



## IVIEWIT HOLDINGS, INC.

Eliot I. Bernstein  
Founder  
Direct Dial: 561.364.4240

### **By Certified Mail**

October 14, 2003

Brooke Kennerly  
Executive Director  
Judicial Qualifications Commission  
1110 Thomasville Road  
Tallahassee, Fla. 32303-6224

**Re: Written Statement of Complaint Against Hon. Jorge Labarga of the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and For Palm Beach County, Florida by Iviewit Holdings, Inc and its Subsidiaries (“Company”)**

Dear Ms. Kennerly:

By way of introduction, I am Founder of the Company who are Defendants to proceedings in the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, Florida titled Proskauer Rose LLP v. Iviewit.com, Inc. et. al., Case No. CA 01-04671 AB (Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida filed May 2, 2001) (“Litigation”), and we write to file a complaint against Hon. Jorge Labarga (“Labarga”) in said Litigation. Moreover, the Company alleges that Labarga, through his several actions and inactions in the Litigation, severely limited the defense of the Company in ways that resulted in the Court, among other things, granting Plaintiff’s motion for Amended Order Striking the Defendants Pleadings and Entering a Default Against Defendants for Failure to Retain Replacement Counsel, a true copy of which is attached herein as Exhibit A.

Furthermore, the background to Exhibit A and the Litigation literally stems back to mid 1998 wherein the Company contacted Plaintiff to enlist their services pertaining to the patent prosecution process of the Company’s intellectual property. Discussions ensued, the Company submitted disclosures of its inventions, and resulted in the engagement of



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Plaintiff and the subsequent allegations of which are best described by the Company's January 28, 2003 Motion to Amend Answer to Assert Counterclaim for Damages ("January 2003 Motion"), effectively buried by Labarga in the malaise his judgeship has come to represent, a true copy of which is attached herein as Exhibit B, and the allegations of which were fully investigated by several attorneys nationally and, in particular, by the Company's counsel in the Litigation, Steven M. Selz, Esq. Florida Bar No. 777420 ("Attorney Selz"), where said allegations should astound those of responsible mind.

Nevertheless, it is the contention of the Company that Labarga violated several Canons of the Code of Judicial Conduct for the State of Florida ("Canons") by his prejudicial conduct and failure to report said astounding allegations to the proper tribunals, more particularly described in Defendants' Motion to Set Aside the Amended Order, Reinstate the Pleadings, and Remove Hon. Jorge Labarga From the Proceedings ("Motion to Remove Labarga"), a true copy of which is attached herein as Exhibit C.

Factually, Labarga's actions and inactions as described in Exhibit C appear as a convenient means, the Company alleges, to remove from his Court allegations of legal malpractice, civil conspiracy of intellectual property theft, breach of contract, tortuous interference with business contracts of the Company, and therefore fraudulent submissions to and through Federal agencies, including but not limited to the United States Patent and Trademark Office, the United States Postal Service, the United States Department of Treasury, Internal Revenue Service Division, and the United States Department of Justice, Antitrust Division, and under the three Federal statutes, by Plaintiff and several other prominent national law firms and their allegedly malfeasant members. Moreover, these entire instances center on the theft of an intellectual property portfolio, estimated by industry experts, to be worth billions of dollars in anticipated royalties on an annual basis.

Still further, the Company points Judicial Qualifications Committee to the enclosed CD-ROM that contains the entirety of the Company's follow-throughs, as a result of Labarga's negligent burying of the Company's January 2003 Motion in fulfillment of our fiduciary obligations to the Company's shareholders, that includes:

- Bar complaints of Iviewit Holdings, Inc. Against Christopher C. Wheeler, Esq. (The Florida Bar File No. 2003-51,109 (15C));
- Bar Complaint of Iviewit Holdings, Inc. Against Kenneth Rubenstein, Esq. (New York's First Judicial Department Departmental Disciplinary Committee Docket 2003.0531);
- Bar Complaint of Iviewit Holdings, Inc. Against Raymond A. Joao, Esq. (New York's First Judicial Department Departmental Disciplinary Committee Docket 2003.0532);



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- Bar complaint of Iviewit Holdings Against William J. Dick (Virginia, and awaiting response);
- Written Statement of Iviewit Holdings, Inc. to the Boca Raton Police Department;
- Written Statement of Iviewit Holdings, Inc. to the Federal Bureau of Investigation, West Palm Beach branch;
- Written Statement to the Office of Enrollment and Discipline of the United States Patent and Trademark Office;
- Written Statement to the European Patent Office (soon to be filed)

Additionally, as the Company filed the above documentation with the Court in the Company's Motion to Remove Labarga, as such, Labarga had since, and now has once again, been apprised of the astounding allegations of the Company, that were fully investigated by several attorneys nationally and, in particular, by the Company's counsel in the Litigation, Attorney Selz.

Moreover, in the Company's January 2003 Motion, Attorney Selz alleged legal malpractice, civil conspiracy of intellectual property theft, breach of contract, tortuous interference with business contracts of the Company against two national law firms and three of its members, one regional law firm and its of counsel, a past Company executive, a prominent New York investment fund, a prominent Palm Beach County, Fla. venture capital firm, and therefore frauds upon the aforementioned Federal agencies and under the three Federal statutes.

Furthermore, the Company emphasizes that the allegations contained in the Company's January 2003 Motion all occurred prior to the beginning of the Litigation, in or about fall 1998 to spring 2001, and, factually, that said Litigation, was an ill-conceived attempt to cloak the allegations by, in the words of the past Company executive included in the January 2003 Motion, "taking the company down brick by brick."

Therefore, due to Labarga's inactions, the Company was forced to submit our allegations to the above referenced tribunals, some of whom are awaiting the conclusion of the present Litigation and Labarga's rulings on these matters, previously buried by Labarga as if he himself conspiratoriously resolved with Plaintiff the said burying (however, more fact finding would need to be involved), wherein Labarga further stated that the January 2003 Motion took too long to file, despite the apparent complexity of the issues. Moreover, and although the Court may hold for Labarga's ruling in a future appeal, if any, Labarga is still remiss in his ethical obligations to report the allegations contained therein, and all conduct unbecoming of a Circuit Court Judge in the State of Florida.

Similarly, rather than conspiratoriously burying the Company's January 2003 Motion as the case may be, and therefore, having knowledge of such activities, Labarga, it is the Company's contention, was obligated by the Canons to report his knowledge of such



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activities to not only to the respective Bar Associations licensing each named attorney, but to each of the above referenced Federal regulatory bodies.

Further, Kenneth Rubenstein, Esq., a member of the Plaintiff in this case has both submitted misleading information to the Court and further perjured himself in depositions taken in this matter, as illustrated by the deposition testimony on record combined with the Rubenstein affidavit to the Court, where such twisted testimony and affidavit was ignored by Labarga; for Labarga to receive such contradictory information regarding Kenneth Rubenstein's statements to the Court, the Company contends, should have constituted another instance where Labarga should have exercised his duty to report such activities.

Moreover, as for Christopher C. Wheeler, Esq., a member of Plaintiff, recent history has found Wheeler either perjuring his deposition testimony or perjuring his response to The Florida Bar in his statements, and the circumstances have yet to confirm which of his recollection of the facts is truthful, if any, as exhibited by the Wheeler deposition testimony and his response to The Florida Bar contained in the enclosed CD-ROM.

Additionally, and to make matters worse, Labarga, when the Litigation was scheduled for trial on July 29, 2003, received false and misleading information from the Plaintiff that a settlement was underway and erroneously delayed the trial. Factually, as described in the Company's Motion to Remove Labarga, the Company prepared for and presented itself for trial in the accompaniment of Attorney Selz, not having been informed of any postponement, but then notified that, unilaterally and without mutual consent, the trial had been postponed.

Soon thereafter, at the next Court hearing, Labarga dismissed both counsels representing the Company relying on motions submitted that stated the Company would be represented by the other counsel, as further described in the Company's Motion to Remove Labarga, subsequently ordering the Company to retain new counsel within twenty (20) days. Moreover, Labarga's ruling left the Company without representation and only days to retain new counsel in a complex case, the proceedings of which Labarga, in the opinion of the Company, has mishandled for more than two years.

Lastly, and before the next scheduled trial dates of November 13-15, Plaintiff moved the Court to enter a default judgment for failure to retain new counsel, and Labarga so granted Plaintiff's motion. Thus, and for two years, the Plaintiff has, as of even date above, successfully avoided proceedings into the allegations contained in the January 2003 Motion, using the 15<sup>th</sup> Judicial Circuit, under the assistance by Labarga's irresponsible regard for the Canons, as a cloaking device. Factually, the Court never tried the facts of the Litigation and due to errors on the Court's part, the Company has been relinquished of its rights to a trial, not even to mention a fair trial.



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Finally, when the Company asked Labarga what he intended to do about the allegations in the Company's January 2003 Motion, Labarga advised the Company to report the allegations to respective Bar Associations; the Company informed Labarga that bar complaints had been filed and that the Florida Bar Association awaited his ruling on these matters. Further, the Company stated that the Canons obliged Labarga to report his knowledge of such malfeasances, and when asked if he had done so, he said he had not.


In closing, and since the allegations contained in the Company's January 2003 Motion were conspiratoriously buried by Labarga, the Company, after spending more than four thousand man hours, resulting in more than Three Hundred Thousand Dollars (\$300,000) in accrued expenses, jeopardizing more than Six Million Dollars (\$6,000,000) of invested capital, witnessing the alleged misappropriation and conversion of up to Six Hundred and Fifty Five Thousand Dollars (\$655,000) of Company funds by Plaintiff (according to evidence collected after the filing of the January 2003 Motion and employee eyewitness accounts), and confounding the public benefit of inventorship which is provided for in the United States Constitution and the Patent Act, must seek to continue to pursue other forums for the remedying of the cataclysmic actions and inactions of Labarga.

Consequently, we urge the Judicial Qualifications Committee to undertake a time of the essence investigation of Labarga in his seemingly conspiratorial burying of the Company's astounding allegations, and, again, much of the information presented to Labarga in the Company's January 2003 Motion were the result of years of investigative work on the part of the Company and its legal counsel.

Very truly yours,

**IVIEWIT HOLDINGS, INC.**

By: \_\_\_\_\_  
Eliot I Bernstein  
Founder

By:  P. Stephen Lamont  
Signature Valid  
P. Stephen Lamont  
Chief Executive Officer

Digitally signed by P. Stephen Lamont  
DN: cn=P. Stephen Lamont, o=iViewit  
Holdings, Inc., ou=Corporate, c=US  
Date: 2003.10.14 09:36:53 -0400



## **Exhibit A**

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.

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**ORDER STRIKING THE DEFENDANTS' PLEADINGS  
AND ENTERING A DEFAULT AGAINST THE DEFENDANTS  
FOR FAILURE TO RETAIN REPLACEMENT COUNSEL**

**THIS MATTER** came before the Court on September 25, 2003 on Proskauer's Motion to Strike Defendants' Pleadings for Failure to Retain Replacement Counsel. The Court, after being fully advised in the premises, hereby finds as follows:

1. The two law firms representing the Defendant corporations were permitted to withdraw from this matter on August 5, 2003. The Court notes that three law firms have now withdrawn from representing the Defendant corporations since this matter was filed in May 2001.
2. The Order on Motions to Withdraw, dated August 5, 2003, which identifies Mr. Eliot Bernstein as the Defendants' representative in this matter, required the Defendants to retain replacement counsel within 15 days of the date of the Order and further stated that corporations are not permitted to represent themselves in the State of Florida. The Order further required that

a Notice of Appearance be filed by the replacement counsel, and that replacement counsel must attend a status check conference on August 14, 2003.

3. At the status check conference on August 14, 2003, Eliot Bernstein represented to the Court that the Defendants had not retained replacement counsel. The Court again warned Mr. Bernstein that the Defendant corporations will not be permitted to represent themselves in this matter.

4. At the docket call on September 12, 2003, Eliot Bernstein again stated to the Court that the Defendants were unrepresented by counsel. At that time, the Court set this matter for trial on November 13-14, 2003.

5. The Defendants' willful violation of this Court's August 5, 2003 Order, considered with the well-settled principle that a corporation cannot represent itself, mandates that the Defendants' pleadings be stricken and a default be entered. Accordingly, it is **ORDERED AND ADJUDGED** that Defendants' pleadings are hereby stricken and a default is hereby entered against the Defendants.

**DONE AND ORDERED** at West Palm Beach, Palm Beach County, Florida this \_\_\_ day of September, 2003.

**SIGNED AND DATED**

**SEP 25 2003**

~~Judge Jorge Labarga~~  
\_\_\_\_\_  
Honorable Jorge Labarga  
Circuit Court Judge

Copies furnished:

Christopher Prusaski, Esq.  
Eliot I. Bernstein





## **Exhibit B**

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> 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.

