

Eliot I. Bernstein

From: Eliot I. Bernstein [alps1@bellsouth.net]

Sent: Wednesday, August 09, 2000 11:10 AM

To: Douglas Boehm (E-mail); James F Armstrong (E-mail); Simon L. Bernstein (E-mail); brian@iviewit.com



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Doug - As you can imagine I am a bit upset myself with last Friday's conversations but for different reasons. I have made not one single unfounded accusation. My remarks were based on facts. If you read the transcript what initiated that call was that when we received the patent that was filed, many of our changes were not incorporated. Most of the changes in the math that we spent the entire day with you laboring over were not incorporated in the patent. The math had fundamental errors still such as missing square roots etc. Also, if you listen to the tapes you will find that Brian was also upset that the math that he had sent several days earlier was also not included. Therefore, we seem to see wild accusations as separate items.

I would have liked to have more time to review the patent myself but you and Steve were working with Brian and I did not really have time to review until the week prior to filing when I first received the first draft. This gave me very little time to review prior to filing, so I am unclear as to how I could have done things any faster as you said in your letter. I figured we had established most of the meat of the invention when you came to our offices several months ago and that the final patent would have been well thought out, and that the math would be correct and tested. When I received the first draft of the filing, again, we had failed to cover zoom without pixelation. When I saw the complexity of the math, I asked my friend to explain it to me. What Jim found were huge errors that we spent our entire day reviewing with you. We agreed to those changes and we trusted that they would be incorporated in our filing. They were not. You now refer to these as minor changes but while we first reviewed them you called them very significant.

As you articulately pointed out, I am neither a patent attorney nor an engineer nor a mathematician, so I have hired people I do trust. What was shocking to me as naive as I may be was that these were items that were discussed to full understanding and yet they remained wrong. You cannot argue that there is much wrong with my anger since it remains founded in facts. Anger is associated with fear, and this seemed to put me and my partners in danger because of the errors. Thus, I re-acted to these facts by asking Steve what liabilities we would now encumber and this is of major concern to my shareholders etc. if there were liabilities that arose.

Regarding the patents Ray filed, it was you and Steve that pointed out that there could be problems in Ray's filings. Again, I re-acted in fear. How can the people we are entrusting to our inventions fail to serve us well? Thus, I alerted those involved and you presented your position on Ray Joao since you were the one who made the accusations in the first place. After listening to you we had decided to go back and amend Rays application to claim priority of all matter to that initial date. When we talked with Steve it was unclear if we were still on that same path and that

was because of the bar date. We revisited the bar date issue and it became unclear as to whether it was September or August based on Centrack. When we noticed that the math and illustrations were not based on the stuff Brian had sent you we asked Steve to explain, he had no answer as to why it had been filed without it. Then, if you listen to the tapes, you will see that Brian was very upset that these changes had not been entered. He was shocked and so expresses his emotions on the tape. Have you written him an angry letter, calling him a wildcard that has unfounded accusations.

As to holding the meeting without you, we were very concerned about the mistakes in the filing and we did try several times to call you. Per Steve and your secretary it was determined that you were totally unreachable by any communication methods. We did not know that this was a foul and had Steve felt uncomfortable he should have passed on the call or brought Bill Dick in.

I have not gone behind your back and made accusations, I am simply trying to understand why the filing was missing the corrections we had worked on, and why Brian's math he had sent days earlier was not included and what this would expose us to. If the math mistakes were critical, it would have been I who would have had to explain to our board why their investments may have not been adequately protected. How would you feel in that position?

Since these items that will be corrected are in fact mistakes and not accusations of mistakes, I fail to understand why your retort appears so hostile. Why you feel the need to attack my personality etc. The point of Friday's conversation was to make changes where change is due and move forward, together. We asked for a clear and concise letter addressing these and other issues that would help clear up the mistakes etc.

I do understand why you want to seek wrath against me or my company for founded factual mistakes, made on your part. I was expecting an apology from you as to why this occurred in the first place, not a letter accusing me of any wrong doings. I did nothing wrong. I feel that the bill for that filing should instead be reduced for the time and effort that was wasted and will be further wasted fixing the errors.

I am a little confused by the statement; "Since you seem to have a predisposition to sue your patent lawyers, I now have to religiously follow all of our firms practices and procedures for documenting everything I say and do with you." Why were we not doing this all along, as it seems a practice of the firm to protect your clients and why would this subject me to additional rates?

