

EXHIBITS

Marked at the
Deposition of

KENNETH RUBENSTEIN

Taken on
NOVEMBER 20, 2002



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LINKING TESTIMONY, TRADITION AND TECHNOLOGY
216 EAST 45TH STREET, NEW YORK, NY 10017 212-687-8010

Selz & Muvdi Selz, P.A.

Attorneys At Law
214 Brazilian Avenue, Suite 220
Palm Beach, FL 33480

Steven M. Selz
Liliana M. Selz

Tel: (561) 820-9409
Fax: (561) 833-9715

FAX TRANSMITTAL COVER SHEET
FAX Number: (212) 969-2900

Individual & Firm: **KENNETH RUBINSTEIN, ESQ.**

From: **STEVEN M. SELZ, ESQ.**

Date & Time: **11/20/02 10:50 A.M.** File # _____

RE: **IVIEWIT**

Document(s) Attached: **DOCUMENTS**

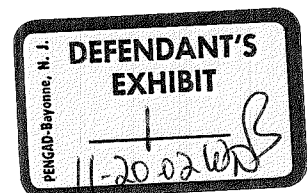
Comments: **FOR DEPOSITION**

A copy or the original of the attached document will not follow unless otherwise noted below. Copy/Original sent by:

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Draft

11/20/2002

**IVIEWIT HOLDINGS, INC.**

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

By Electronic Mail and Facsimile

November 20, 2002

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

Re: Iviewit Patents Pending

Dear Ken:

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

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

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

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

Draft

11/20/2002



Kenneth Rubenstein
November 20, 2002
Page 2

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

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

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

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

As such, I would like to enlist your assistance, if available, to review the conclusions of past and present patent counsel, and to further assist Iviewit in further defining the inventions in any intellectual property arena of our choosing, whether it be by a petition by what process is available at the United States Patent and Trademark Office, or any administrative, state, or federal court of appropriate jurisdiction armed with executed documents, memos, emails, and parole evidence all pointing to fraudulent, or at the least, entirely malpractical occurrences regarding the filings of the past Iviewit patents pending.

Draft

11/20/2002



Kenneth Rubenstein
November 20, 2002
Page 3

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

Best regards,

P. Stephen Lamont
Chief Executive Officer

Selz & Muvdi Selz, P.A.

Attorneys At Law
214 Brazilian Avenue, Suite 220
Palm Beach, FL 33480

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Liliana M. Selz

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FAX TRANSMITTAL COVER SHEET FAX Number: (212) 969-2900

Individual & Firm: KENNETH RUBINSTEIN, ESQ.

From: STEVEN M. SELZ, ESQ.

Date & Time: 11/20/02 10:50 A.M. File # _____

RE: IVIEWIT

Document(s) Attached: DOCUMENTS

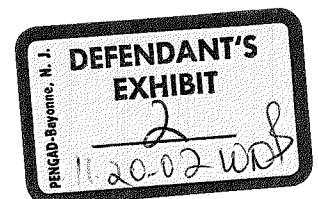
Comments: FOR DEPOSITION

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Main Identity

From: "Eliot I Bernstein" <res0bf4a@verizon.net>
To: "Steve Selz (E-mail 2)" <info@lrevanspa.com>
Sent: Wednesday, November 20, 2002 11:00 AM
Subject: FW: Today -- iviewit

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

From: Eliot I. Bernstein [mailto:res0bf4a@verizon.net]
Sent: Monday, August 06, 2001 4:28 PM
To: Aidan Foley (E-mail); Aidan Foley (E-mail 2)
Subject: FW: Today -- iviewit

-----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

Hank Powell
Managing Director

CrossBow Ventures
One North Clematis Street
Suite 510
West Palm Beach, FL 33401-5523
T +1(561) 838-9005 (office)

11/20/02

T +1(561) 279-0556 (home)
T +1(561)310-9171 (cellphone)
F +1(561) 838-4105
HPowell@cb-ventures.com
www.cb-ventures.com

In a message dated 07/26/2001 8:01:54 AM Pacific Daylight Time, HeidiKrauel writes:

Subj: **Re: Today**
Date: 07/26/2001 8:01:54 AM Pacific Daylight Time
From: HeidiKrauel
To: David.Colter@warnerbros.com (DColter0264)
Sent on: AOL 6.0 for Windows US sub 10531

In a message dated 7/26/01 10:47:13 AM Eastern Daylight Time, David.Colter@warnerbros.com (DColter0264) writes:

| Any times good for you before 10 am PST?

stepping into meeting now until 2:30pm EST. I can do tomorrow too...

