as a highly qualified candidate who would be the ideal person to undertake day to day operations of IVIEWIT and work on the patents, acting as a qualified engineer.

19. Additionally, WHEELER continued to assist UTLEY in perpetrating such fraud on both the Board of Directors of IVIEWIT and to third parties,

including Wachovia Bank, by approving a false resume for UTLEY to be included in seeking approval of a private placement for IVIEWIT.

20. That based on the recommendations of WHEELER, as partner of PROSKAUER, the board of directors agreed to engage the services of UTLEY as president.

21. That almost immediately after UTLEY's employment and almost one year after initially providing of services, WHEELER provided a retainer agreement for the providing of services by PROSKAUER to IVIEWIT LLC, addressed to UTLEY, a true and correct copy of such retainer agreement (the "Retainer") being attached hereto and made a part hereof as Exhibit "A". That the services provided were in fact to be paid out of the royalties recovered from the use of the Technology, which was to be included in patent pools overseen by RUBENSTEIN.

22. That the Retainer by its terms contemplated the providing of corporate and general legal services to IVIEWIT LLC by PROSKAUER and was endorsed by UTLEY on behalf of IVIEWIT LLC, the Board of Directors of IVIEWIT LLC would not have UTLEY authorized to endorse same as it did not include the intellectual property work which PROSKAUER had already undertaken.

23. That prior to the Retainer, PROSKAUER and WHEELER had provided

legal services to IVIEWIT, including services regarding patent procurement and acted to coordinate such services both internally and with outside counsel, including RUBENSTEIN and JOAO, including times when they were misrepresented as PROSKAUER attorneys.

24. That PROSKAUER billed IVIEWIT for legal services related to corporate, patent, trademark and other work in a sum of approximately \$800,000.00.

25. That PROSKAUER billed IVIEWIT for legal service never performed, double-billed by the use of multiple counsel on the same issue, and systematically overcharged for services provided.

26. That summaries of the billing statements provided by PROSKAUER to IVIEWIT are attached hereto and made a part hereof as Exhibit "B".

27. That based on the over-billing by PROSKAUER, IVIEWIT paid a sum in of approximately \$500,000.00 plus together with a 2.5% interest in IVIEWIT, which sums and interest in IVIEWIT was received and accepted by PROSKAUER.

28. That WHEELER, UTLEY, RUBENSTEIN, JOAO and PROSKAUER, conspired to deprive IVIEWIT of its rights to the technologies developed by Bernstein by:

a) Transferring patents using Foley & Lardner so as to name UTLEY as the sole holder of multiple patents in his individual name and capacity when in fact they were and arose from the technologies developed by Bernstein and others and held by IVIEWIT prior to UTLEY's employment with IVIEWIT, and;

b) Upon discovery of the "lapses" by JOAO, that WHEELER and PROSKAUER referred the patent matters to WILLIAM DICK, of Foley & Lardner, who was also a close personal friend of UTLEY and who had been involved in the diversion of patents to UTLEY at Diamond Turf Products; and,

c) Failing to list proper inventors of the technologies based on improper legal advise that foreign inventors could not be listed until their immigration status was adjusted, resulting in the failure of the patents to include their rightful and lawful inventors and the payment by IVIEWIT for unnecessary immigration work; and,

d) Failing to ensure that the patent applications for the technologies, contained all necessary and pertinent information relevant to the technologies and as required by law; and,

e) Failing to secure trademarks and copyrights and failing to complete trademark and copyright work for the use of proprietary names of IVIEWIT and source code for the Technologies of IVIEWIT as intellectual property, and;

f) Allowing the infringement of patent rights of IVEIWIT and the intellectual property of IVIEWIT by other clients of PROSKAUER and WHEELER, and;

g) Aiding JOAO in filing patents for IVIEWIT intellectual property by intentionally withholding pertinent information from such patents and not filing same timely, so as to allow JOAO to apply for similar patents in his own name, both while acting as counsel for IVIEWIT and subsequently.

29. As a direct and proximate result of the actions of the Counter Defendant, Counter Plaintiffs have been damaged in a sum estimated to be greater than \$10,000,000,000.00, based on projections by Gerald Stanley, CEO of Real 3-D (a consortium of Lockheed, Silicone Graphics and Intel) as to the value of the technologies and their applications to current and future uses together with the loss of funding from Crossbow Ventures as a result of such conduct.

30. All conditions precedent to the bringing of this action have occurred or have been waived or excused.

COUNT I- LEGAL MALPRACTICE

31. This is an action for legal malpractice within the jurisdiction of this court.

32. Counter Plaintiff re-alleges and hereby incorporates that allegations of Paragraphs 1 through 30 as if fully set forth herein.

