

young patent professionals. I left this position with Foley in August of 2002, and once again entered private practice as a sole practitioner in patent law.

### III. Background of Declarant's Relationship with Iviewit

5. In late September of 1996, Mr. Utley contacted me, asking whether I could handle certain patent matters for him. A meeting was held, where I learned at that time that Mr. Utley had taken a position with a company named Diamond Turf Equipment, Inc.<sup>1</sup> Shortly thereafter, on October 1, 1996, Mr. Utley sent documentation, including an invention disclosure relating to a hydraulic motor circuit, to me under cover of a letter with a heading: "Brian G. Utley, Premier Connection, 1930 SW 8th Street, Boca Raton, FL 33486". When I questioned him about the different name of the company, Mr. Utley responded that Premier Connection was his own company and that the invention(s) disclosed were his. I asked him if he had an agreement with Diamond Turf Equipment, Inc. to invent or to turn over any related inventions to them. Mr. Utley said he did not have any such agreement. I subsequently prepared a provisional patent application for the hydraulic motor circuit subject matter naming Brian G. Utley as the inventor, and I filed the application with the USPTO in November of 1996. At the direction of the client, Mr. Utley, no assignment of the invention was made. On information and belief, no nonprovisional utility patent application was ever filed based upon this provisional application (i.e., no patent rights were ever granted for the invention(s) filed in the provisional application).
6. Other than holiday greeting cards, I did not communicate with Mr. Utley until about March or April of 2000, when Mr. Utley contacted me and asked if I could do some work for Iviewit.com ("Iviewit"). (I had since moved from Foley's Milwaukee Office to a Foley Office in Palm Beach, Florida). At that time, I learned that Mr. Utley had left Diamond Turf Equipment, Inc. and was now the President of Iviewit. Mr. Utley stated that the client would be Iviewit. He was informed of my new connection as Special Counsel for Foley, and I said that a conflicts check would be made to determine if I could accommodate his

Utley states in deposition that patents were never filed!!!

<sup>1</sup> It is noted that Complainant has identified a mythical company "Diamond Turf Lawnmower". I assume they are referring to a company named "Diamond Turf Equipment, Inc." which was the company Mr. Utley was employed by during the relevant timeframe. I shall hereinafter refer to them using their correct name.