Heidi Krauel
Associate
AOL Time Warner Ventures
22000 AOL Way
Dulles, VA 20166
Phone - 703 265 1134
Fax - 703 265 3925
Email - heidikrauel@aol.com

Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.419 / Virus Database: 235 - Release Date: 11/13/2002

11/20/02

Selz & Muvdi Selz, P.A.

Attorneys At Law
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Palm Beach, FL 33480

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Liliana M. Selz

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Fax: (561) 833-9715

FAX TRANSMITTAL COVER SHEET
FAX Number: (561) 364-5502

Individual & Firm: ELIOT BERNSTEIN.

From: STEVEN M. SELZ, ESQ.

Date & Time: 6/4/03 10:00 A.M. File # _____

Total number of Pages (INCLUDING this cover sheet) 20

RE: IVIEWIT.COM

Document(s) Attached: INFORMATION ON DEPO OF RUBENSTEIN YOU REQUESTED AND COPY OF LETTER RECEIVED TODAY AS TO WHEELER DEPO.

Comments: AS DISCUSSED- NEED TO KNOW BY THIS FRIDAY WHAT YOU INTEND OR I WILL HAVE TO WITHDRAW- CAN'T AFFORD TO CONTINUE WORK WITHOUT PAYMENT.

A copy or the original of the attached document will not follow unless otherwise noted below. Copy/Original sent by:

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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.

**DEFENDANTS' MOTION TO COMPEL TAKING OF FOREIGN
DEPOSITION AND FOR APPOINTMENT OF A COMMISSIONER**

Defendants, IVIEWIT.COM, INC., IVIEWIT HOLDINGS, INC. and
IVIEWIT TECHNOLOGIES, INC., by and through their undersigned counsel, hereby
move this Court for an Order requiring Kenneth Rubenstein, Esq. as a partner of the
Plaintiff, to submit to the taking of his deposition in New York City, New York and
appointing Esquire Deposition Services in New York City, New York, as a
Commissioner for the taking of the deposition of Mr. Rubenstein and in support of
this Motion would state:

1. That based on the prior testimony of deponents to this matter and the

personal knowledge of the Defendants corporate representative, Elliot Bernstein, Kenneth Rubenstein was involved directly in the providing of services to the Defendants both prior to his employment with the Plaintiff and subsequently during his employ with the Plaintiff.

2. That Kenneth Rubenstein (“Rubenstein”) is an attorney currently employed by the Plaintiff and who works out of the Plaintiff’s New York City offices.

3. That the Defendants intend to take the deposition of Rubenstein in New York City, New York, prior to the trial of this matter due to the knowledge of Rubenstein as to the services provided by the Plaintiff to the Defendants; however, counsel for the Plaintiff has refused to make Rubenstein available as set forth in the attached Exhibit “A”.

4. That Esquire Deposition Services, located at 216 E. 4th Street, 8th Floor, New York City, New York 10017, should be appointed Commissioner to take the deposition of Rubenstein.

WHEREFORE the Defendants, move this Honorable Court for the entry of an order directing that Kenneth Rubenstein be submitted for deposition and permitting the Defendants to take the deposition of Rubenstein in New York and appointing Esquire Deposition Services, located at 216 E. 4th Street, 8th Floor, New York City, New York 10017 as Commissioner to take the deposition of Rubenstein.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 24th day of October, 2002 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

CASE NO. CA 01-04671 AB

PROSKAUER ROSE LLP, a New
York limited liability partnership,

Plaintiff,

v.

IVIEWIT.COM, INC., a Delaware corporation,
IVIEWIT HOLDINGS, INC., a Delaware
corporation, and IVIEWIT TECHNOLOGIES,
INC., a Delaware corporation,

Defendants.