33. PROSKAUER employed by IVIEWIT for purposes of representing IVIEWIT to obtain multiple patents and oversee foreign filings for such technologies including the provisional filings for the technologies as described in Paragraph 11 above.

34. That pursuant to such employment, PROSKAUER owed a duty to ensure that the rights and interests of IVIEWIT were protected.

35. WHEELER, RUBENSTEIN, JOAO and PROSKAUER neglected that reasonable duty of care in the performance of legal services in that they:

a) Failed to take reasonable steps to ensure that the intellectual property of IVIEWIT was protected; and,

b) Failed to complete work regarding copyrights and trademarks; and,

c) Engaged in unnecessary and duplicate corporate and other work resulting in billing for unnecessary legal services believed to be in excess of \$400,000.00; and,

d) By redacting information from the billing statements regarding services provided so to as to give the appearance that the services provided by PROSKAUER were limited in nature, when in fact they involved various aspects of intellectual property protection; and,

e) By knowingly representing and agreeing to accept representation of

clients in conflict with the interests of IVIEWIT, without either consent or waiver by IVIEWIT.

36. That the negligent actions of PROSKAUER and its partners, WHEELER and RUBENSTEIN, resulted in and was the proximate cause of loss to IVIEWIT.

WHEREFORE, Counter Plaintiff demands judgement for damages against Defendant together with reasonable attorneys fees, court costs, interest and such other and further relief as this Court deems just and equitable.

COUNT II- CIVIL CONSPIRACY

37. This is an action for civil conspiracy within the jurisdiction of this court.

38. Counter Plaintiff re-alleges and hereby incorporates that allegations of Paragraphs 1 through 30 as if fully set forth herein.

39. Defendant, PROSKAUER and UTLEY, WHEELER, RUBENSTEIN and JOAO, jointly conspired to deprive the Counter Plaintiffs of their rights and interest in the Technology.

40. That UTLEY, WHEELER, RUBENSTEIN, JOAO and PROSKAUER with such intent, directed that certain patent rights be put in the name of UTLEY and/or that such patent rights were modified or negligently pursued so as to fail to provide protection of the intellectual property, resulting in the ability of other clients of WHEELER, RUBENSTEIN, JOAO and PROSKAUER to make use of such

technologies without being liable to IVIEWIT for royalties normally arising from such use.

41. That PROSKAUER, without either consent of the Board of Directors or proper documentation, transferred securities to Tiedemann/Prolow Investment Group, which entity was also referred to by WHEELER, who acted as counsel for such unauthorized transaction.

42. That upon the discovery of the above-described events and conspiracy, IVIEWIT's lead investor, Crossbow Ventures, ceased its funding of IVIEWIT.

43. That Crossbow Ventures, which was a referral of WHEELER, took a security interest in the Technology under the guise of protecting IVIEWIT and its shareholders from the actions of UTLEY, based on the filing of an involuntary bankruptcy (which was later withdrawn), and as to WHEELER and PROSKAUER based on the instant law suit, when in fact such conduct was motivated by Crossbow's attempts to wrongfully detain the interests of IVIEWIT in the Technology. Such conduct, upon information and belief, was undertaken with the knowledge and assistance of WHEELER and PROSKAUER.

44. As a direct and proximate result of the conspiracy and acts of PROSKAUER, UTLEY, WHEELER, JOAO and RUBENSTEIN, the Counter Plaintiffs have been damaged.

WHEREFORE, Counter Plaintiffs demand judgement for damages against Defendant together with court costs, interest and such other and further relief as this Court deems just and equitable.

COUNT III- BREACH OF CONTRACT

45. This is an action for breach of contract within the jurisdiction of this Court.

46. Counter Plaintiff re-alleges and hereby incorporates that allegations of Paragraphs 1 through 30 as if fully set forth herein.

47. Defendant, PROSKAUER, breached the contract with Counter Plaintiff, IVIEWIT LLC by failing to provide services billed for pursuant to the billing statements presented to the Counter Plaintiffs and over-billing for services provided.

48. That such actions on the part of PROSKAUER constitute beaches of the contract by and between IVIEWIT LLC and PROSKAUER.

49. That as a direct and proximate result of such conduct on the part of PROSKAUER, IVIEWIT LLC has been damaged by overpayment to PROSKAUER and the failure of PROSKAUER to perform the contracted for legal services.