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RECEIVED FOR FILING

JAN 28 2003

DOROTHY H. WILKEN  
CLERK OF CIRCUIT COURT  
CIRCUIT CIVIL DIVISION

**DEFENDANTS MOTION FOR LEAVE TO AMEND TO ASSERT  
COUNTERCLAIM FOR DAMAGES**

Defendants, IVIEWIT.COM, INC., IVIEWIT HOLDINGS,  
INC. and IVIEWIT TECHNOLOGIES, INC., by and through their undersigned  
counsel, hereby move this Court for Leave to Amend their Answer so as to assert a  
counterclaim in this matter pursuant to Rule 1.170(f) of the Florida Rules of Civil  
Procedure and as grounds therefore would state as follows:

1. That the Defendants move to amend their answer in this matter so as to  
include a counterclaim in this matter, which by its nature appears to be a compulsory  
counterclaim to the extent that the issues arise out of the same nexus of events, as

justice requires that the counterclaim be tried at the same time as the complaint and answer so that all pending issues between the parties may be adjudicated in this action.

2. That as a result of fact that additional evidence in support of the Defendants' counterclaims is found in the Plaintiff's own files and records, the Plaintiff will not be prejudiced by the amendment of the Defendants' answer in this matter, nor will this matter be delayed as to the trial of same.

3. Defendants have attached hereto a copy of the proposed counterclaim.

WHEREFORE the Defendants, move this Honorable Court for the entry of an order permitting the Defendants to amend their answer in this matter.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 20<sup>th</sup> day of January, 2003 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

SELZ & MUVDI SELZ, P.A.  
214 Brazilian Avenue, Suite 220  
Palm Beach, FL 33480  
Tel: (561) 820-9409  
Fax: (561) 833-9715

By:   
\_\_\_\_\_  
STEVEN M. SELZ  
FBN: 777420

IN THE CIRCUIT COURT OF THE  
15<sup>th</sup> JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY,  
FLORIDA

PROSKAUER ROSE, LLP, a New York  
limited partnership,

Plaintiff,

vs.

CASE NO.: CA 01-04671 AB

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

Defendants,

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**COUNTERCLAIM FOR DAMAGES**

COME NOW the Counter Plaintiffs, IVIEWIT.COM, INC., IVIEWIT  
HOLDINGS, INC., IVIEWIT TECHNOLOGIES, INC. and IVIEWIT LLC,  
hereinafter collectively referred to as "IVIEWIT" or Counter Plaintiffs, and hereby  
sues Counter Defendant, PROSKAUER ROSE, LLP, hereinafter "PROSKAUER",  
a New York limited partnership, and alleges as follows:

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

1. This is an action for damages in a sum greater than \$15,000.00, exclusive

of interest, taxable costs and attorneys fees.

2. Counter Plaintiff, IVIEWIT.COM, INC., is a Delaware corporation, formed by PROSKAUER, which at all times relevant hereto was authorized to conduct and conducted business in Palm Beach County Florida and the State of California.

3. Counter Plaintiff, IVIEWIT HOLDINGS, INC., is a Delaware corporation, formed by PROSKAUER, which at all times relevant hereto was authorized to conduct and conducted business in Palm Beach County Florida and California.

4. Counter Plaintiff, IVIEWIT TECHNOLOGIES, INC., is a Delaware corporation, formed by PROSKAUER, which at all times relevant hereto was authorized to conduct and conducted business in Palm Beach County Florida and the State of California.

5. IVIEWIT LLC, is a Florida limited liability company, formed by PROSKAUER, which, at all times relevant hereto, was authorized to conduct and conducted business in the Palm Beach County Florida and the State of California.

6. Counter Defendant PROSKAUER ROSE, LLP, (hereinafter "PROSKAUER") is a New York limited partnership, operating a law office in Boca Raton, Palm Beach County, Florida.

Boca Raton, Palm Beach County, Florida.

7. BRIAN G. UTLEY, (hereinafter "UTLEY") was at all times relevant hereto a sui juris resident of the State of Florida and who on or about September of 1999 was the president of Counter Plaintiff, IVIEWIT LLC.

8. CHRISTOPHER WHEELER, (hereinafter "WHEELER") is a sui juris individual and resident of Palm Beach County, Florida, who at all times relevant hereto was a partner of PROSKAUER and who provided legal services to the Counter Plaintiffs.

9. KENNETH RUBENSTEIN, (hereinafter "RUBENSTEIN") is a sui juris individual believed to be a resident of the State of New York and who various times relevant hereto was initially misrepresented by WHEELER as a partner of PROSKAUER and later became a partner of PROSKAUER, and who provided legal services to the Counter Plaintiffs both while at Meltzer, Lippie, et al., and PROSKAUER.

10. RAYMOND JOAO, (hereinafter "JOAO") is a sui juris individual believed to be a resident of the State of New York and who at all times relevant hereto was represented to be RUBENSTEIN's associate at PROSKAUER, when in fact JOAO has never been an employee of PROSKAUER but in fact was an employee of Meltzer, Lippie, et al.

11. That beginning on or about November of 1998, the Counter Plaintiff, IVIEWIT, through it's agent and principal, Eliot I. Bernstein ("Bernstein"), held discussions with WHEELER with regard to PROSKAUER providing legal services to the company involving specific technologies developed by Bernstein and two others, which technologies allowed for:

i) Zooming of digital images and video without degradation to the quality of the digital image due to what is commonly refereed to as "pixilation"; and,

ii) The delivery of digital video using proprietary scaling techniques; and,

iii) A combination of the image zoom techniques and video scaling techniques described above; and,

iv) The remote control of video cameras through communications networks.

12. That Bernstein engaged the services of PROSKAUER to provide legal services to the company to be formed, including corporate formation and governance for a single entity and to obtain multiple patents and oversee US and foreign filings for such technologies including the provisional filings for the technologies as described in Paragraph 11 above, the "Technology", and such

other activities as were necessary to protect the intellectual property represented by the Technology.

13. That at the time of the engagement of PROSKAUER, Bernstein was advised and otherwise led to believe that WHEELER was the PROSKAUER partner in charge of the account.

14. Upon information and belief, WHEELER, RUBENSTEIN and JOAO upon viewing the technologies developed by Bernstein, and held by IVIEWIT, realized the significance of the technologies, its various applications to communication networks for distributing video data and images and for existing digital processes, including, but not limited to digital cameras, digital video disks (DVD), digital imaging technologies for medical purposes and digital video, and that WHEELER, RUBENSTEIN and JOAO conspired to undertake and in fact undertook a deliberate course of conduct to deprive Bernstein and IVIEWIT of the beneficial use of such technologies for either the use of third parties, who were other clients of PROSKAUER and WHEELER, or for WHEELER, RUBENSTEIN and JOAO's own financial gain, to the detriment and damage of the Counter Plaintiffs.

15. That WHEELER, who was a close personal friend of UTLEY, recommended to Bernstein and other members of the board of directors of



IVIEWIT that the IVIEWIT engage the services of UTLEY to act as President of the Iviewit.com, LLC based on his knowledge and ability as to technology issues.

16. That at the time that WHEELER made the recommendation of UTLEY to the board of directors, that WHEELER knew that UTLEY was in a dispute with his former employer, Diamond Turf Products and the fact that UTLEY had misappropriated certain patents on hydro-mechanical systems to the detriment of Diamond Turf Products.

17. Additionally, WHEELER was fully aware of the fact that UTLEY was not the highly qualified "engineer" that UTLEY represented himself to be, and that in fact UTLEY lacked real engineering expertise or even an engineering degree and that UTLEY had been fired from Diamond Turf Products due to his misappropriation of patents.

18. That despite such knowledge, WHEELER never mentioned such facts concerning UTLEY to any representative of IVIEWIT and in fact undertook to "sell" UTLEY as a highly qualified candidate who would be the ideal person to undertake day to day operations of IVIEWIT and work on the patents, acting as a qualified engineer.

19. Additionally, WHEELER continued to assist UTLEY in perpetrating such fraud on both the Board of Directors of IVIEWIT and to third parties,

including Wachovia Bank, by approving a false resume for UTLEY to be included in seeking approval of a private placement for IVIEWIT.

20. That based on the recommendations of WHEELER, as partner of PROSKAUER, the board of directors agreed to engage the services of UTLEY as president.

21. That almost immediately after UTLEY's employment and almost one year after initially providing of services, WHEELER provided a retainer agreement for the providing of services by PROSKAUER to IVIEWIT LLC, addressed to UTLEY, a true and correct copy of such retainer agreement (the "Retainer") being attached hereto and made a part hereof as Exhibit "A". That the services provided were in fact to be paid out of the royalties recovered from the use of the Technology, which was to be included in patent pools overseen by RUBENSTEIN.

22. That the Retainer by its terms contemplated the providing of corporate and general legal services to IVIEWIT LLC by PROSKAUER and was endorsed by UTLEY on behalf of IVIEWIT LLC, the Board of Directors of IVIEWIT LLC would not have UTLEY authorized to endorse same as it did not include the intellectual property work which PROSKAUER had already undertaken.

23. That prior to the Retainer, PROSKAUER and WHEELER had provided

legal services to IVIEWIT, including services regarding patent procurement and acted to coordinate such services both internally and with outside counsel, including RUBENSTEIN and JOAO, including times when they were misrepresented as PROSKAUER attorneys.

24. That PROSKAUER billed IVIEWIT for legal services related to corporate, patent, trademark and other work in a sum of approximately \$800,000.00.

25. That PROSKAUER billed IVIEWIT for legal service never performed, double-billed by the use of multiple counsel on the same issue, and systematically overcharged for services provided.

26. That summaries of the billing statements provided by PROSKAUER to IVIEWIT are attached hereto and made a part hereof as Exhibit "B".

27. That based on the over-billing by PROSKAUER, IVIEWIT paid a sum in of approximately \$500,000.00 plus together with a 2.5% interest in IVIEWIT, which sums and interest in IVIEWIT was received and accepted by PROSKAUER.

28. That WHEELER, UTLEY, RUBENSTEIN, JOAO and PROSKAUER, conspired to deprive IVIEWIT of its rights to the technologies developed by Bernstein by:

a) Transferring patents using Foley & Lardner so as to name UTLEY as the sole holder of multiple patents in his individual name and capacity when in fact they were and arose from the technologies developed by Bernstein and others and held by IVIEWIT prior to UTLEY's employment with IVIEWIT, and;

b) Upon discovery of the "lapses" by JOAO, that WHEELER and PROSKAUER referred the patent matters to WILLIAM DICK, of Foley & Lardner, who was also a close personal friend of UTLEY and who had been involved in the diversion of patents to UTLEY at Diamond Turf Products; and,

c) Failing to list proper inventors of the technologies based on improper legal advice that foreign inventors could not be listed until their immigration status was adjusted, resulting in the failure of the patents to include their rightful and lawful inventors and the payment by IVIEWIT for unnecessary immigration work; and,

d) Failing to ensure that the patent applications for the technologies, contained all necessary and pertinent information relevant to the technologies and as required by law; and,

e) Failing to secure trademarks and copyrights and failing to complete trademark and copyright work for the use of proprietary names of IVIEWIT and source code for the Technologies of IVIEWIT as intellectual property, and;

f) Allowing the infringement of patent rights of IVEIWIT and the intellectual property of IVIEWIT by other clients of PROSKAUER and WHEELER, and;

g) Aiding JOAO in filing patents for IVIEWIT intellectual property by intentionally withholding pertinent information from such patents and not filing same timely, so as to allow JOAO to apply for similar patents in his own name, both while acting as counsel for IVIEWIT and subsequently.

29. As a direct and proximate result of the actions of the Counter Defendant, Counter Plaintiffs have been damaged in a sum estimated to be greater than \$10,000,000,000.00, based on projections by Gerald Stanley, CEO of Real 3-D (a consortium of Lockheed, Silicone Graphics and Intel) as to the value of the technologies and their applications to current and future uses together with the loss of funding from Crossbow Ventures as a result of such conduct.

30. All conditions precedent to the bringing of this action have occurred or have been waived or excused.

### **COUNT I- LEGAL MALPRACTICE**

31. This is an action for legal malpractice within the jurisdiction of this court.

32. Counter Plaintiff re-alleges and hereby incorporates that allegations of Paragraphs 1 through 30 as if fully set forth herein.

33. PROSKAUER employed by IVIEWIT for purposes of representing IVIEWIT to obtain multiple patents and oversee foreign filings for such technologies including the provisional filings for the technologies as described in Paragraph 11 above.

34. That pursuant to such employment, PROSKAUER owed a duty to ensure that the rights and interests of IVIEWIT were protected.

35. WHEELER, RUBENSTEIN, JOAO and PROSKAUER neglected that reasonable duty of care in the performance of legal services in that they:

a) Failed to take reasonable steps to ensure that the intellectual property of IVIEWIT was protected; and,

b) Failed to complete work regarding copyrights and trademarks; and,

c) Engaged in unnecessary and duplicate corporate and other work resulting in billing for unnecessary legal services believed to be in excess of \$400,000.00; and,

d) By redacting information from the billing statements regarding services provided so to as to give the appearance that the services provided by PROSKAUER were limited in nature, when in fact they involved various aspects of intellectual property protection; and,

e) By knowingly representing and agreeing to accept representation of

clients in conflict with the interests of IVIEWIT, without either consent or waiver by IVIEWIT.

