

**Candice Bernstein**

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**From:** Candice Michelle Bernstein [candiceb@adelphia.net]  
**Sent:** Wednesday, December 15, 2004 6:22 AM  
**To:** 'arrmatey@courtzero.org'  
**Subject:** FW: MAJOR CONFLICT OF INTEREST PAST PRESIDENT NY BAR - LAW FIRM ACCUSED OF STEALING BILLION DOLLAR TECHNOLOGY  
**Importance:** High  
**Sensitivity:** Confidential  
**Attachments:** NYBAR STRIKE RUBENSTEIN RESPONSE - COMPLAINT AGAINST KRANE.pdf

To whom it may concern,

The following case has now erupted into two supreme court cases. Florida Bar was also found in similar conflict and led to Florida Supreme Court Case SC04-1078 ([http://jweb.flcourts.org/pls/docket/ds\\_docket\\_search%20](http://jweb.flcourts.org/pls/docket/ds_docket_search%20)) and the Krane conflict has led to a First Dept (NY) court ordered investigation of the complaints. The matters in NY have now led to conflict with Chief Justice Judith Kaye and in FL to the President of the bar Kelly Overstreet Johnson. I need some legal help, but my faith in attorneys and the system regulating them has diminished. I saw your efforts and thought perhaps there is an honest lawyer, and that maybe you could help or help refer me to some people who could help.

Please feel free to call me at 561-364-4240 if you have an interest in this matter and righting the many wrongs. Please see the attached document for more information  
 Eliot

**NEW YORK BAR PAST PRESIDENT IN MOST BIZARRE CONFLICT OF INTEREST - PROSKAUER ROSE INVOLVED IN COVERING UP TECHNOLOGY THEFT BY THEIR FIRM THROUGH HIGHLY UNETHICAL MANIPULATION OF THE STATE BAR OF NY!!!! MAJOR CONFLICT OF INTEREST BY THE PAST PRESIDENT OF & CURRENT MEMBER OF THE NEW YORK BAR! LAW FIRM THAT CONTROLS PATENT POOLS ACCUSED OF STEALING BILLION DOLLAR TECHNOLOGIES!!!! IVIEWIT & CROSSBOW VENTURES(tm) FILE CHARGES OF FRAUD ON THE UNITED STATES PATENT AND TRADEMARK OFFICE BY THEIR PATENT ATTORNEY'S AND THE COMMISSIONER OF THE UNITED STATES PATENT AND TRADEMARK OFFICE MOVES TO PUT PATENTS INTO A SIX MONTH SUSPENSION PENDING INVESTIGATION!!! IVIEWIT SEEKING HELP IN BATTLING CORRUPT PROCESSES IN THE CONCEPT OF ANTICOMPETITIVE PATENT POOLS. READ ALL ABOUT IT.**

**Subject:**  
**Importance:** High  
**Sensitivity:** Confidential

Dear Mr. Cahill,

Attached is complaint against Mr. Steven Krane of Proskauer Rose LLP and past President of the New York State Bar Association in his highly unethical response on behalf of Respondent Kenneth Rubenstein in the NYSBA 2003.0351 complaint against Rubenstein and Proskauer Rose LLP. This conflict of interest appears to tear at the very fabric of justice and we demand immediate action to correct such sham on the New York State Bar Association.

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

**From:** Eliot I. Bernstein [mailto:iviewit@adelphia.net]  
**Sent:** Thursday, May 20, 2004 2:43 PM  
**To:** 'Thomas J. Cahill, Chief Counsel - First Judicial Department Departmental Disciplinary