I am also puzzled as to why you chose to write me directly and not include the other people involved in this matter. First, Brian was also very upset and puzzled by this. Brian, unlike me, has good knowledge in this arena; he has been hired to handle the intellectual property of the firm. If anyone has failed to understand any of the things you have mentioned, you must confront him. Brian has been working with you to develop and cultivate the property; if we are in the dark you must confront him. I am naive in this world and this is why I have entrusted both him and you to protect the company. Also, my father was on the phone and Jim Armstrong and neither have felt that I did anything wrong or unjust. Thus, I feel obligated to let them respond to your letter as well.

I am sorry for your feeling that I have accused you of wrong doings. I was just upset with the facts of the matter and may have seemed scared and afraid. I like both Steve and yourself and do appreciate all you have done. It does not negate the problems though. I am unsure of how you

want to proceed with the firm but I think this need to be handled by all involved parties.

Best regards,

Eliot

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

From: Boehm, Douglas A.

To: Eliot Bernstein (Iviewit)

Sent: 8/9/00 2:46 AM

Subject: PERSONAL AND CONFIDENTIAL

**PERSONAL AND CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED**

Eliot--

I need to discuss something personally with you that is very important to our working relationship. I am sending this via e-mail and only to you, without copying Brian or anybody else, so whether you share it or not is entirely up to you. Please take the time to read and consider the following.

I am very upset with the way you handled the situation at last Friday's teleconference with Steve Becker regarding the latest patent application filing, and I am particularly offended by your exaggerations, accusations, and criticisms of our work. I listened to the tape of the teleconference, and I was shocked.

First, you know that I am the Foley & Lardner partner responsible for Iviewit work, and Steve Becker is the associate who reports to me. I can't believe that you decided to hold that teleconference Friday with Steve without me being present. That was really low. If you want to fly off the handle and jump to conclusions without talking to Brian first, that's your business. But when it comes to making accusations about the quality of my work product to my associate, that's my business.

Second, Steve and I have consistently put 110% effort into everything we have done for you. Last week, I put in 200% effort, flying down to Florida on short notice so you can hold a meeting to figure out if you were going to sue your former patent attorney, having me spending all the next day with your investment bankers, and then spending the night in the O'Hare airport and coming directly to work the very next day to revise and file a patent application for you by midnight. I don't know very many people that would have done that for a client. Now you get all bent out of shape over a few minor math mistakes -- which are readily correctable.

Third, during the Friday teleconference, you accused us of changed strategies, filing delays, and huge mistakes. If there were any strategy changes, they were partly your fault -- because you don't understand what's happening on the IP side of your business, even though we have tried to explain it all to you many times. But that's fine if you trust your people. You have excellent people working with you, but you simply don't listen to us. Instead, you make wild accusations and inflammatory statements about things you know nothing about. The delays and the mistakes were also, to a large extent, your fault. Had you gotten Jim involved earlier, had you worked closer with Brian to understand the math, had you spent more time reviewing the application drafts, then perhaps none of this would have happened. You can't just sit back now and blame us. Sorry, but I won't put up with it.

Fourth, you have strained our working relationship. We now have to tape each others' telephone conversations so we can point fingers and threaten to sue each other? What kind of a working relationship is that? I figured out from day one that you were a wildcard, but I didn't mind that, because I can relate to wildcards. A lot of brilliant inventors are wildcards. I have even been accused of being a wildcard myself. But just because you're a wildcard doesn't mean you have the right to make unfounded accusations and cut people off at the knees.

I'm afraid this latest episode is going to cost you. Steve Becker won't work on any Iviewit matters any longer for me. That's going to cost you an additional \$40.00 per hour in legal fees, now that I have to do the work myself. Since you seem to have a predisposition to sue your patent lawyers, I now have to religiously follow all of our firms practices and procedures for documenting everything I say and do with you. That's going to take me extra time and cost you extra money. Foley & Lardner raises its billing rates on September 1st, and I was previously considering discounting our rates for Iviewit as I have done in the past. After all of your accusations, I don't have any inclination to do so. I've also been dragging my feet on providing you with our bills, as a favor to you and Brian, since I knew you were cash-strapped. No more. I'm sending your bills as soon as I can. I have somehow lost my motivation to get into hot water with my firm for such an unappreciative client.

The way I see it, you owe us an apology. Steve worked many long, frustrating hours trying to pull an invention out of your head and get it down on paper. Apparently Ray Joao had the same problem. You owe Steve an apology for blaming him, without proof, of cutting and pasting the mathematical formulas into the wrong document, and for accusing him of not copying you on the patent correspondence, and for getting angry and using profanity at the meeting. No lawyer should have to put up with that kind of abuse from a client -- let alone a bright young associate like Steve. Fortunately for him, Foley & Lardner has enough work that he doesn't need to work for me on Iviewit patent applications for billable hours -- so he's not going to anymore.