36. That the negligent actions of PROSKAUER and its partners, WHEELER and RUBENSTEIN, resulted in and was the proximate cause of loss to IVIEWIT.

WHEREFORE, Counter Plaintiff demands judgement for damages against Defendant together with reasonable attorneys fees, court costs, interest and such other and further relief as this Court deems just and equitable.

### COUNT II- CIVIL CONSPIRACY

37. This is an action for civil conspiracy within the jurisdiction of this court.

38. Counter Plaintiff re-alleges and hereby incorporates that allegations of Paragraphs 1 through 30 as if fully set forth herein.

39. Defendant, PROSKAUER and UTLEY, WHEELER, RUBENSTEIN and JOAO, jointly conspired to deprive the Counter Plaintiffs of their rights and interest in the Technology.

40. That UTLEY, WHEELER, RUBENSTEIN, JOAO and PROSKAUER with such intent, directed that certain patent rights be put in the name of UTLEY and/or that such patent rights were modified or negligently pursued so as to fail to provide protection of the intellectual property, resulting in the ability of other clients of WHEELER, RUBENSTEIN, JOAO and PROSKAUER to make use of such

technologies without being liable to IVIEWIT for royalties normally arising from such use.

41. That PROSKAUER, without either consent of the Board of Directors or proper documentation, transferred securities to Tiedemann/Prolow Investment Group, which entity was also referred by WHEELER, who acted as counsel for such unauthorized transaction.

42. That upon the discovery of the above-described events and conspiracy, IVIEWIT's lead investor, Crossbow Ventures, ceased its funding of IVIEWIT.

43. That Crossbow Ventures, which was a referral of WHEELER, took a security interest in the Technology under the guise of protecting IVIEWIT and its shareholders from the actions of UTLEY, based on the filing of an involuntary bankruptcy (which was later withdrawn), and as to WHEELER and PROSKAUER based on the instant law suit, when in fact such conduct was motivated by Crossbow's attempts to wrongfully detain the interests of IVIEWIT in the Technology. Such conduct, upon information and belief, was undertaken with the knowledge and assistance of WHEELER and PROSKAUER.

44. As a direct and proximate result of the conspiracy and acts of PROSKAUER, UTLEY, WHEELER, JOAO and RUBENSTEIN, the Counter Plaintiffs have been damaged.



WHEREFORE, Counter Plaintiffs demand judgement for damages against Defendant together with court costs, interest and such other and further relief as this Court deems just and equitable.

**COUNT III- BREACH OF CONTRACT**

45. This is an action for breach of contract within the jurisdiction of this Court.

46. Counter Plaintiff re-alleges and hereby incorporates that allegations of Paragraphs 1 through 30 as if fully set forth herein.

47. Defendant, PROSKAUER, breached the contract with Counter Plaintiff, IVIEWIT LLC by failing to provide services billed for pursuant to the billing statements presented to the Counter Plaintiffs and over-billing for services provided.

48. That such actions on the part of PROSKAUER constitute breaches of the contract by and between IVIEWIT LLC and PROSKAUER.

49. That as a direct and proximate result of such conduct on the part of PROSKAUER, IVIEWIT LLC has been damaged by overpayment to PROSKAUER and the failure of PROSKAUER to perform the contracted for legal services.

WHEREFORE, IVIEWIT demands judgement for damages against Counter Defendant together with court costs, interest and such other and further relief as this Court deems just and equitable.

**COUNT IV- TORTIOUS INTERFERENCE WITH AN ADVANTAGEOUS  
BUSINESS RELATIONSHIP**

50. This is an action for tortious interference with an advantageous business relationship within the jurisdiction of this Court.

51. Counter Plaintiff re-alleges and hereby incorporates that allegations of Paragraphs 1 through 30 as if fully set forth herein.

52. Counter Plaintiff was engaged in negotiations of technology agreements with both Warner Bros. and AOL/Time Warner as to the possible use of the Technologies of the Counter Plaintiffs and investment in Counter Plaintiffs as a strategic partner.

53. That despite the prior representations of RUBENSTEIN, at a meeting held on or about November 1, 2000, by and between UTLEY, RUBENSTEIN and representatives of Warner Bros. as to the Technology of IVIEWIT and the efficacy, novelty and unique methodology of the Technology, RUBENSTEIN refused to subsequently make the same statements to representatives of AOL and Warner Bros., taking the position that since Warner Bros./AOL is "now a big client of Proskauer, I can't comment on the technologies of Iviewit." or words to that effect in response to inquiry from Warner Brother/AOL's counsel as to the status and condition of the pending patents on the intellectual property.

54. That RUBENSTEIN, having served as an advisor to the Board of Directors for IVIEWIT, was aware of the fact that at the time of the making of the statements set forth in Paragraph 50, above, IVIEWIT was in the midst of negotiations with AOL/Warner Bros. as to the possible funding of the operations of IVIEWIT in and sum of between \$10,000,000.00 and \$20,000,000.00.

55. Further, RUBENSTEIN as a partner of PROSKAUER, and despite his clear prior actions in representing the interests of IVIEWIT, refused to answer questions as to the enforcement of the Technology of IVIEWIT, with the intent and knowledge that such refusal would lead to the cessation of the business relationship by and between IVIEWIT and Warner Bros./AOL and other clients familiar with the Warner Bros./AOL technology group then in negotiations with IVIEWIT, including, but not limited to Sony Corporation, Paramount, MGM and Fox.

56. That the actions of RUBENSTEIN were and constituted an intentional and unjustified interference with the relationship by and between IVIEWIT and Warner Bros./AOL designed to harm such relationship and further motivated by the attempts to "cover-up" the conflict of interest in PROSKAUER's representation of both IVIEWIT and Warner Bros./AOL.

57. That indeed, as a direct and proximate result of the conduct of RUBENSTEIN, Warner Bros./AOL ceased business relations with IVIEWIT to the

damage and detriment of Counter Plaintiffs.

WHEREFORE, Counter Plaintiffs demand judgement for damages against Counter Defendant together with court costs, interest and such other and further relief as this Court deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 19<sup>th</sup> day of January, 2003 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

SELZ & MUVDI SELZ, P.A.  
214 Brazilian Avenue, Suite 220  
Palm Beach, FL 33480  
Tel: (561) 820-9409  
Fax: (561) 833-9715

By: 

STEVEN M. SELZ  
FBN: 777420



## Exhibit C



**[Insert Motion to Set Aside Amended Order and Remove Labarga]**



## IVIEWIT HOLDINGS, INC.

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

October 3, 2003

Honorable Jorge Labarga  
Circuit Court Judge  
Palm Beach County Courthouse, Room 11.1204  
205 N. Dixie Highway  
West Palm Beach, Fla. 33401

**Re: Proskauer Rose LLP v. Iviewit.com, Inc., et.al. Case No. CA 01-04671-AB**

Dear Judge Labarga:

By way of introduction, and since December 3, 2001, I am Chief Executive Officer (Acting) of the Defendant corporations referenced above. Moreover, mention is made to Plaintiff's letter of September 26, and its attached motion of Amended Order to Strike the Defendants' Pleadings and Entering a Default Judgment for Failure to Retain Replacement Counsel ("Amended Order"), and I write to apprise you of three separate and distinct areas of that letter and motion and the surrounding circumstances as follows:

1. As Plaintiff would have the Court believe, Eliot I. Bernstein is **NOT** the corporate representative of the Defendants, but, rather, it is I who hold the singular position, in my capacity as Chief Executive Officer, to act on behalf of the Defendants in these matters. Moreover, Plaintiff became well aware of this fact during our settlement negotiations of February 2002 to June 2002, as well as identified on the URL at <http://www.iviewit.com/> and any attempt to label Mr. Bernstein as the Defendants corporate representative is a mockery of the proceedings in your Court.

Moreover, Defendants find it plausible that Plaintiff's steadfast concern with the mislabeling of Mr. Bernstein as the "corporate representatives" is to position themselves favorably with respect to the bar complaints of Iviewit Holdings, Inc. Against Christopher C. Wheeler, Esq. (The Florida Bar File No. 2003-51,109 (15C)) and Iviewit Holdings, Inc. Against Kenneth Rubenstein, Esq. (New York's

First Judicial Department Departmental Disciplinary Committee Docket 2003.0531), wherein their singular defense was to allege that the filing of said bar complaints were in retaliation for Case No. CA 01-04671-AB, and now with the



final adjudication of said case, they must rely on another “theory” to defend against the damning facts of the bar complaints.

Oppositely, the factual circumstances of the bar complaints find the allegations centered on the time period of mid 1998 to the spring of 2001, wherein Plaintiff’s representative, Mr. Wheeler, was called upon by the Defendants’ Board of Directors to answer questions pertaining to a bulk of the allegations in the bar complaint, most or all of which are contained in Defendants Motion for Leave to Amend to Assert Counterclaim for Damages dated January 28, 2003; it was only after Mr. Wheeler failed to meet with Defendants’ Board of Directors that Plaintiff filed the present litigation.

2. Referencing Plaintiffs’ letter and Amended Order, wherein it cites the *Global Recreation Case* (see case attached to Plaintiff’s letter), said case is **NOT** analogous to the matters at hand. Not analogous as a result of: (1) as described in Exhibit A, its Exhibit 5 below, the Court may not make the finding of willful noncompliance with the attorney acquisition order; (2) as described in Exhibit A, its Exhibit 6 below, Defendants inaction in the past six weeks is as a result of the complex issues surrounding this case, and the due diligence required of the attorneys presently interviewing with Defendants; and (3) as described in Exhibit A, its Exhibit 7 below, the Defendants did not exhibit a deliberate disregard for the Court’s authority.

Moreover, and by Exhibit A attached herein, Defendants are in negotiations with four law firms, and hope to engage one or more in further preparation for the scheduled trial of November 13-14. Moreover, in twenty seven out of twenty eight months of these proceedings, the Defendants were represented by counsel, and, further, the attorneys and law firms identified in Exhibit A have been reviewing the totality of the facts of the case and the surrounding circumstances since February 2003, as evidenced by Exhibit A, its Exhibit 6 below.

Furthermore, the Defendants find it plausible that Plaintiff is using their September 26 motion as a cleverly designed ploy to, again, stretch to favorably position themselves against the bar complaints referenced in 1, and to paint an incorrect picture of the surrounding facts in defense of future proceedings by the named attorneys and law firms of Exhibit A, and is using your Court to execute said cleverly designed ploy.

Lastly, Defendants and prospective counsel Howrey Simon Arnold White LLP of Washington, D.C. have a scheduled meeting for October 16 to finalize arrangement for the November trial, among other matters, as evidenced by Exhibit A, its Exhibit 7 below.





Finally, Defendants note that each of the electronic mail messages of Exhibit A, its Exhibits 5 to 7, were either penned by the hand of, or addressed to, CEO Lamont and not Plaintiff's purported "corporate representative," Mr. Bernstein.

3. The circumstances surrounding this matter have exhibited the one-sided, prejudicial nature of Hon. Jorge Labarga, and that by Exhibit A, the Defendants not only move the Court for the setting aside of the Amended Order and reinstating of the pleadings, but move the Court for the removal of Judge Labarga from the proceedings for alleged violations of: (i) Canon 3D(2) of the Code of Judicial Conduct for the State of Florida that states "A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action;" and (ii) Canon 3B(5) of the Code of Judicial Conduct for the State of Florida that states "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so. This section does not preclude the consideration of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors when they are issues in the proceeding."

Finally, Defendants maintain that those presiding over courts in the State of Florida, or any State for that matter, who blatantly ignore rules such as Canons 3D(2) and 3B(5) are individuals burying the facts of a case much in the same way as Defendants' January 28 motion and the bar complaints allege members of Plaintiff attempted to bury Defendants intellectual property; it is inexcusable that a judge would be aware of the allegations contained in the January 28 motion against the Plaintiff in this matter, and, although denying said motion in his court (thereby removing Defendants defense entirely), further fails to properly notify the proper tribunals of the alleged malfeasant activity contained therein.