WHEREFORE, IVIEWIT demands judgement for damages against Counter Defendant together with court costs, interest and such other and further relief as this Court deems just and equitable.

**COUNT IV- TORTIOUS INTERFERENCE WITH AN ADVANTAGEOUS
BUSINESS RELATIONSHIP**

50. This is an action for tortious interference with an advantageous business relationship within the jurisdiction of this Court.

51. Counter Plaintiff re-alleges and hereby incorporates that allegations of Paragraphs 1 through 30 as if fully set forth herein.

52. Counter Plaintiff was engaged in negotiations of technology agreements with both Warner Bros. and AOL/Time Warner as to the possible use of the Technologies of the Counter Plaintiffs and investment in Counter Plaintiffs as a strategic partner.

53. That despite the prior representations of RUBENSTEIN, at a meeting held on or about November 1, 2000, by and between UTLEY, RUBENSTEIN and representatives of Warner Bros. as to the Technology of IVIEWIT and the efficacy, novelty and unique methodology of the Technology, RUBENSTEIN refused to subsequently make the same statements to representatives of AOL and Warner Bros., taking the position that since Warner Bros./AOL is “now a big client of Proskauer, I can’t comment on the technologies of Iviewit.” or words to that effect in response to inquiry from Warner Brother/AOL’s counsel as to the status and condition of the pending patents on the intellectual property.

54. That RUBENSTEIN, having served as an advisor to the Board of Directors for IVIEWIT, was aware of the fact that at the time of the making of the statements set forth in Paragraph 50, above, IVIEWIT was in the midst of negotiations with AOL/Warner Bros. as to the possible funding of the operations of IVIEWIT in and sum of between \$10,000,000.00 and \$20,000,000.00.

55. Further, RUBENSTEIN as a partner of PROSKAUER, and despite his clear prior actions in representing the interests of IVIEWIT, refused to answer questions as to the enforcement of the Technology of IVIEWIT, with the intent and knowledge that such refusal would lead to the cessation of the business relationship by and between IVIEWIT and Warner Bros./AOL and other clients familiar with the Warner Bros./AOL technology group then in negotiations with IVIEWIT, including, but not limited to Sony Corporation, Paramount, MGM and Fox.

56. That the actions of RUBENSTEIN were and constituted an intentional and unjustified interference with the relationship by and between IVIEWIT and Warner Bros./AOL designed to harm such relationship and further motivated by the attempts to “cover-up” the conflict of interest in PROSKAUER’s representation of both IVIEWIT and Warner Bros./AOL.

57. That indeed, as a direct and proximate result of the conduct of RUBENSTEIN, Warner Bros./AOL ceased business relations with IVIEWIT to the

damage and detriment of Counter Plaintiffs.

WHEREFORE, Counter Plaintiffs demand judgement for damages against Counter Defendant together with court costs, interest and such other and further relief as this Court deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 10th day of January, 2003 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

SELZ & MUVDI SELZ, P.A.
214 Brazilian Avenue, Suite 220
Palm Beach, FL 33480
Tel: (561) 820-9409
Fax: (561) 833-9715

By: _____

STEVEN M. SELZ
FBN: 777420



EXHIBIT U



Calculated Discount Rate:	12.00%				
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Revenue Potential					
<i>Device OEM Licensing</i>	\$387,491,845	\$410,385,714	\$435,344,087	\$485,758,798	\$543,018,985
<i>Motion Picture Video on Demand ("VOD") Licensing</i>	4,260,793	4,778,426	5,648,251	7,151,662	9,707,205
<i>DVD Encoding/Replication</i>	383,471,325	430,058,359	508,342,628	643,649,599	873,648,447
<i>Appliances (copiers, printers, etc.)</i>	290,618,884	307,789,285	326,508,066	364,319,098	407,264,239
<i>Other Device OEM's (scanners, game boxes, e-books, etc.)</i>	96,872,961	102,596,428	108,836,022	121,439,699	135,754,746
<i>Delivery Systems (terrestrial, ISP, Wireless, etc.)</i>	387,491,845	0	0	0	0
<i>Medical Imaging and Devices</i>	116,247,554	123,115,714	130,603,226	145,727,639	162,905,696
<i>Wireless Devices</i>	271,244,292	287,270,000	304,740,861	340,031,159	380,113,290
<i>Enterprise Software</i>	191,735,663	215,029,179	254,171,314	321,824,799	436,824,224
<i>Internet (auctions, retail games, etc.)</i>	<u>191,735,663</u>	<u>215,029,179</u>	<u>254,171,314</u>	<u>321,824,799</u>	<u>436,824,224</u>
Present Value – Total Revenue Potential	1,875,454,356	1,670,960,048	1,657,584,195	1,749,351,147	1,921,901,867
Present Value – Cumulative Revenue Potential	<u>1,875,454,356</u>	<u>3,546,414,404</u>	<u>5,203,998,599</u>	<u>6,953,349,746</u>	<u>8,875,251,614</u>
Present Value – Cum. Rev. Pot. Over 20-Year Patent Life	\$17,353,552,076				
Assume Percentage of Unsuccessful U.S. Patent Repair	\$6,802,592,414				
Assume Percentage of Forfeiting PCT Protection	<u>3,470,710,415</u>				
Cum. Potential Damages Over 20-Year Patent Life	<u>\$10,273,302,829</u>				