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO COMPEL
TAKING OF FOREIGN DEPOSITION AND FOR THE APPOINTMENT
OF A COMMISSIONER AND MOTION FOR PROTECTIVE ORDER**

Plaintiff, Proskauer Rose LLP ("Proskauer"), responds to the Defendants' Motion to Compel Taking of Foreign Deposition and for Appointment of a Commissioner served under certificate of service dated October 24, 2002 (the "Motion") and further moves, pursuant to Rule 1.280(c) of the Florida Rules of Civil Procedure, for the entry of a protective order as to the taking of the deposition of Kenneth Rubenstein ("Mr. Rubenstein"), and as grounds states as follows:

1. This is an action by Proskauer to collect unpaid attorney's fees from the Defendants, all former clients of Proskauer.
2. The Defendants' have not alleged, in any pleading, that Proskauer failed to properly perform the work undertaken on their behalf. Notwithstanding Defendants' failure to plead any such allegation, Defendants are now putting forth an eleventh hour attempt to turn this

matter into a malpractice case (and delay the trial of this matter set for the week of December 16, 2002) and are attempting to harass a Proskauer attorney (who lives in New Jersey and works in New York) who never billed any time to the Iviewit matter.¹

3. Specifically, Defendants are attempting to compel Mr. Rubenstein, a partner in Proskauer's New York office, to appear for a deposition. The Motion was filed because Proskauer has refused to produce Mr. Rubenstein for his deposition.

4. The Motion is misleading and misrepresents the discovery in this matter. Citing no particular deposition testimony, Defendants' motion at paragraph 1 states that prior testimony of the deponents in this matter has revealed that Rubenstein was "involved directly in the providing of services to the Defendants. . . ." Nothing could be further from the truth.

5. Contrary to the Defendants' baseless statement that Rubenstein was involved in the representation of Proskauer, Brian Utley, Defendants' former President and Chief Operating Officer, testified in his deposition as follows:

- At Elliot Bernstein's request, Rubenstein recommended another law firm to handle Defendants' patent matters (BU:70-4, 23);²
- "Rubenstein was never involved" in any of the work, and Defendants' interrogatory answers stating otherwise are a "misrepresentation." (BU:84-5, 7, 21);
- "[o]ther than referring Iviewit to [outside counsel], Rubenstein never did any work for Iviewit" (BU:121-3);

¹ Proskauer filed a motion in limine directed to the issue of whether the Defendants can put on proof of any alleged wrongdoing by Proskauer, as the defense was never pled in any of the pleadings in this matter. The motion in limine is set for hearing on November 5, 2002.

² The abbreviation "BU__" followed by a page and line number refers to the transcript of the Deposition of Brian Utley dated August 22, 2002.

- Utley never met Rubenstein (BU:121-19);
- Rubenstein had no active role with Iviewit (BU:138-11, 24);
- “Rubenstein and Mr. Wheeler, I’ll repeat, had nothing to do with the patents and therefore, I object to them being included in the question.” (BU:150-9);

Copies of the pages of the transcript of the Deposition of Brian Utley cited above are attached hereto.

6. Defendants’ eleventh-hour desire to depose Mr. Rubenstein is nothing more than a blatantly transparent attempt to harass Mr. Rubenstein, who billed no time in the Defendants’ representation. Although Defendants plan to take the deposition of Christopher Wheeler, Proskauer’s corporate representative, the Defendants’ intent to harass Rubenstein is further made clear by the fact that the Defendants have never attempted to take the deposition of any of the myriad of Proskauer attorneys who actually did provide legal services for the Defendants.

WHEREFORE, Proskauer respectfully requests that the Court deny the Defendants’ motion to compel Mr. Rubenstein’s deposition, enter a protective order consistent with this motion, and grant any further relief that is reasonable and just.

This 25 day of October, 2002.