Very truly yours,

**IVIEWIT HOLDINGS, INC.**

By:  P. Stephen Lamont  
Chief Executive Officer

Digitally signed by P. Stephen Lamont  
DN: cn=P. Stephen Lamont, o=iViewit  
Holdings, Inc., ou=Corporate, c=US  
Date: 2003.10.03 08:31:49 -04'00'

**Exhibit A**

**IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA**

**CASE NO. 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**

---

**MOTION TO SET ASIDE THE AMENDED ORDER STRIKING THE  
DEFENDANTS PLEADINGS AND ENTERING A DEFAULT AGAINST THE  
DEFENDANTS FOR FAILURE TO RETAIN REPLACEMENT COUNSEL  
("AMENDED ORDER"), REINSTATE THE PLEADINGS, AND REMOVE HON.  
JORGE LABARGA FROM THE PROCEEDINGS**

Defendants, IVIEWIT.COM, INC., a Delaware corporation, IVIEWIT HOLDINGS, INC., a Delaware corporation, and IVIEWIT TECHNOLOGIES, INC., a Delaware Corporation ("Defendants"), hereby request that Court enter an order to set aside the Amended Order, reinstate the pleadings, and, further, based on the Court's knowledge of alleged attorney misconduct that merits investigation in that Plaintiff has allegedly committed malfeasances against Defendants and allegedly perpetrated frauds upon United States government agencies, that the Court remove Hon. Jorge Labarga from the proceedings due to his failure to notify tribunals of the alleged frauds and other malfeasances committed by the Plaintiffs and in support state as follows:

1. That the Court must set aside the Amended Order of September 30 and reinstate the pleadings, as on August 5, 2003 the Court allowed two separate and distinct counsels for Defendants to withdraw from this matter based upon representations that the other counsel was continuing to represent Defendants. Moreover, the Court granted separate motions to withdraw by both counsels thus terminating representation of Defendants, proceedings of which contradict the motions submitted to the Court by both counsels (Exhibit 1 and Exhibit 2), was not intended to leave the Defendants without counsel, and thus constitute error on the part of this Court.
1. Where the Court's determinations in 1 constitute an action that cannot stand in law because of disregard of the fundamental requisite in the proceedings that a corporation cannot represent itself. Furthermore, the Court's error in 1 was so prejudicial and fundamental that the expenditure of further time and expense would be futile for the Defendants.
2. That, although error by the Court in 1, Schiffrin & Barroway LLP forced said action through its knowing and willful failure to provide full information to the Court in its motion, and in its order to other counsel Steven M. Selz, Esq. to stand down (Exhibit 3) based on its July 15 letter agreement with Defendants (Exhibit 4), and based on said knowing and willful failure to provide full information in its motion, the Court committed error nonetheless. Furthermore, the Court should be made aware that the motion asserted by Schiffrin & Barroway LLP was with full knowledge that they had ordered past counsel, Steven M. Selz, Esq., to stand down due to their assuming responsibility for the case as called for in the attached

3. Exhibit 4, section D. Additionally, in the event that the Court denies the present Motion, Defendants shall additionally move the Court to mandate that Schiffrin & Barroway LLP provide counsel as called for in Exhibit 4.
4. That, although error by the Court in 1, additionally: (a) by the electronic mail messages attached as Exhibit 5, wherein the Defendants immediately contacted potential replacement counsel, the Court may not make the finding of willful noncompliance with the attorney acquisition order; (2) by the electronic mail messages attached as Exhibit 6, wherein the Defendants have since February 2003 made contact with supplementary counsel (now replacement counsel), Defendants inaction in the past six weeks is as a result of the complex issues surrounding this case, and the due diligence required of the attorneys presently interviewing with Defendants; and (3) by the electronic mail messages as attached as Exhibit 7, wherein the Defendants have an October 16 meeting with prospective replacement counsel, the Defendants did not exhibit a deliberate disregard for the Court's authority.
5. That the Court must set aside the Amended Order and reinstate the pleadings, as on July 29, 2003, Eliot I. Bernstein and then counsel Steven M. Selz, Esq. appeared to begin the scheduled trial and were thus informed that Plaintiff had surreptitiously advised the Court that settlement negotiations were in progress. Factually, the Defendants acknowledge notifications by Plaintiff that if settlement were not reached by July 28, 2003 that Plaintiff would proceed to trial.

6. That no settlement was reached, due to no fault of Defendants, it was fundamental that trial would begin on July 29, 2003, and wherein the Court's failure to timely notify Defendants as to the continuance of the trial date thus constitutes error.
7. Where the Court's determinations in 4 constitute an action that cannot stand in law because of disregard of the fundamental requisite in the proceedings that Defendants relied and prepared for a trial date of July 29, 2003. Furthermore, the Court's error in 4 was so prejudicial and fundamental that the expenditure of further time and expense would be futile for the Defendants, and lead directly to the Court's error in 1.
8. That the Court must remove Hon. Jorge Labarga from the proceedings in that the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages dated January 28, 2003 (Exhibit 8), was based upon six (6) months of investigative work on the part of several attorneys nationally and a Florida attorney and former counsel Steven M. Selz, Esq. Florida Bar No. 777420, this Court denied hearing a series of allegations that include, *interlia*, but are not limited to: (a) a civil conspiracy to deprive Defendants of the benefits of its intellectual property; (b) malfeasant courses of conduct by attorneys licensed in the State of Florida and State of New York directly related to this case; (c) that on the basis of allegations concerning Kenneth Rubenstein a member of Plaintiff, said allegations rise to the level of the licensing entity known as MPEG LA LLC, through the doctrine of *Respondeat Superior*, that would bring MPEG LA LLC directly within the "sham" exception to the Noerr/Pennington doctrine's immunity to Federal Antitrust Laws, Sherman Antitrust Act, 15 U.S.C. §§ 1-7 and

9. the Clayton Act 15 U.S.C. §§ 12-27, in its role as licensor of those technologies known as MPEG 2 and MPEG 4; and, as a proximate result of (a) to (c), (d) fraudulent conduct that befalls on Federal agencies including, but not limited to, the United States Patent and Trademark Office, the United States Postal Service, the United States Department of Treasury, Internal Revenue Service Division, and the United States Department of Justice, Antitrust Division, and that based upon this series of allegations enumerated above in (a) to (d), this Court not only errors in its denial of Defendants January 28, 2003 motion, but, factually falls outside of Canon 3D(2) of the Code of Judicial Conduct for the State of Florida.
10. Where the Court's determinations in 7 constitute an action that cannot stand in law because of disregard of the fundamental requisite in the proceedings that Defendants' Motion for Leave to Amend to Assert Counterclaim for Damages dated January 28, 2003 was based on the same nexus of events and that resulted from additional evidence found in Plaintiff's files and records. Furthermore, The Florida State Bar Association under Lorraine Christine Hoffman, Esq. has halted investigation of the allegations against Christopher C. Wheeler, Esq. a member of Plaintiff, stating that the matter is before this Court and until the Court makes final determinations in this case and on these matters, that the Florida Bar must withhold before proceeding with investigation of the charges (Exhibit 9). Furthermore, the Court's error in 7 was so prejudicial and fundamental that the expenditure of further time and expense would be futile for the Defendants.
11. That the Court must remove Hon. Jorge Labarga from the proceedings in that during the course of the proceedings in CASE NO. 01-04671 AB, the Court has

12. taken action in 7, and stated on numerous occasions, comments of a prejudicial nature that “[T]his should be a very short trial” and that “[Y]ou are not going to make a Federal case out of this,” this Court not only errors in its prejudicial comments, but, factually falls outside of Canon 3B(5) of the Code of Judicial Conduct for the State of Florida.

13. Where the Court’s comments in 9 constitute an action that cannot stand in law because of disregard of the fundamental requisite in the proceedings that Defendants is constitutionality mandated to receive proceedings and trial free of prejudice. Furthermore, the Court’s error in 9 was so prejudicial and fundamental that the expenditure of further time and expense would be futile for the Defendants.

Wherefore, Defendants request that this Court enter an order setting aside the Amended Order of September 30, reinstate the pleadings, and remove Hon. Jorge Labarga from the proceedings as a result of the following errors: (a) recent actions by Plaintiff that caused this Court to delay a scheduled trial date hours before trial without notice to the Defendant or Defendant’s counsel; (b) recent actions by former Defendants counsel, Schiffrin & Barroway LLP, that caused this Court to dismiss both of Defendants attorneys on the same day, at the same time, and in the same hearing; (c) as the Defendants are fully complying with the Court’s attorney acquisition order in preparation for trial on Nov. 13-14; (d) denial of Defendants Motion for Leave to Amend to Assert Counterclaim for Damages dated January 28, 2003 that involved allegations of fraudulent acts by members of Plaintiff, among others, on four Federal agencies, and under three



Federal statutes; and (e) prejudicial comments throughout this case by the Court, and requests further determinations that the Court deems appropriate, reasonable, and just.

This 3<sup>rd</sup> day of October 2003.

Iviewit.com, Inc., Iviewit  
Technologies, Inc., Iviewit Holdings,  
Inc.  
10158 Stonehenge Circle, Suite 801  
Boynton Beach, Fla. 33437  
Telephone: (561) 364-4240



**P. Stephen Lamont**

Digitally signed by P. Stephen Lamont  
DN: cn=P. Stephen Lamont, o=Iviewit  
Holdings, Inc., ou=Corporate, c=US  
Date: 2003.10.03 08:32:48 -0400

---

Eliot I. Bernstein  
Founder & Inventor

---

P. Stephen Lamont  
Chief Executive Officer (Acting)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was furnished by facsimile this 3<sup>rd</sup> day of October 2003, to Matthew Triggs, Proskauer Rose LLP, One Boca Place, Suite 340 West, 2255 Glades Road, Boca Raton, Fla. 33431-7360, facsimile no. (561) 241-7145.

 **P. Stephen Lamont**  
Signature Valid

Digitally signed by P. Stephen  
Lamont  
DN: cn=P. Stephen Lamont,  
o=Hewlett Holdings, Inc.,  
ou=Corporate, c=US  
Date: 2003.10.03 08:33:09 -0400

P. Stephen Lamont

**Exhibit 1**

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR PALM  
BEACH COUNTY, FLORIDA

PROSKAUER ROSE L.L.P.,  
a New York limited partnership,

CA 01-04671 AB

Plaintiff,

**NOTICE OF HEARING**  
(Uniform Motion Calendar)

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

Defendants.

---

To: Christopher W. Prusaski, Esq. and  
Matt Triggs, Esq.  
Proskauer Rose, LLP  
2255 Glades Road, Suite 340 W  
Boca Raton, FL 33431

Krishna B. Narine, Esq.  
Three Bala Plaza East  
Suite 400  
Bala Cynwyd, PA 19004

Eliot Bernstein  
10158 Stonehenge Circle, #801  
Boynton Beach, FL 33437-3546

YOU ARE HEREBY NOTIFIED that a hearing has been scheduled in this cause as indicated below. In the absence or disqualification of the Judge listed below, this cause will be brought on for hearing before another Judge who is available and qualified to act thereon.

**Judge:** The Honorable Jorge Labarga

**Date:** Tuesday, August 5, 2003.

**Time:** 8:45 A.M. or as soon thereafter as the matter may be heard.

**Place:** Palm Beach County Courthouse, 205 North Dixie Highway, West  
Palm Beach, Florida 33401

**Matter:** Selz & Muvdi Selz, P.A.'s Motion to Withdraw as Counsel for Defendants.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax to the above-listed addressee(s) this 1<sup>st</sup> day of August, 2003 and that prior to the setting of the hearing in this matter a good faith effort has been made to resolve the matters noticed or due to constraints of time, such efforts have not been made but will be made prior to the date and time set for hearing in this matter.

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 15<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR PALM  
BEACH COUNTY, FLORIDA

PROSKAUER ROSE L.L.P.,  
a New York limited partnership,

CA 01-04671 AB

Plaintiff,

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

Defendants.

---

**SELZ & MUVDI SELZ, P.A.'S MOTION TO WITHDRAW AS  
ATTORNEYS FOR DEFENDANTS**

SELZ & MUVDI SELZ, P.A. and Steven M. Selz, Esq. show that they are attorneys for the Defendants in this matter and move this Honorable Court for an Order permitting Selz & Muvdi Selz, P.A. and Steven M. Selz, Esq. to withdraw as attorneys for Defendants in this matter and as grounds therefore would state:

1. That there is disagreement between the undersigned attorneys and the Defendants as to how the defense and possible settlement of this action should be conducted.
2. That as a result the undersigned cannot continue representation of the Defendants in this matter.

3. Defendants are represented by additional counsel in this matter and will not be prejudiced by the withdrawal of the undersigned as counsel for Defendants.

4. Defendants address is 10158 Stonehenge Circle, #801 , Boynton Beach, FL 33437-3546.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and/or fax transmittal this 1<sup>st</sup> day of August, 2003 to: To: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431; Krishna B. Narine, Esq., Three Bala Plaza East, Suite 400, Bala Cynwyd, PA 19004 and Eliot Bernstein, 10158 Stonehenge Circle, #801, Boynton Beach, FL 33437-3546.

SELZ & MUVDI SELZ, P.A.  
214 Brazilian Avenue, Suite 220  
Palm Beach, FL 33480  
Tel: (561) 820-9409  
Fax: (561) 833-9715

By: [Signature]  
STEVEN M. SELZ  
FBN: 777420

STATE OF FLORIDA  
COUNTY OF PALM BEACH

Before me, the undersigned authority, personally appeared STEVEN M. SELZ, who was duly sworn and says that the facts alleged in the foregoing motion are true.