I think you owe me an apology too, and I consider myself pretty thick-skinned when it comes to these kinds of things. I have spent numerous nights and weekends working on your agreements and patent applications in order to satisfy your unreasonably short deadlines. Then you accused me in front of everybody -- but behind my back -- of changing the math without your knowledge, altering numbers, missing a priority date, not filing the changes everybody agreed to, missing diagrams from final patent documents, changing filing strategies, and generally providing you with inferior work product. As you can see from my letter explaining the so-called errors, you blew everything out of proportion, and without even talking to Brian or me. You got everybody all excited, including your Father, and you're also talking about notifying the stockholders. Notifying them of what? Your unfounded accusations?

In order for me to continue working with you, you need to change. You need to promise me that you will act in a civil and professional manner from here on out. If you don't like the way I'm doing something, call me on it -- don't hold a meeting about it without me. If you don't understand a particular patent strategy, just ask me --instead of accusing me of changing the strategy. If a problem occurs on a team of which you're a member, try to resolve it as a team effort -- don't distance yourself and blame it on somebody else when you are partly at fault.

You first had problems with Ray Joao, so you came to Foley & Lardner. Now you have problems with us, and Steve bailed out. Are you still going to have problems with me and my work product? Well, you can either work with me to resolve your problems in a civil and professional manner, or you can find another patent law firm that will put up with your unreasonable manner and abuse.

Eliot, by spending time on holding meetings to blame your lawyers, you are missing the bigger issues with your technology. Corrections to the math of that last patent application are relatively meaningless. You've got much bigger things you should be worrying about. We have told you about them before, but I'm not sure you're listening.

First, you don't seem to have a good feel whether or not your technology is patentable. You don't personally have the background to tell whether your technology is new. You don't appreciate that this technology is in a very crowded and fast-paced field, and will be difficult to obtain broad patent coverage. You have not performed any technical searches to determine what the state of the art was at the time of your invention. You don't know how to help us describe your invention or distinguish it from the prior art that we do know about. You just seem to be assuming that everything you did is patentable or can be made so. And if not? Oh, that's easy. Then blame the lawyers.

Second, you essentially argued to Wachovia that it doesn't matter if your competitors are currently using the same or similar technology as

Iviewit, because you were the first one to do it. Don't you realize that this argument doesn't fly if you don't have granted patents? When our PCT applications publish within the next six months, most if not all of your trade secrets will be lost. So then you want to go license the technology and know-how? And Iviewit is a newcomer in the industry? This could be tough. Even if the patents do issue, but a competitor refuses to accept your technology license, do you have a spare million dollars or two to sue them for patent infringement? Have you thought about any of this?

Third, I doubt if you have never checked to see if your competitors have patents covering your technology. You may find out, rather abruptly I'm afraid, that the people you're going to attempt to license may have a better patent portfolio than you do. All of a sudden you'll end up being the licensee. Or what's worse, you may have to shut down and re-engineer your business to avoid a multimillion dollar patent infringement lawsuit. This is a real risk -- much more of a risk than losing a priority date because a square root sign was missing from a math formula of an example in one of your patent applications. You should keep things in perspective.

During the Friday teleconference, you say that you don't know why we came up with a potential bar date of September 1, 2000, yet when Brian tried to explain it to you, you refused to listen. Now you independently decide that everything must be done by August 10th. That cannot realistically be accomplished. Furthermore, I don't think it is necessary. Based on our understanding when we were there in May, and based on Brian's comments on Friday, it does not appear that 8/10/99 started the one-year clock. According to both you and Brian, there was no public disclosure of the invention on that date, and there was no offer for sale of the invention. If you know of contrary facts, please provide them. But I refuse to jump through hoops that you arbitrarily set up just because you don't understand the law, or just because you get a kick out of seeing lawyers jump through hoops.

I realize that it is not commonplace for outside counsel to be so blunt and upset with a client, so I apologize for sending this e-mail. However, I felt that you needed to be told these things now, and in a straightforward manner, and in writing, in order to salvage our relationship. We cannot go on working like this. If you don't like the quality of our services or work product, then please fire us and go find yourself another group of lawyers who will put up with you. Otherwise, if you value our working relationship, you'll simply have to change the way you deal with people.

Please let me know what you decide.

--Doug

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4/24/2003

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>Best regards,

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