EXHIBIT V

LETTER OF MR. COLTER

Subj: **iviewit**

Date: 10/25/2001 12:08:38 AM Pacific Daylight Time

From: David Colter@warnerbros.com (DColter0264)

To: gt@22wain.com

Sent on: AOL 6.0 for Windows US sub 10539

Greg,

I wanted to give you an update on iviewit, since we will be missing each other until the 7th of Nov (vacation next week).

Eliot's erratic behaviour regarding the NDA was anything but erratic. I have since learned from a number of sources that Eliot believed we were part of, and supporting a pre-packaged bankruptcy for the company that would clean out the current investors (mostly friends and family who had their investment considered as unsecured debt for tax protections I believe) and leave Crossbow, it's friends, the original patent attorneys and Aidan with majority control of the IP -- wiping out Eliot and many people I know and care about.

Aidan told Eliot that we had agreed with this plan -- hence Eliot's behaviour at that time. I have also talked with a number of people who are involved with iviewit -- Alan Epstein, Aidan, Hank, etc -- and the story seems fairly clear, and I believe that inappropriate actions have taken place -- the primary investor has been running the company, and seems to have engineered all of the investment as debt to force the BK, and gain control of the IP from it's inventor. I have learned a lot more about business this week, that I would rather not need to know.

John Calkins, Clarissa Weirick and I met with Eliot and Aidan last Friday. John was surprised at Crossbow and Aidan's actions, when all of the patent opinions look very favorable, and when we have been waiting for a business plan since February to take to Heidi Krauel at AOLTW Ventures. John wants to arrive at an investment decision in 6 weeks, and the primary task is the assessment of the patents. You are probably the best one to answer some of the questions:

- Ken Rubenstein was one of the original attorneys who looked at the patents and whose firm in FL filed the originals -- should we approach Ken for an opinion?

- Zaffman provided what seems like a very strong opinion. Would you take a look at it and provide your perspective? I can send under another cover.

- If we end up with a percentage ownership of the IP, how does that impact our ability to leverage in patent pools? Do we need to have full control.

Your input is very important.

Additionally, I know you provided Aidan a good perspective on licensing. I want to suggest that you should talk with Alan Epstein, and possibly Eliot, before dealing with him in the future. I am concerned that he has been less than honorable in his dealings with Eliot, iviewit and ourselves. I am not completely certain, but have a bad

feeling based on many people's views on what is happening to iviewit. I would be very interested in your opinion on this.

Hopefully, we can talk about this when you are back... I would be happy to chat from my vacation in Orlando... Eliot is a friend and I want to explore all options to help.

Travel safe and take care.

Thank,
David



EXHIBIT W



DEPOSITION OF RESPONDENT

1 A. Right.

2 Q. Did you ever advise anyone at iviewit
 3 other than, obviously, Mr. Utley, who knew that you
 4 had represented him in the past, that you had
 5 represented Mr. Utley at one point?

6 A. No.

7 Q. Was there any - any question of any
 8 conflict?

9 A. No.

DEPOSITION OF MR. UTLEY

Proskauer Rose, et al. vs Iviewit.Com, Inc., et al. 8/22/02

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.

RESPONDENT'S RESPONSE TO COMPLAINT

V. No Conflicts Of Interest Existed In Proskauer's Representation Of Iviewit

Mr. Bernstein also alleges the existence of a conflict of interest on the part of Mr. Wheeler based on his prior representation of Mr. Utley in other matters. At the time Mr. Wheeler introduced Mr. Utley to Mr. Bernstein, Mr. Wheeler disclosed that Proskauer had previously formed a corporation for Mr. Utley in approximately 1993. At the time the introduction was made, Mr. Utley was not a current client of the firm. In short, there was no conflict of interest arising out of Mr. Wheeler merely introducing Mr. Utley to Iviewit.