[Signature]  
STEVEN M. SELZ

Sworn to and subscribed before me on this 1<sup>st</sup> day of August, 2003.



Linda L. Hamilton  
MY COMMISSION # DD181980 EXPIRES  
May 7, 2005  
BONDED THRU TROY FAIN INSURANCE, INC.

[Signature]  
Notary Public  
My Commission Expires

**Exhibit 2**



SCHIFFRIN & BARROWAY, LLP

Three Bala Plaza East

Suite 400

Bala Cynwyd, PA 19004

DIRECT DIAL: (610) 822-2202

FAX: (610) 667-7056

**FAX TRANSMITTAL SHEET**

DATE: August 1, 2003

TO: Matthew Triggs  
Steven Selz  
Eliot Bernstein

FAX NO.: 561-241-7145  
561-833-9715  
Via Electronic Mail

FROM: Krishna B. Narine

MATTER: Iviewit

Number of Pages 4  
(including transmittal sheet)

---

**MESSAGE:**

**Proposed changes.**

IF THERE IS A PROBLEM WITH TRANSMITTAL OR RECEIPT OF THIS FAX, PLEASE CALL  
(610) 822-2202. THANK YOU.

NOTE: PLEASE DELIVER THIS FAX IMMEDIATELY TO RECIPIENT.

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service.  
Thank you.

\*FAX\*

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY, FLORIDA

PROSKAUER ROSE L.L.P.,

Plaintiff,

vs.

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

Defendants

CA 01-04671 AB

**NOTICE OF HEARING**  
(Uniform Motion Calendar)

To: Christopher W. Prusaki, Esq. and  
Matthew Triggs, Esq.  
Proskauer Rose, LLP  
2255 Glades Road, Suite 340 W  
Boca Raton, FL 33431  
Fax:: 561-241-7145

Steven M. Selz  
Selz & Muvdi Selz, P.A.  
214 Brazilian Avenue  
Suite 220  
Palm Beach, FL 33480  
Fax: 561-833-9715

Eliot Bernstein  
10158 Stonehenge Circle, #801  
Boynton Beach, FL 33437-3546


YOU ARE HEREBY NOTIFIED that a hearing has been scheduled in this cause as indicated below. In the absence or disqualification of the Judge listed below, this cause will be brought on for hearing before another Judge who is available and qualified to act thereon.

**Judge:** The Honorable Jorge Labarga  
**Date:** Tuesday, August 5, 2003  
**Time:** 8:45 A.M. or as soon thereafter as the matter may be heard  
**Place:** Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401  
**Matter:** Schiffrin & Barroway LLP's Motion to Withdraw as Counsel for

Defendants.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax to the above-listed addressees this \_\_\_ day of August, 2003, and that prior to the hearing in this matter a good faith effort has been made to resolve the matters noticed or due to constraints of time, such efforts have not been made but will be made prior to the date and time set for hearing in this matter.

Date: August 1, 2003

  
Krishna B. Narine Bar PA Bar No. 52238  
(Admitted *pro hac vice*)  
**Schiffirin & Barroway, LLP**  
Three Bala Plaza East  
Suite 400  
Bala Cynwyd, PA 19004  
Phone: (610) 667-7706  
Fax: (610) 667-7056

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY, FLORIDA

---

PROSKAUER ROSE L.L.P.,  
Plaintiff,  
vs.  
IVIEWIT.COM, INC., a Delaware  
corporation, IVIEWIT HOLDINGS, a  
Delaware corporation, and IVIEWIT  
TECHNOLOGIES, INC., a Delaware  
corporation,  
Defendants

---

CA 01-04671 AB

**SCHIFFRIN & BARROWAY, LLP'S MOTION TO WITHDRAW AS  
ATTORNEYS FOR DEFENDANTS**


SCHIFFRIN & BARROWAY, LLP and Krishna B. Narine, Esq. recently entered their appearances as attorneys for the Defendants in this matter and move this Honorable Court for an Order permitting Schiffrin & Barroway, LLP and Krishna B. Narine, Esq. to withdraw as attorneys for defendants in this matter and as the basis for this motion state:

1. On July 24, 2003, Schiffrin & Barroway, LLP and Krishna B. Narine, Esq. were admitted *pro hac vice* in this matter.
2. Schiffrin & Barroway, LLP, Krishna B. Narine, Esq. and the Defendants have not been able to agree on how the defense of this action should be conducted, nor on a possible settlement of this action.
3. For the foregoing reason, Schiffrin & Barroway, LLP and Krishna B. Narine, Esq. cannot continue representation of the Defendants in this matter.

4. Defendants are represented by additional counsel, who is thoroughly familiar with the facts and the procedural history of this matter, and as such will not be prejudiced by the withdrawal of the undersigned counsel for Defendants.
5. Defendants' address is 10158 Stonehenge Circle, #801, Boynton Beach, FL 33437-3546.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax to the above-listed addressees this \_\_\_ day of August, 2003, and that prior to the hearing in this matter a good faith effort has been made to resolve the matters noticed or due to constraints of time, such efforts have not been made but will be made prior to the date and time set for hearing in this matter.

Date: August 1, 2003


  
Krishna B. Narine Bar PA Bar No. 52238  
(Admitted *pro hac vice*)  
**Schiffirin & Barroway, LLP**  
Three Bala Plaza East  
Suite 400  
Bala Cynwyd, PA 19004  
Phone: (610) 667-7706  
Fax: (610) 667-7056

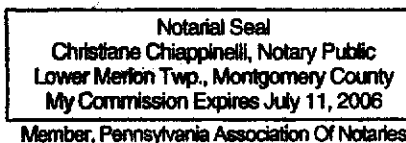
STATE OF PENNSYLVANIA  
COUNTY OF MONTGOMERY

Before me, the undersigned authority, personally appeared Krishna B. Narine who has sworn and says the facts recited in the foregoing Schiffirin & Barroway, LLP's Motion to Withdraw as Attorneys for Defendants are true.

  
Krishna B. Narine

Sworn and subscribed before me on August 1<sup>st</sup>, 2003

  
Notary Public  
My commission expires:



**Exhibit 3**

**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

July 25, 2003

**VIA FACSIMILE TRANSMISSION**  
**AND REGULAR MAIL**

Krishna B. Narine, Esq.  
Three Bala Plaza East  
Suite 400  
Bala Cynwyd, PA 19004

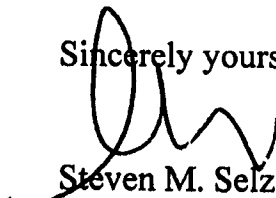
Re: Proskauer Rose vs. Ivievit.com; Case No. CA 01-04671 AB.

Dear Krishna:

Please accept this letter in furtherance and confirmation of our telephone conversation of this morning regarding the above-referenced matter. As we discussed, you have been able to resolve same and are currently working on the preparation of settlement documents. In the meantime, as we are set for trial beginning next Tuesday, July 28<sup>th</sup>, 9:30 and in the hopes of avoiding unnecessary costs for trial preparation, you have instructed that we are to discontinue our trial preparation in this matter. We have confirmed this with Eliot Bernstein. Therefore, pursuant to these instructions we will "stand down" and cease all further trial preparation and other work in this matter until you provide written instruction to the contrary. I have forwarded earlier this morning the copy of the amended complaint we discussed.

Please advise if I may be of any further assistance. Should this letter not accurately and fully reflect our discussions in this matter please advise the undersigned immediately.

Sincerely yours,



Steven M. Selz  
For the Firm

SMS/ajf  
cc: Eliot Bernstein

**Exhibit 4**



# SCHIFFRIN & BARROWAY, LLP

RICHARD S. SCHIFFRIN\*  
ANDREW L. BARROWAY\*  
MARC A. TOPAZ\*  
DAVID KESSLER\*  
KRISHNA B. NARINE  
KATHARINE M. RYAN  
STUART L. BERMAN\*  
JACOB A. GOLDBERG

ATTORNEYS AT LAW  
THREE BALA PLAZA EAST  
SUITE 400  
BALA CYNWYD, PENNSYLVANIA 19004  
(610) 667-7706  
FAX: (610) 667-7056

GREGORY M. CASTALDO\*  
DARREN J. CHECK\*  
EDWARD W. CIOLKO°  
SEAN M. HANDLER  
SCOTT K. JOHNSON\*  
RICHARD A. MANISKAS  
STEPHEN P. MCFATE  
JOSEPH H. MELTZER\*  
TOBIAS L. MILLROOD\*  
CHRISTOPHER L. NELSON  
LEE D. RUDY°  
KAY E. SICKLES\*  
MARC D. WEINBERG\*  
PATRICIA C. WEISER\*  
ROBERT B. WEISER\*  
MARC I. WILLNER  
MICHAEL K. YARNOFF\*\*  
ERIC L. ZAGAR  
ANDREW L. ZIVITZ\*

° ADMITTED IN NJ  
\* ALSO ADMITTED IN CA  
\* ALSO ADMITTED IN DE  
\* ALSO ADMITTED IN IL  
\* ALSO ADMITTED IN NJ  
° ALSO ADMITTED IN NY

July 15, 2003

**Via Electronic Mail and Federal Express**

Flaster Greenberg  
Commerce Center  
1810 Chapel Avenue West  
Cherry Hill, NJ 08002  
Attention: Marc R. Garber, Esq.

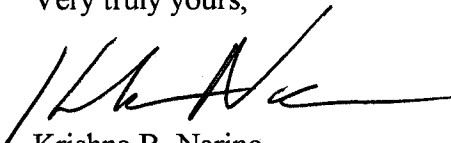
Dear Marc:

As we discussed earlier, it is acknowledged that our law firm's retirement plan was administered by MPDA, formerly an affiliate of Flaster Greenberg. We also acknowledge that in the MPDA engagement letter our law firm also engaged Flaster Greenberg for legal work related to the retirement plan.

Several months ago Flaster Greenberg sold the MPDA business, with the result of a company called Manchester (unrelated to Flaster Greenberg) taking over the plan administration work of our retirement plan. Thus, we hereby acknowledge that we are a former client and not a current client of Flaster Greenberg.

While we don't believe there to be a conflict, we hereby consent to Flaster Greenberg's representation of Iviewit with respect to the Letter of Understanding with Schiffrin & Barroway, LLP.

Very truly yours,



Krishna B. Narine

cc: Eliot Bernstein

# SCHIFFRIN & BARROWAY, LLP

RICHARD S. SCHIFFRIN\*  
ANDREW L. BARROWAY\*  
MARC A. TOPAZ\*  
DAVID KESSLER\*  
KRISHNA B. NARINE  
KATHARINE M. RYAN  
STUART L. BERMAN\*  
JACOB A. GOLDBERG

ATTORNEYS AT LAW  
THREE BALA PLAZA EAST  
SUITE 400  
BALA CYNWYD, PENNSYLVANIA 19004  
(610) 667-7706  
FAX: (610) 667-7056

GREGORY M. CASTALDO\*  
DARREN J. CHECK\*  
EDWARD W. CIOLKO<sup>□</sup>  
SEAN M. HANDLER  
SCOTT K. JOHNSON\*  
RICHARD A. MANISKAS  
STEPHEN P. MCFATE  
JOSEPH H. MELTZER\*  
TOBIAS L. MILLROOD\*  
CHRISTOPHER L. NELSON  
LEE D. RUDY<sup>◊</sup>  
KAY E. SICKLES\*  
MARC D. WEINBERG\*  
PATRICIA C. WEISER\*  
ROBERT B. WEISER\*  
MARC I. WILLNER  
MICHAEL K. YARNOFF\*\*  
ERIC L. ZAGAR  
ANDREW L. ZIVITZ\*

<sup>□</sup> ADMITTED IN NJ  
<sup>\*</sup> ALSO ADMITTED IN CA  
<sup>\*</sup> ALSO ADMITTED IN DE  
<sup>\*</sup> ALSO ADMITTED IN IL  
<sup>\*</sup> ALSO ADMITTED IN NJ  
<sup>◊</sup> ALSO ADMITTED IN NY

Tuesday, July 15, 2003

## Via Electronic Mail and Federal Express

Eliot Bernstein  
CEO and Founder  
Iviewit Holdings, Inc.  
10158 Stonehenge Circle  
Suite 801  
Boynton Beach, FL 33437-3546

Re: Iviewit and Schiffrin & Barroway, LLP - Letter of Understanding

Dear Eliot:

In response to the proposal set forth in your letter of July 6, 2003, and with consideration of our conversation on July 7, 2003, Schiffrin & Barroway, LLP ("SB") proposes the following terms which will become effective as of the date this letter is signed by both parties. SB will make a capital contribution to a newly formed entity ("NewCo") that will acquire ownership of the "Iviewit Patents". SB will make additional capital contributions and loans to NewCo and Iviewit Holdings, Inc. ("Iviewit") in the form of the contribution of legal services and payment of legal fees owing to patent counsel and other counsel. SB will make the payment of expenses related to the operation of NewCo and Iviewit Holdings, Inc. to, *inter alia*, prosecute and develop the Iviewit Patents, prosecute infringers of the Iviewit Patents, and prosecute and defend Iviewit and NewCo against claims by and between Iviewit Holdings, Inc., its subsidiaries and affiliates and its former officers, directors and attorneys:

1. SB will purchase for a \$100,000 capital contribution a 21% voting membership interest in NewCo, a newly formed limited liability company, subject to NewCo's entering into an agreement to purchase from Crossbow/DiStream its interests in Iviewit, including Crossbow/DiStream's debt claims and security interests in all assets of Iviewit and NewCo's acquisition of ownership of the "Iviewit Patents."
2. In consideration of the other commitments described hereafter, SB will receive an additional 24% voting membership interest in NewCo and, by assignment from existing shareholders, 21% of voting equity shares in Iviewit.