8/5/2006

**Committee'**

**Cc:** 'P. Stephen Lamont, Chief Executive Officer - Iviewit Holdings, Inc.'; 'Harry I. Moatz - Director Office of Enrolment & Discipline - United States Patent and Trademark Office'; 'Barbara Williams, Bar Counsel - Virginia State Bar'; 'Alan S. Jaffe, Chairman - Proskauer Rose LLP - On behalf of all Proskauer Rose Partners'; 'Huizenga Holdings, Inc. - H. Wayne Huizenga Jr.'; 'The Goldman Sachs Group, Inc.'; 'Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris - Alan Epstein, Esq.'; 'James R. Jackoway, Esq. Partner - Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris'; 'Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris - Michele Mulrooney, Esq. - Michele Mulrooney, Esq.'; 'Huizenga Holdings Incorporated - Cris Branden'; 'Crossbow VenturesT - Stephen J. Warner'; 'Atlas Entertainment - Allen Shapiro President'; 'Bridge Residential Advisors, LLC - James A. Osterling, President'; 'Cornell Partners - Caroline Prochotska Rogers, Esq.'; 'Flaster Greenberg P.C. - Marc R. Garber, Esq.'; 'Donlad G. Kane II'; 'Jude Rosario (E-mail 2)'; 'Zakirul Shirajee (E-mail)'; 'Law Office of Mark W. Gaffney'; 'UBS/Paine Webber Inc. - Mitchell Welsch'; 'Quintile Wealth Management - Kenneth Anderson, Partner'; 'Patty Daniels Town & Country Studio - Patty Daniels, Owner'; 'Ellen Degeneres c/o Amber Cordero'; 'Richard D. Rosman, APC - Richard D. Rosman, Esq.'; 'Rock-It Cargo USA Incorporated LA - Andrew R. Dietz'; 'Rock-It Cargo USA Incorporated LA - Barry Becker'; 'Selz & Muvdi Selz, P.A. - Steven Selz, Esq.'; 'Silver Young Fund - Alan Young'; 'Sony Pictures Digital Entertainment - Divisional CIO of Motion Pictures and Television'; 'Vulcan Ventures - David J. Colter, Vice President Technology'; 'Warner Bros. - John D. Calkins, Senior Vice President New Media Business Development'; 'Air Apparent Incorporated - Donna Dietz, President'; 'Anderson Howard Electric Inc.'; 'jarmstrong1@comcast.net'; 'anthony.frenden@disney.com'; 'Chuck Brunelas (E-mail)'; 'Guy T. Iantoni (E-mail)'; 'Jack P. Scanlan (E-mail)'; 'Jill Iantoni (E-mail)'; 'Joan & Jeff Stark (E-mail)'; 'Joseph A. Fischman (E-mail)'; 'Lisa Sue Friedstein (E-mail)'; 'Maurice R. Buchsbaum (E-mail)'; 'Sal Gorge (E-mail)'; 'George deBidart (E-mail)'; 'Ginger Ekstrand (E-mail)'; 'Caroline Prochotska Rogers Esquire (E-mail)'; 'Caroline Prochotska Rogers Esquire (E-mail 2)'; 'James F. Armstrong (E-mail)



Very truly yours,

Eliot I Bernstein  
Founder

I View It Technologies, Inc.  
10158 Stonehenge Circle  
Suite 801  
Boynton Beach, FL 33437-3546  
561.364.4240  
iviewit@adelphia.net

THIS MESSAGE AND ITS EMBEDDED FILES INCORPORATED HEREIN 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 IT'S ATTACHMENTS. PLEASE DELETE THE MESSAGE AND ITS EMBEDDED 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, UNLESS EXPRESSLY DESIGNATED BY THE SENDER. THANK YOU!

Article 1, section 8, clause 8 of the United States Constitution provides:

"Congress shall have the power ... to promote the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their Respective Writings and Discoveries."



## IVIEWIT HOLDINGS, INC.

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

May 20, 2004

### **By Facsimile**

Thomas J. Cahill  
Chief Counsel  
First Judicial Department Departmental Disciplinary Committee  
61 Broadway, 2nd Floor  
New York, New York 10006

Re: **Complaint of Iviewit Holdings, Inc., Against Kenneth Rubenstein, Esq., Docket 2003.0531: Demand to Strike Response**

Dear Mr. Cahill:

By way of introduction, I am Chief Executive Officer (Acting) of Iviewit Holdings, Inc. and its subsidiaries (collectively, "Company") with a background of which the Company invites you to view at <http://www.iviewit.com/management.htm> and I write to demand the striking of the response of Kenneth Rubenstein ("Respondent") to the Company's New York State Bar Association Complaint of February 26, 2003 ("Complaint").

Moreover, upon information belief, the response of Respondent was authored by Steven C. Krane a partner at Proskauer Rose LLP, then the direct past President of the New York State Bar Association ("NYSBA") whom held a myriad of positions of influence at the NYSBA at the time he authored the response for Respondent, also a partner of Proskauer Rose LLP. The conflict of interest is inherent that while maintaining such positions of influence at the NYSBA, Mr. Krane was also a partner of the same law firm as Respondent, Proskauer Rose LLP, and it is astounding that the NYSBA would allow one with such a highly conflicted position to even be part of the response process of the Respondent, let alone sign a document authored in his defense. In fact, the Complaint against the Respondent transcends his singular role as an attorney in the matter and in all other state and federal complaints is directed at the entire firm of Proskauer Rose LLP. This so taints both the entire review of this matter in addition to tainting the NYSBA that we demand a review of this matter by an unbiased party with authority over the discipline of New York attorneys and discipline over the NYSBA. Presently, Mr. Krane holds the following positions, whereby the matter against Respondent must elevate beyond any association with any organization where Mr. Krane has any form of influence that could further prejudice this matter in favor of his partner, Kenneth Rubenstein and their law firm Proskauer Rose LLP:

- NEW YORK STATE BAR ASSOCIATION, MEMBER, HOUSE OF DELEGATES, 1996 - PRESENT
- NEW YORK STATE BAR ASSOCIATION, VICE-CHAIR, COMMITTEE ON THE FUTURE OF THE PROFESSION, 1997 – PRESENT