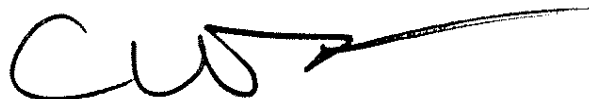
PROSKAUER ROSE LLP
2255 Glades Road, Suite 340W
Boca Raton, Florida 33431
Telephone: (561) 241-7400
Facsimile: (561) 241-7145



Matthew Triggs
Florida Bar No. 0865745
Christopher Prusaski
Florida Bar No. 0121525

CERTIFICATE OF SERVICE

I certify that on October 25, 2002, a copy of the foregoing was furnished by U.S. Mail and facsimile to Steven Selz, Esq., Selz & Muvdi Selz, P.A., 214 Brazilian Avenue, Suite 220, Palm Beach, FL 33480.



Christopher W. Prusaski

PROSKAUER ROSE LLP

2255 Glades Road
Suite 340 West
Boca Raton, FL 33431-7360
Telephone 561.241.7400
Elsewhere in Florida
800.432.7746
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NEW YORK
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WASHINGTON
NEWARK
PARIS

Matthew Triggs
Member of the Firm

Direct Dial 561.995.4736
mtriggs@proskauer.com

June 13, 2003

Via U.S. Mail

Steven M. Selz, Esq.
Selz & Muvdi Selz, P.A.
214 Brazilian Avenue, Suite 220
Palm Beach, FL 33480

Re: Proskauer Rose LLP v. Iviewit.com, Inc.

Dear Steve:

Notwithstanding the Court's recent order regarding Mr. Rubenstein's deposition, I have enclosed a copy of an affidavit of Mr. Rubenstein through which he answers the questions that he previously declined to answer in his deposition.

Sincerely,



Matthew Triggs

MT/kr
Enclosure



IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 01-04671 AB

PROSKAUER ROSE LLP, a New
York limited liability partnership,

Plaintiff,

v.

IVIEWIT.COM, INC., a Delaware corporation,
IVIEWIT HOLDINGS, INC., a Delaware
corporation, and IVIEWIT TECHNOLOGIES,
INC., a Delaware corporation,


Defendants.

NOTICE OF FILING AFFIDAVIT OF KENNETH RUBENSTEIN

Plaintiff, Proskauer Rose LLP, by and through its undersigned counsel, hereby gives
notice of the filing of the original Affidavit of Kenneth Rubenstein dated June 10, 2003.

This 13th day of June, 2003.

PROSKAUER ROSE LLP
Attorneys for Plaintiff
One Boca Place, Suite 340W
2255 Glades Road
Boca Raton, Florida 33431
Telephone: (561) 241-7400
Facsimile: (561) 241-7145



Matthew Triggs
Florida Bar No. 0865745
Christopher Prusaski
Florida Bar No. 0121525

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June, 2003, a true and correct copy of the foregoing has been furnished by U.S. Mail to Steven M. Selz, Esq., Selz & Muvdi Selz, P.A., 214 Brazilian Avenue, Suite 220, Palm Beach, Fl 33480.



Matthew Triggs

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 01-04671 AB

PROSKAUER ROSE LLP, a New
York limited liability partnership,

Plaintiff,

v.

IVIEWIT.COM, INC., a Delaware corporation,
IVIEWIT HOLDINGS, INC., a Delaware
corporation, and IVIEWIT TECHNOLOGIES,
INC., a Delaware corporation,

Defendants.

AFFIDAVIT OF KENNETH RUBENSTEIN

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

Before me, the undersigned authority, personally appeared Kenneth Rubenstein who,
under oath, states as follows:

1. My name is Kenneth Rubenstein. I am over the age of 18 years, I have personal
knowledge of the matters set forth herein, and I am competent to testify as to those
matters.
2. On November 20, 2002, I was deposed in the matter of Proskauer Rose LLP v.
Iviewit.com, Inc. et. al., pending the in the Fifteenth Judicial Circuit in and for Palm
Beach County Florida, Case No. CA01-07671-AB.