3. In further consideration of foregoing grants of membership and stock assignments by NewCo, SB shall provide the following services and assume the following obligations for NewCo and Iviewit:
  - a. Retain, assist and compensate patent counsel for all costs and expenses (acknowledging the funding of the estimated minimum cost of approximately \$250,000), to correct and prosecute all of Iviewit's pending U.S. and foreign patent applications, and to obtain valid U.S. and foreign patents for Iviewit's proprietary technology and inventions;
  - b. Prosecute to judgment or settle malpractice and other claims against Proskauer Rose LLP, Foley and Lardner, and Meltzer, Lippe, Goldstein, Wolfe & Schlissel, P.C., including the payment of all necessary costs and expenses, provided, however, that NewCo or Iviewit, as the case may be, will be responsible for payment of such costs and expenses incurred after monies are recovered and received pursuant to paragraph 5, and are available for such use as determined solely by the CEO or Board taking into account the attached operating budget and cash needs of Iviewit and NewCo for business operations purposes, as determined solely by the CEO or Board;
  - c. Prosecute actions to enjoining and recover damages for unauthorized use of Iviewit's proprietary technology and inventions and obtain compensation for use of the same through enforcement of existing Non-Disclosure Agreements and prosecution of patent infringement actions, including payment of all necessary costs and expenses, provided, however, that NewCo or Iviewit, as the case may be, will be responsible for payment of such costs and expenses incurred after monies are recovered and received pursuant to paragraph 5, and are available for such use as determined solely by the CEO or Board taking into account the attached operating budget and cash needs of Iviewit and NewCo for business operations purposes, as determined solely by the CEO or Board;
  - d. It is contemplated that the operating expenses of NewCo and Iviewit shall be funded through the proceeds of recoveries on the claims described in 3.b. above; provided, however that if such proceeds are not available, SB agrees to contribute capital to NewCo and Iviewit to pay ordinary operating expenses as set forth in the attached budget, which shall include actual legal fees and costs for effecting transfer of title to Iviewit patents to NewCo and creating NewCo. Notwithstanding the foregoing, SB shall not be responsible to provide operating expenses if such operating requirements are available through the NewCo and Iviewit revenues. Iviewit shall be maintained as an entity to pursue the claims described in paragraph 3.b. above; and

Letter to Eliot Bernstein

July 15, 2003

Page 3

- e. Prosecute actions to recover the 15% of Iviewit stock from certain individuals, to be identified by Iviewit, who were involved in malfeasance against the company, of which 33-1/3% will go to SB and 66-2/3% will be split in the following manner:

Eliot I. Bernstein - 40% of 66%

Isa S. Welsch - 25% of 66%

Caroline Prochotska Rogers, Esq. -25% of 66%

Other Shareholders - 10% of 66%

4. SB shall have full authority with respect to prosecution and resolution of the claims set forth in paragraph 3.b. above, including Proskauer Rose LLP's lawsuit for non-payment of legal fees, and with respect to the engagement of legal counsel and consultants, whether such claims are prosecuted and resolved through negotiation, litigation, or any other method SB deems appropriate.
5. All proceeds received from the resolution of the claims set forth in paragraph 3.b. or 3.c. will be distributed to Iviewit and NewCo, less any contingent fee not to exceed 33% owed to any law firm, other than SB, retained to pursue such claims.

The undersigned with due authority to bind Schiffrin & Barroway, LLP and Iviewit Holdings, Inc. respectively, have executed this document on this day of July 15, 2003.

Krishna B. Narine  
X  
Partner  
Schiffirin & Barroway, LLP

Eliot I. Bernstein  
X  
CEO and Founder  
Iviewit Holdings, Inc.

MEWBT HOLDINGS, INC.  
OPERATING BUDGET

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Year 1	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Year 2	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Year 3
Schedule (1)	\$53,875	\$53,875	\$90,625	\$90,625	\$369,000	\$92,033	\$92,033	\$92,033	\$92,033	\$368,130	\$93,501	\$93,501	\$93,501	\$93,501	\$413,623
Facilities Expense (2)	0	0	9,472	9,472	18,944	9,756	9,756	9,756	9,756	38,026	10,049	10,049	10,759	10,759	41,616
Marketing:															
Conventions & Exhibits (2)	0	0	6,250	6,250	12,500	6,250	6,250	6,250	6,250	25,000	6,250	6,250	6,250	6,250	25,000
Other Marketing	0	0	4,250	4,250	8,500	5,375	5,375	5,375	5,375	21,500	5,375	5,375	5,375	5,375	21,500
Insurance (Property, D&O, E&O, W/C, L&B)	1,242	1,488	1,947	2,408	7,082	2,678	3,347	3,816	4,282	14,365	4,763	5,249	5,812	6,743	22,558
Communication Costs	2,000	0	0	0	2,000	0	0	0	0	0	0	0	0	0	0
Legal and Accounting (3)	6,000	6,000	6,000	6,000	24,000	2,500	2,500	2,500	2,500	10,000	2,500	2,500	2,500	2,500	10,000
Travel & Living (2)	0	0	8,000	8,000	16,000	8,000	8,000	8,000	8,000	32,000	8,000	8,000	8,000	8,000	32,000
Office Supplies	250	250	250	250	1,000	250	250	250	250	1,000	250	250	250	250	1,000
Telephones (Cell and Land Lines)	1,600	1,600	1,600	1,600	6,400	1,600	1,600	1,600	1,600	6,400	1,600	1,600	1,600	1,600	6,400
Agency Fee for CEO Recruitment (4)	10,000	0	0	0	10,000	0	0	0	0	0	0	0	0	0	0
Operating Total	\$74,967	\$83,210	\$118,394	\$118,855	\$375,427	\$118,642	\$119,111	\$119,580	\$120,049	\$477,382	\$122,288	\$122,765	\$124,047	\$204,595	\$573,697
Other Key Items:															
Payables to Bahaiyah Scheibel Taylor & Zeffman (5)	\$6,345	\$6,345	\$6,345	\$6,345	\$25,380	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Payables to Armstrong Hirsch-Jackoway Tyerman & Wertheimer (6)	10,370	10,370	10,370	10,370	41,482	0	0	0	0	0	0	0	0	0	0
Payables to Steven M. Satz, Esq. handling Florida litigation (7)	12,000	0	12,134	12,134	48,535	0	0	0	0	0	0	0	0	0	0
Payables to Intel & Marlene (8)	\$40,849	\$28,849	\$28,849	\$28,849	\$127,395	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Non-Operating Total	\$115,817	\$92,058	\$147,243	\$147,705	\$502,824	\$118,642	\$119,111	\$119,580	\$120,049	\$477,382	\$122,288	\$122,765	\$124,047	\$204,595	\$573,697
Total	\$115,817	\$207,275	\$355,119	\$362,824	\$502,824	\$21,486	\$740,577	\$890,157	\$890,296	\$980,295	\$1,102,494	\$1,225,259	\$1,349,307	\$1,553,903	\$1,553,903
Comulative															

- Notes:
- (1) Includes Fringes as 30% of Total Payroll.
  - (2) Assumes successful patent re-writes are completed by end of 2nd Quarter.
  - (3) Represents Delaware corporate expenses, tax filings, future Florida litigation expenses.
  - (4) Key payments to continue contact with Ted Leonals and AOL.
  - (5) Key payments to answer PCT Office Actions.
  - (6) Key payments to explain introduction to major motion picture studios
  - (7) Key payments to continue Florida litigation.
  - (8) Key payments to explain introduction to major motion picture studios.

**Exhibit 5**

**P. Stephen Lamont**

---

**From:** P. Stephen Lamont [pstephen.lamont@verizon.net]  
**Sent:** Tuesday, August 05, 2003 1:42 PM  
**To:** 'Mark Gaffney'; 'jak@klafterolsen.com'; Kurt Olsen Esq. (E-mail)  
**Subject:** RE: Proskauer v. Iviewit  
**Importance:** High

Mark/Jeff,

The hearing was this morning and Judge LaBarga gave Iviewit fifteen (15) days in which to secure new counsel. We could use some help in this area if anything comes to mind.

Moreover, Schiffrin & Barroway has unilaterally withdrawn from the binding Letter of Understanding ("Agreement") dated July 15, and we are considering our options to seek their full performance of the Agreement.

Lastly, Blakely confirms Howrey's receipt of the documents at 10:13 AM on August 1, and signed for by R. Gregory in the mail room; I have asked for a confirmation of their receipt of the documents which I am still waiting for.

Best regards,

P. Stephen Lamont  
Chief Executive Officer  
Iviewit Holdings, Inc.  
10158 Stonehenge Circle  
Boynton Beach, Fla. 33437  
Tel.: 914-217-0038  
Email: pstephen.lamont@verizon.net; 9142170038@mobile.att.net  
URL: www.iviewit.com

**THIS MESSAGE AND ITS EMBEDDED AND/OR ATTACHED FILES INCORPORATED HEREIN BY REFERENCE CONTAIN INFORMATION THAT IS PROPRIETARY AND CONFIDENTIAL, PRIVILEGED INFORMATION. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE PROHIBITED FROM READING, OPENING, PRINTING, COPYING, FORWARDING, OR SAVING THIS MAIL AND ITS EMBEDDED AND/OR ATTACHED FILES. PLEASE DELETE THE MESSAGE AND ITS EMBEDDED AND/OR ATTACHED FILES WITHOUT READING, OPENING, PRINTING, COPYING, FORWARDING, OR SAVING THEM, AND NOTIFY THE SENDER IMMEDIATELY AT 561.364.4240. IF YOU ARE THE INTENDED RECIPIENT, YOU ARE PROHIBITED FROM FORWARDING THEM OR OTHERWISE DISCLOSING THESE CONTENTS TO OTHERS, WITHOUT THE EXPRESS WRITTEN CONSENT OF THE SENDER.**

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

**From:** Mark Gaffney [mailto:mark.w.gaffney@verizon.net]  
**Sent:** Tuesday, August 05, 2003 1:31 PM  
**To:** pstephen.lamont@verizon.net; jak@klafterolsen.com  
**Subject:** Proskauer v. Iviewit

Stephen.

I was out of the office yesterday and caught up on the e-mail this morning. When you find out more about what the Florida judge does when he learns that there is no settlement and that Selz and Narine are apparently both resigning, let Jeff and I know what is going on. It would be best for Iviewit if the judge gives Iviewit more time to shore up its defense to Proskauer's claim for unpaid fees.

Mark Gaffney

#### **P. Stephen Lamont**

---

**From:** P. Stephen Lamont [pstephen.lamont@verizon.net]  
**Sent:** Wednesday, August 06, 2003 8:25 AM  
**To:** Mark. W. Gaffney Esq. (E-mail); Jeffrey A. Klafter Esq. (E-mail); Kurt Olsen Esq. (E-mail)  
**Subject:** FW: Palm Beach County Court Order

**Importance:** High



2003 08 05 Court  
order.pdf

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

**From:** Eliot I Bernstein [mailto:iviewit@bellsouth.net]  
**Sent:** Wednesday, August 06, 2003 6:55 AM  
**To:** P. Stephen Lamont (E-mail); Caroline Prochotska Rogers (E-mail);  
Caroline Prochotska Rogers (E-mail 2); Marc R. Garber (E-mail)  
**Subject:**

---

Outgoing mail is certified Virus Free.

Checked by AVG anti-virus system (<http://www.grisoft.com>).  
Version: 6.0.507 / Virus Database: 304 - Release Date: 8/4/2003



## **P. Stephen Lamont**

---

**From:** P. Stephen Lamont [pstephen.lamont@verizon.net]  
**Sent:** Saturday, September 13, 2003 4:27 PM  
**To:** Mark. W. Gaffney Esq. (E-mail); Jeffrey A. Klafner Esq. (E-mail); Kurt Olsen Esq. (E-mail); Kenneth Anderson (E-mail); Caroline P. Rogers Esq. (E-mail)  
**Cc:** Eliot I. Bernstein (E-mail)  
**Subject:** Florida Litigation

**Importance:** High

His Honor Jorge LaBarga has made just one too many prejudicial comments in the case, most recently his statement in the September 11 calendar call wherein he states that "this should be a relatively short trial." See Eliot Bernstein for more details of this and other prejudicial statements and asides.

