

4/13/03

Selz & Muvdi Selz, P.A.

Attorneys At Law
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Liliana M. Selz

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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
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
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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 a 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

- 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.

Court orders Rubenstein to deposition and when he is confronted with contradictory evidence, he becomes hostile and refuses to answers questions. Judge Labarga orders him back to deposition to answer the questions he refused. The redeposition has not taken place but for a guy who claimed to know nothing here is proven materially false in Rubenstein's deposition.

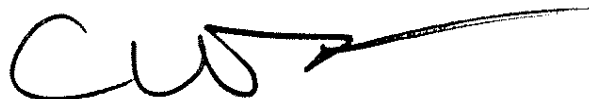
PROSKAUER ROSE LLP
 2255 Glades Road, Suite 340W
 Boca Raton, Florida 33431
 Telephone: (561) 241-7400
 Facsimile: (561) 241-7145



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
LOS ANGELES
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

Totally unheard of - Rubenstein walks out on first depo and is ordered back to answer questions he refused and instead he tries some backdoor sneaky statement to the judge?

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

EXHIBITS

Marked at the
Deposition of

KENNETH RUBENSTEIN

Taken on
NOVEMBER 20, 2002



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JOB: #142586

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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**

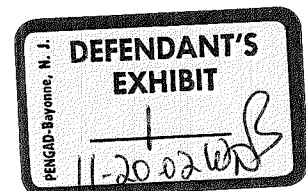
Comments: **FOR DEPOSITION**

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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 my self further, "Why is the Iviewit scaling method now so far reaching and ubiquitous in many, varied patent pools overseen by yourself and others of similar stature?"

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

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

Steven M. Selz
Liliana M. Selz

Tel: (561) 820-9409
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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

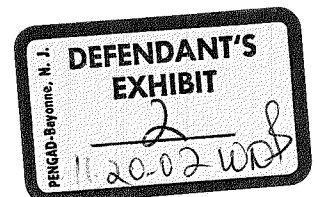
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Main Identity

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



Message from AOLTW/WB technology group to AOLTW investment group, showing Rubenstein was relied on by AOLTW/WB.

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

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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