3. On page 25, line 7 of that transcribed testimony, I was asked "Did you have any discussions with Warner Bros. about IViewIt?" My answer to this question is as follows:
Answer: I had one communication with Warner Bros. related to Iviewit. Mr. Utley, former CEO of Iviewit, who knew that Proskauer did work for Warner Bros., requested that we help open a channel of communication for Iviewit. I contacted Greg Thaggard at Warner Bros. and told him that he might be interested in speaking with Iviewit. I also told him that, as both Iviewit and Warner Bros. were clients, I would not get involved in any relationship between Iviewit and Warner Bros.
4. On page 27, line 18, I was asked "Did you ever talk to anyone at Warner Bros. with regarding to IViewIt?" My answer to this question is as follows:
Answer: See my response above contained in paragraph 3.
5. On page 29, line 22, I was asked "When did you represent Warner Bros., sir?" My answer to this question is as follows:
Answer: I started working on projects concerning Warner Bros. starting in about 1996.
6. On page 41, line 6, I was asked "Could you tell me about the cases that you have been involved with? Just naming the cases." [Requesting names of patent cases he has litigated.] My answer to this question is as follows:
Answer: Some patent cases we worked on are: SMARTS v. Avesta Technologies, Inc.; Hauppauge Computer Works, Inc. v. Advanced Interactive, et al.; Nova v. Sensys and Standard Microsystems v. Datapoint.

7. On page 47, line 7, I was asked "Have you ever discussed IViewIt Technologies with him?" [Chris Cookson] My answer to this question is as follows:

Answer: No.

8. On page 57, line 6, I was asked "Does that committee ever obtain waivers of conflicts from clients?" My answer to this question is as follows:

Answer: Waivers are sometimes obtained.

9. On page 75, line 20, I was asked "So you refuse to answer whether or not you had communicated to those parties with regard to IViewIt; is that correct?" [Warner Bros. and Sony] My answer to this question is as follows:

Answer: I never communicated with Sony about Iviewit. The only communication I had with Warner Bros. related to Iviewit was identified above.

FURTHER AFFIANT SAYETH NAUGHT.

Kenneth Rubenstein
Kenneth Rubenstein

Date: June 10, 2003

VIRGINIA V. WURTHMAN
Notary Public, State of New York
No. 03-9820204
Qualified in Bronx County
Commission Expires July 31, 2006

Before me, the undersigned notary public, appeared Kenneth Rubenstein, who is personally known to me or produced _____ as identification and who did take an oath.

Virginia V. Wurthman
Notary Public
Commission No. 03-9820204

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.

**ORDER ON DEFENDANTS' MOTION TO APPOINT FOREIGN
COMMISSIONER AND TO COMPEL DEPOSITION OF KENNETH
RUBENSTEIN**

This matter coming before the Court on the Defendants' Motion to Appoint Foreign Commissioner and to Compel the Taking of Deposition as to Kenneth Rubenstein, Esq. and the Court having heard argument of counsel for both Plaintiff and Defendants and otherwise being advised in the premises and having considered the grounds for the Motion and considered applicable law, it is FOUND,

ORDERED AND ADJUDGED as follows:

1. Defendants' Motion for Appointment of Foreign Commissioner and to

compel the taking of the deposition of Kenneth Rubenstein, Esq. is hereby granted.

2. Esquire Deposition Services, located at 216 E. 4th Street, 8th Floor, New York City, New York 10017, is hereby appointed Commissioner to take the deposition of Kenneth Rubenstein, Esq. in this matter, which deposition is to be conducted telephonically at a mutually convenient date for the parties prior to November 15, 2002, ON AN OTHERWISE AGREED BY THE PARTIES.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this 31st day of October, 2002.



CIRCUIT COURT JUDGE

Copies to:

Steven M. Selz, Esq.
214 Brazilian Ave., #220
Palm Beach, FL 33480

Christopher W. Prusaski, Esq.
Proskauer Rose, LLP
2255 Glades Road, Suite 340 W
Boca Raton, FL 33431

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

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20 DEPOSITION OF KENNETH RUBENSTEIN

21 New York, New York

22 Wednesday, November 20, 2002

23

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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.

□

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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?

□

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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?

□

58

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

□

62

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

□

63

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.

□

64

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.

□

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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?

□

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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

□

79

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

□

80

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

□

81

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

□

82

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

□

83

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

4

5

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.

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25 _____
WENDY D. BOSKIND, RPR

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November 20, 2002

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5 I wish to make the following changes,
6 for the following reasons:
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Ken Rubenstein Deposition

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