Therefore, we are looking for a volunteer(s) to make an appearance and file a motion for LaBarga's removal from the litigation.

Best Regards,

P. Stephen Lamont  
Chief Executive Officer  
Iviewit Holdings, Inc.  
10158 Stonehenge Circle  
Boynton Beach, Fla. 33437  
Tel: 914-217-0038  
Fax: 845-279-7710  
Email: pstephen.lamont@verizon.net; 9142170038@mobile.att.net  
URL: www.iviewit.com

**THIS MESSAGE AND ITS EMBEDDED AND/OR ATTACHED FILES INCORPORATED HEREIN BY REFERENCE CONTAIN INFORMATION THAT IS PROPRIETARY AND CONFIDENTIAL, PRIVILEGED INFORMATION. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE PROHIBITED FROM READING, OPENING, PRINTING, COPYING, FORWARDING, OR SAVING THIS MAIL AND ITS EMBEDDED AND/OR ATTACHED FILES. PLEASE DELETE THE MESSAGE AND ITS EMBEDDED AND/OR ATTACHED FILES WITHOUT READING, OPENING, PRINTING, COPYING, FORWARDING, OR SAVING THEM, AND NOTIFY THE SENDER IMMEDIATELY AT 561.364.4240. IF YOU ARE THE INTENDED RECIPIENT, YOU ARE PROHIBITED FROM FORWARDING THEM OR OTHERWISE DISCLOSING THESE CONTENTS TO OTHERS, WITHOUT THE EXPRESS WRITTEN CONSENT OF THE SENDER.**

**Exhibit 6**

**P. Stephen Lamont**

---

**From:** P. Stephen Lamont [pstephen.lamont@verizon.net]  
**Sent:** Tuesday, February 04, 2003 2:51 PM  
**To:** 'mark.w.gaffney@verizon.net'  
**Subject:** Motion for Leave to Amend/Counter complaint

Mark,

Look forward to talking with you Thursday morning at 10:00 A.M.

Best regards,

P. Stephen Lamont  
Chief Executive Officer  
Iviewit Holdings, Inc.  
10158 Stonehenge Circle  
Boynton Beach, Fla. 33437  
Tel.: 914-217-0038  
Email: pstephen.lamont@verizon.net; 9142170038@mobile.att.net  
URL: www.iviewit.com



Counter Complaint  
Final.pdf

**Exhibit 7**

**P. Stephen Lamont**

---

**From:** Mark Gaffney [mark.w.gaffney@verizon.net]  
**Sent:** Tuesday, September 30, 2003 1:28 PM  
**To:** pstephen.lamont@verizon.net  
**Cc:** Eliot I. Bernstein (E-mail); Jeffrey A. Klafter Esq. (E-mail); Kurt Olsen Esq. (E-mail); Kenneth Anderson (E-mail)  
**Subject:** Re: Howrey & Simon -

Stephen,

I just spoke to Ken Anderson (whose e-mail is up and running again), and he says that October 16 at 1:00 PM would be fine. We expect to stay in frequent contact in preparation for the meeting.

Would everyone indicate whether they are expect to attend.

Mark Gaffney

**Exhibit 8**

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY,  
FLORIDA

PROSKAUER ROSE L.L.P.,  
a New York limited partnership,

CA 01-04671 AB

Plaintiff,

v.

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

Defendants.

---

COPY / ORIGINAL  
RECEIVED FOR FILING

JAN 28 2003

DOROTHY H. WILKEN  
CLERK OF CIRCUIT COURT  
CIRCUIT CIVIL DIVISION

**DEFENDANTS MOTION FOR LEAVE TO AMEND TO ASSERT  
COUNTERCLAIM FOR DAMAGES**

Defendants, IVIEWIT.COM, INC., IVIEWIT HOLDINGS,  
INC. and IVIEWIT TECHNOLOGIES, INC., by and through their undersigned  
counsel, hereby move this Court for Leave to Amend their Answer so as to assert a  
counterclaim in this matter pursuant to Rule 1.170(f) of the Florida Rules of Civil  
Procedure and as grounds therefore would state as follows:

1. That the Defendants move to amend their answer in this matter so as to  
include a counterclaim in this matter, which by its nature appears to be a compulsory  
counterclaim to the extent that the issues arise out of the same nexus of events, as

justice requires that the counterclaim be tried at the same time as the complaint and answer so that all pending issues between the parties may be adjudicated in this action.

2. That as a result of fact that additional evidence in support of the Defendants' counterclaims is found in the Plaintiff's own files and records, the Plaintiff will not be prejudiced by the amendment of the Defendants' answer in this matter, nor will this matter be delayed as to the trial of same.

3. Defendants have attached hereto a copy of the proposed counterclaim.

WHEREFORE the Defendants, move this Honorable Court for the entry of an order permitting the Defendants to amend their answer in this matter.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 20<sup>th</sup> day of January, 2003 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

SELZ & MUVDI SELZ, P.A.  
214 Brazilian Avenue, Suite 220  
Palm Beach, FL 33480  
Tel: (561) 820-9409  
Fax: (561) 833-9715

By:   
\_\_\_\_\_  
STEVEN M. SELZ  
FBN: 777420



IN THE CIRCUIT COURT OF THE  
15<sup>th</sup> JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY,  
FLORIDA

PROSKAUER ROSE, LLP, a New York  
limited partnership,

Plaintiff,

vs.

CASE NO.: CA 01-04671 AB

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

Defendants,

---

**COUNTERCLAIM FOR DAMAGES**

COME NOW the Counter Plaintiffs, IVIEWIT.COM, INC., IVIEWIT  
HOLDINGS, INC., IVIEWIT TECHNOLOGIES, INC. and IVIEWIT LLC,  
hereinafter collectively referred to as "IVIEWIT" or Counter Plaintiffs, and hereby  
sues Counter Defendant, PROSKAUER ROSE, LLP, hereinafter "PROSKAUER",  
a New York limited partnership, and alleges as follows:

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

1. This is an action for damages in a sum greater than \$15,000.00, exclusive

of interest, taxable costs and attorneys fees.

2. Counter Plaintiff, IVIEWIT.COM, INC., is a Delaware corporation, formed by PROSKAUER, which at all times relevant hereto was authorized to conduct and conducted business in Palm Beach County Florida and the State of California.

3. Counter Plaintiff, IVIEWIT HOLDINGS, INC., is a Delaware corporation, formed by PROSKAUER, which at all times relevant hereto was authorized to conduct and conducted business in Palm Beach County Florida and California.

4. Counter Plaintiff, IVIEWIT TECHNOLOGIES, INC., is a Delaware corporation, formed by PROSKAUER, which at all times relevant hereto was authorized to conduct and conducted business in Palm Beach County Florida and the State of California.

5. IVIEWIT LLC, is a Florida limited liability company, formed by PROSKAUER, which, at all times relevant hereto, was authorized to conduct and conducted business in the Palm Beach County Florida and the State of California.

6. Counter Defendant PROSKAUER ROSE, LLP, (hereinafter "PROSKAUER") is a New York limited partnership, operating a law office in Boca Raton, Palm Beach County, Florida.

Boca Raton, Palm Beach County, Florida.

7. BRIAN G. UTLEY, (hereinafter "UTLEY") was at all times relevant hereto a sui juris resident of the State of Florida and who on or about September of 1999 was the president of Counter Plaintiff, IVIEWIT LLC.

8. CHRISTOPHER WHEELER, (hereinafter "WHEELER") is a sui juris individual and resident of Palm Beach County, Florida, who at all times relevant hereto was a partner of PROSKAUER and who provided legal services to the Counter Plaintiffs.

9. KENNETH RUBENSTEIN, (hereinafter "RUBENSTEIN") is a sui juris individual believed to be a resident of the State of New York and who various times relevant hereto was initially misrepresented by WHEELER as a partner of PROSKAUER and later became a partner of PROSKAUER, and who provided legal services to the Counter Plaintiffs both while at Meltzer, Lippie, et al., and PROSKAUER.

10. RAYMOND JOAO, (hereinafter "JOAO") is a sui juris individual believed to be a resident of the State of New York and who at all times relevant hereto was represented to be RUBENSTEIN's associate at PROSKAUER, when in fact JOAO has never been an employee of PROSKAUER but in fact was an employee of Meltzer, Lippie, et al.

11. That beginning on or about November of 1998, the Counter Plaintiff, IVIEWIT, through it's agent and principal, Eliot I. Bernstein ("Bernstein"), held discussions with WHEELER with regard to PROSKAUER providing legal services to the company involving specific technologies developed by Bernstein and two others, which technologies allowed for:

i) Zooming of digital images and video without degradation to the quality of the digital image due to what is commonly refereed to as "pixilation"; and,

ii) The delivery of digital video using proprietary scaling techniques; and,

iii) A combination of the image zoom techniques and video scaling techniques described above; and,

iv) The remote control of video cameras through communications networks.

12. That Bernstein engaged the services of PROSKAUER to provide legal services to the company to be formed, including corporate formation and governance for a single entity and to obtain multiple patents and oversee US and foreign filings for such technologies including the provisional filings for the technologies as described in Paragraph 11 above, the "Technology", and such

other activities as were necessary to protect the intellectual property represented by the Technology.

13. That at the time of the engagement of PROSKAUER, Bernstein was advised and otherwise led to believe that WHEELER was the PROSKAUER partner in charge of the account.

14. Upon information and belief, WHEELER, RUBENSTEIN and JOAO upon viewing the technologies developed by Bernstein, and held by IVIEWIT, realized the significance of the technologies, its various applications to communication networks for distributing video data and images and for existing digital processes, including, but not limited to digital cameras, digital video disks (DVD), digital imaging technologies for medical purposes and digital video, and that WHEELER, RUBENSTEIN and JOAO conspired to undertake and in fact undertook a deliberate course of conduct to deprive Bernstein and IVIEWIT of the beneficial use of such technologies for either the use of third parties, who were other clients of PROSKAUER and WHEELER, or for WHEELER, RUBENSTEIN and JOAO's own financial gain, to the detriment and damage of the Counter Plaintiffs.

15. That WHEELER, who was a close personal friend of UTLEY, recommended to Bernstein and other members of the board of directors of

IVIEWIT that the IVIEWIT engage the services of UTLEY to act as President of the Iviewit.com, LLC based on his knowledge and ability as to technology issues.

16. That at the time that WHEELER made the recommendation of UTLEY to the board of directors, that WHEELER knew that UTLEY was in a dispute with his former employer, Diamond Turf Products and the fact that UTLEY had misappropriated certain patents on hydro-mechanical systems to the detriment of Diamond Turf Products.

17. Additionally, WHEELER was fully aware of the fact that UTLEY was not the highly qualified "engineer" that UTLEY represented himself to be, and that in fact UTLEY lacked real engineering expertise or even an engineering degree and that UTLEY had been fired from Diamond Turf Products due to his misappropriation of patents.

18. That despite such knowledge, WHEELER never mentioned such facts concerning UTLEY to any representative of IVIEWIT and in fact undertook to "sell" UTLEY as a highly qualified candidate who would be the ideal person to undertake day to day operations of IVIEWIT and work on the patents, acting as a qualified engineer.

19. Additionally, WHEELER continued to assist UTLEY in perpetrating such fraud on both the Board of Directors of IVIEWIT and to third parties,

including Wachovia Bank, by approving a false resume for UTLEY to be included in seeking approval of a private placement for IVIEWIT.

20. That based on the recommendations of WHEELER, as partner of PROSKAUER, the board of directors agreed to engage the services of UTLEY as president.

21. That almost immediately after UTLEY's employment and almost one year after initially providing of services, WHEELER provided a retainer agreement for the providing of services by PROSKAUER to IVIEWIT LLC, addressed to UTLEY, a true and correct copy of such retainer agreement (the "Retainer") being attached hereto and made a part hereof as Exhibit "A". That the services provided were in fact to be paid out of the royalties recovered from the use of the Technology, which was to be included in patent pools overseen by RUBENSTEIN.

22. That the Retainer by its terms contemplated the providing of corporate and general legal services to IVIEWIT LLC by PROSKAUER and was endorsed by UTLEY on behalf of IVIEWIT LLC, the Board of Directors of IVIEWIT LLC would not have UTLEY authorized to endorse same as it did not include the intellectual property work which PROSKAUER had already undertaken.

23. That prior to the Retainer, PROSKAUER and WHEELER had provided

legal services to IVIEWIT, including services regarding patent procurement and acted to coordinate such services both internally and with outside counsel, including RUBENSTEIN and JOAO, including times when they were misrepresented as PROSKAUER attorneys.

24. That PROSKAUER billed IVIEWIT for legal services related to corporate, patent, trademark and other work in a sum of approximately \$800,000.00.

25. That PROSKAUER billed IVIEWIT for legal service never performed, double-billed by the use of multiple counsel on the same issue, and systematically overcharged for services provided.

26. That summaries of the billing statements provided by PROSKAUER to IVIEWIT are attached hereto and made a part hereof as Exhibit "B".

27. That based on the over-billing by PROSKAUER, IVIEWIT paid a sum in of approximately \$500,000.00 plus together with a 2.5% interest in IVIEWIT, which sums and interest in IVIEWIT was received and accepted by PROSKAUER.

28. That WHEELER, UTLEY, RUBENSTEIN, JOAO and PROSKAUER, conspired to deprive IVIEWIT of its rights to the technologies developed by Bernstein by:



a) Transferring patents using Foley & Lardner so as to name UTLEY as the sole holder of multiple patents in his individual name and capacity when in fact they were and arose from the technologies developed by Bernstein and others and held by IVIEWIT prior to UTLEY's employment with IVIEWIT, and;

b) Upon discovery of the "lapses" by JOAO, that WHEELER and PROSKAUER referred the patent matters to WILLIAM DICK, of Foley & Lardner, who was also a close personal friend of UTLEY and who had been involved in the diversion of patents to UTLEY at Diamond Turf Products; and,

c) Failing to list proper inventors of the technologies based on improper legal advice that foreign inventors could not be listed until their immigration status was adjusted, resulting in the failure of the patents to include their rightful and lawful inventors and the payment by IVIEWIT for unnecessary immigration work; and,

d) Failing to ensure that the patent applications for the technologies, contained all necessary and pertinent information relevant to the technologies and as required by law; and,

e) Failing to secure trademarks and copyrights and failing to complete trademark and copyright work for the use of proprietary names of IVIEWIT and source code for the Technologies of IVIEWIT as intellectual property, and;

f) Allowing the infringement of patent rights of IVEIWIT and the intellectual property of IVIEWIT by other clients of PROSKAUER and WHEELER, and;

g) Aiding JOAO in filing patents for IVIEWIT intellectual property by intentionally withholding pertinent information from such patents and not filing same timely, so as to allow JOAO to apply for similar patents in his own name, both while acting as counsel for IVIEWIT and subsequently.

29. As a direct and proximate result of the actions of the Counter Defendant, Counter Plaintiffs have been damaged in a sum estimated to be greater than \$10,000,000,000.00, based on projections by Gerald Stanley, CEO of Real 3-D (a consortium of Lockheed, Silicone Graphics and Intel) as to the value of the technologies and their applications to current and future uses together with the loss of funding from Crossbow Ventures as a result of such conduct.

30. All conditions precedent to the bringing of this action have occurred or have been waived or excused.

### **COUNT I- LEGAL MALPRACTICE**

31. This is an action for legal malpractice within the jurisdiction of this court.

32. Counter Plaintiff re-alleges and hereby incorporates that allegations of Paragraphs 1 through 30 as if fully set forth herein.

33. PROSKAUER employed by IVIEWIT for purposes of representing IVIEWIT to obtain multiple patents and oversee foreign filings for such technologies including the provisional filings for the technologies as described in Paragraph 11 above.

34. That pursuant to such employment, PROSKAUER owed a duty to ensure that the rights and interests of IVIEWIT were protected.

35. WHEELER, RUBENSTEIN, JOAO and PROSKAUER neglected that reasonable duty of care in the performance of legal services in that they:

a) Failed to take reasonable steps to ensure that the intellectual property of IVIEWIT was protected; and,

b) Failed to complete work regarding copyrights and trademarks; and,

c) Engaged in unnecessary and duplicate corporate and other work resulting in billing for unnecessary legal services believed to be in excess of \$400,000.00; and,

d) By redacting information from the billing statements regarding services provided so to as to give the appearance that the services provided by PROSKAUER were limited in nature, when in fact they involved various aspects of intellectual property protection; and,

e) By knowingly representing and agreeing to accept representation of

clients in conflict with the interests of IVIEWIT, without either consent or waiver by IVIEWIT.

36. That the negligent actions of PROSKAUER and its partners, WHEELER and RUBENSTEIN, resulted in and was the proximate cause of loss to IVIEWIT.

WHEREFORE, Counter Plaintiff demands judgement for damages against Defendant together with reasonable attorneys fees, court costs, interest and such other and further relief as this Court deems just and equitable.

### COUNT II- CIVIL CONSPIRACY

37. This is an action for civil conspiracy within the jurisdiction of this court.

38. Counter Plaintiff re-alleges and hereby incorporates that allegations of Paragraphs 1 through 30 as if fully set forth herein.

39. Defendant, PROSKAUER and UTLEY, WHEELER, RUBENSTEIN and JOAO, jointly conspired to deprive the Counter Plaintiffs of their rights and interest in the Technology.

40. That UTLEY, WHEELER, RUBENSTEIN, JOAO and PROSKAUER with such intent, directed that certain patent rights be put in the name of UTLEY and/or that such patent rights were modified or negligently pursued so as to fail to provide protection of the intellectual property, resulting in the ability of other clients of WHEELER, RUBENSTEIN, JOAO and PROSKAUER to make use of such

technologies without being liable to IVIEWIT for royalties normally arising from such use.

41. That PROSKAUER, without either consent of the Board of Directors or proper documentation, transferred securities to Tiedemann/Prolow Investment Group, which entity was also referred by WHEELER, who acted as counsel for such unauthorized transaction.

42. That upon the discovery of the above-described events and conspiracy, IVIEWIT's lead investor, Crossbow Ventures, ceased its funding of IVIEWIT.

43. That Crossbow Ventures, which was a referral of WHEELER, took a security interest in the Technology under the guise of protecting IVIEWIT and its shareholders from the actions of UTLEY, based on the filing of an involuntary bankruptcy (which was later withdrawn), and as to WHEELER and PROSKAUER based on the instant law suit, when in fact such conduct was motivated by Crossbow's attempts to wrongfully detain the interests of IVIEWIT in the Technology. Such conduct, upon information and belief, was undertaken with the knowledge and assistance of WHEELER and PROSKAUER.

44. As a direct and proximate result of the conspiracy and acts of PROSKAUER, UTLEY, WHEELER, JOAO and RUBENSTEIN, the Counter Plaintiffs have been damaged.

WHEREFORE, Counter Plaintiffs demand judgement for damages against Defendant together with court costs, interest and such other and further relief as this Court deems just and equitable.

**COUNT III- BREACH OF CONTRACT**

45. This is an action for breach of contract within the jurisdiction of this Court.

46. Counter Plaintiff re-alleges and hereby incorporates that allegations of Paragraphs 1 through 30 as if fully set forth herein.

47. Defendant, PROSKAUER, breached the contract with Counter Plaintiff, IVIEWIT LLC by failing to provide services billed for pursuant to the billing statements presented to the Counter Plaintiffs and over-billing for services provided.

48. That such actions on the part of PROSKAUER constitute breaches of the contract by and between IVIEWIT LLC and PROSKAUER.

49. That as a direct and proximate result of such conduct on the part of PROSKAUER, IVIEWIT LLC has been damaged by overpayment to PROSKAUER and the failure of PROSKAUER to perform the contracted for legal services.

WHEREFORE, IVIEWIT demands judgement for damages against Counter Defendant together with court costs, interest and such other and further relief as this Court deems just and equitable.

**COUNT IV- TORTIOUS INTERFERENCE WITH AN ADVANTAGEOUS  
BUSINESS RELATIONSHIP**

50. This is an action for tortious interference with an advantageous business relationship within the jurisdiction of this Court.

51. Counter Plaintiff re-alleges and hereby incorporates that allegations of Paragraphs 1 through 30 as if fully set forth herein.

52. Counter Plaintiff was engaged in negotiations of technology agreements with both Warner Bros. and AOL/Time Warner as to the possible use of the Technologies of the Counter Plaintiffs and investment in Counter Plaintiffs as a strategic partner.

53. That despite the prior representations of RUBENSTEIN, at a meeting held on or about November 1, 2000, by and between UTLEY, RUBENSTEIN and representatives of Warner Bros. as to the Technology of IVIEWIT and the efficacy, novelty and unique methodology of the Technology, RUBENSTEIN refused to subsequently make the same statements to representatives of AOL and Warner Bros., taking the position that since Warner Bros./AOL is "now a big client of Proskauer, I can't comment on the technologies of Iviewit." or words to that effect in response to inquiry from Warner Brother/AOL's counsel as to the status and condition of the pending patents on the intellectual property.

54. That RUBENSTEIN, having served as an advisor to the Board of Directors for IVIEWIT, was aware of the fact that at the time of the making of the statements set forth in Paragraph 50, above, IVIEWIT was in the midst of negotiations with AOL/Warner Bros. as to the possible funding of the operations of IVIEWIT in and sum of between \$10,000,000.00 and \$20,000,000.00.

55. Further, RUBENSTEIN as a partner of PROSKAUER, and despite his clear prior actions in representing the interests of IVIEWIT, refused to answer questions as to the enforcement of the Technology of IVIEWIT, with the intent and knowledge that such refusal would lead to the cessation of the business relationship by and between IVIEWIT and Warner Bros./AOL and other clients familiar with the Warner Bros./AOL technology group then in negotiations with IVIEWIT, including, but not limited to Sony Corporation, Paramount, MGM and Fox.

56. That the actions of RUBENSTEIN were and constituted an intentional and unjustified interference with the relationship by and between IVIEWIT and Warner Bros./AOL designed to harm such relationship and further motivated by the attempts to "cover-up" the conflict of interest in PROSKAUER's representation of both IVIEWIT and Warner Bros./AOL.

57. That indeed, as a direct and proximate result of the conduct of RUBENSTEIN, Warner Bros./AOL ceased business relations with IVIEWIT to the



damage and detriment of Counter Plaintiffs.

WHEREFORE, Counter Plaintiffs demand judgement for damages against Counter Defendant together with court costs, interest and such other and further relief as this Court deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 19<sup>th</sup> day of January, 2003 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

SELZ & MUVDI SELZ, P.A.  
214 Brazilian Avenue, Suite 220  
Palm Beach, FL 33480  
Tel: (561) 820-9409  
Fax: (561) 833-9715

By: 

STEVEN M. SELZ  
FBN: 777420

**Exhibit 9**



# THE FLORIDA BAR

CYPRESS FINANCIAL CENTER, SUITE 835  
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JOHN F. HARKNESS, JR.  
EXECUTIVE DIRECTOR

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July 1, 2003

## PERSONAL/FOR ADDRESSEE ONLY

Mr. Eliot Bernstein  
10158 Stonehenge Circle #801  
Boynton Beach, Florida 33437

Re: Your complaint against Christopher Clark Wheeler  
The Florida Bar File No. 2003-51,109(15C)

Dear Mr. Bernstein:

I have completed my review of your complaint, Mr. Wheeler's response, your letter of rebuttal and Mr. Wheeler's response thereto. I have also reviewed the banker's box of civil pleadings and orders, deposition transcripts, legal billing statements and other materials you submitted with the foregoing. Based on this review, I have found no basis for a bar investigation at this time.

Apparently, you retained Mr. Wheeler's law firm in 1998 to handle matters on behalf of your corporation, Iviewit.Com, Inc. In 2001, the firm sued your company for non-payment of legal bills in excess of \$369,000. Thereafter, your company filed a counterclaim for damages, alleging the same misconduct set forth in your bar complaint, including malpractice. Significant discovery has taken place (and continues), and your case has been set for trial on July 29-31, 2003 (*Proskauer Rose LLP v. Iviewit*, Case No. CA01-04671 AB) in Circuit Court in Palm Beach County, Florida.

Accordingly, the matter you present is a civil dispute which may not be resolved by the intervention of The Florida Bar. This is not to say that The Florida Bar has considered and determined the veracity of Mr. Wheeler's position as to the validity of your specific charges. Rather, because Mr. Wheeler has advanced a viable position, the Bar has deferred its consideration of the matter until a determination has been made, on the merits, by the civil court before which the matter is currently pending.

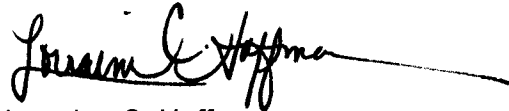
Based on the foregoing, and absent any basis for further ethical inquiry, I have dismissed your complaint and directed that The Florida Bar's file on this matter be closed. This determination does not preclude you from refileing this matter for further bar consideration, after the civil trial is concluded.

Please note that a copy of this file will be retained by The Florida Bar for one (1) year, at which time it will be destroyed. It is suggested to you and the attorney who is the subject of your complaint to maintain a **complete** copy of this file for future reference, if needed.

Mr. Eliot Bernstein  
Page 2  
July 1, 2003

On behalf of The Florida Bar, I thank you for the opportunity to review and respond to your complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Lorraine C. Hoffmann", with a long horizontal line extending to the right.

Lorraine C. Hoffmann  
Assistant Staff Counsel

LCH/dm

cc: Christopher Clark Wheeler