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- NEW YORK STATE BAR ASSOCIATION, CHAIR, SPECIAL COMMITTEE TO REVIEW THE CODE OF PROFESSIONAL RESPONSIBILITY, 1995 – PRESENT
- NEW YORK STATE BAR ASSOCIATION, MEMBER, SPECIAL COMMITTEE TO REVIEW THE CODE OF PROFESSIONAL RESPONSIBILITY, 1992-1995
- NEW YORK STATE BAR ASSOCIATION, MEMBER, COMMITTEE ON PROFESSIONAL ETHICS, 1990-1994
- NEW YORK STATE BAR ASSOCIATION, CHAIR, TASK FORCE ON SIMPLIFICATION OF LAW, 1989-1991; MEMBER 1988-1989, 1991-1992
- NEW YORK STATE BAR ASSOCIATION, MEMBER, COMMITTEE ON COURTS OF APPELLATE JURISDICTION, 1984-1988
- FINALLY, AT THE TIME OF HIS RESPONSE FOR RESPONDENT, KRANE WAS THE IMMEDIATE PAST PRESIDENT OF THE NEW YORK STATE BAR

Accordingly, by the authorship of the response of Respondent, said response cannot be viewed in an unbiased manner, and is so highly conflicted, that it constitutes no response at all in the defense of Respondent and should be stricken in his defense according to the demand stated herein. Furthermore, once stricken, Respondent has made no response at all in his defense, whereby the Company demands the immediate investigation of its specific, factual allegations against Respondent and Mr. Krane by an unbiased third party with a view towards administering discipline, whether by admonishment, reprimand, suspension, resignation, or disbarment, but preferably move this matter to the next higher level of review where Mr. Krane has no membership or appointed position.

Let this letter serve additionally as a formal complaint against Mr. Krane with NYSBA and any oversight department for the NYSBA. We charge that Mr. Krane has a multiplicity of conflicts of interests in his highly unethical and self-serving behavior of using his position of influence at the NYSBA designed to protect consumer interests against unethical attorneys, to attempt to malign justice in favor of an attorney who is his partner and his law firm Proskauer Rose LLP and exculpate them from such charges. If you need any further form of formal complaint filed against Mr. Krane, please notify us immediately.

We also ask for a formal retraction and redaction from Mr. Krane of every statement made by him in defense of the Respondent, so that we may circulate such retraction and redaction to every state and federal agency currently reviewing the matter against Respondent and the entire law firm of Proskauer Rose LLP, whom have also been tainted by such maligned statements. Since the Respondent's response defense has been used as defense in the following investigations and court cases a retraction/redaction is necessary in order that the Company may notify such authorities of the biases inherent in the defense for:

- Complaint against Christopher C. Wheeler with The Florida State Bar
- Complaint against William J. Dick with the Virginia State Bar
- Complaint against Raymond Joao with the NYSBA
- Proskauer Rose LLP v. Iviewit in the 15<sup>th</sup> Civil Circuit Court of West Palm Beach, FL.



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Furthermore, although distinct complaints have been filed against Raymond Joao who is not a Proskauer Rose LLP attorney, yet upon information and belief we have been told by the NYSBA that the two complaints have been merged we demand an immediate uncoupling so that the Joao complaint does not suffer the bias inherent in the Respondent's Complaint. We ask similarly that the same actions as directed herein for Respondent's Complaint be administered to Joao's complaint.


Finally, Mr. Krane in his defense on behalf of Respondent attempts an unfounded attack on the statements made by the inventor Eliot Bernstein whom all such personal affronts seem worthless in view of recent complaints filed against Proskauer Rose LLP and Respondent to the Commissioner of Patent & Trademarks for the United States Patent & Trademark Office whereby claims of **FRAUD UPON THE UNITED STATES PATENT & TRADEMARK OFFICE** by Respondent and the entire firm of Proskauer Rose LLP, including MR. Krane, were co-signed by the Company's largest investor, Stephen J. Warner, Chairman & Co-Founder of Crossbow Ventures, Inc the largest and most prominent venture fund in South Florida.

Attached to this communication are the following items:


- Biography of Steven Krane from the Proskauer Rose LLP website
- Biography of Kenneth Rubenstein from the Proskauer Rose LLP website
- Response of Steven Krane on behalf of Kenneth Rubenstein and Proskauer Rose LLP to the NY Bar
- Rebuttal of Iviewit (without exhibits) to response of Steven Krane on behalf of the Iviewit shareholders

Very truly yours,

**IVIEWIT HOLDINGS, INC.**

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: 2004.05.20 13:51:23  
-04'00'

By:  **Eliot I. Bernstein**  
Eliot I. Bernstein  
President & Founder

Digitally signed by Eliot I. Bernstein  
DN: CN = Eliot I. Bernstein, C = US, O = Iviewit  
Reason: I am the author of this document  
Date: 2004.05.20 13:37:27 -04'00'



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Cc: Office of New York State Attorney General Elliott Spitzer  
New York County District Attorney, Frauds Bureau  
The Court of Appeals

- Chief Judge Judith S. Kaye
- Hon. George Bundy Smith
- Hon. Carmen Beauchamp Ciparick
- Hon. Albert M. Rosenblatt
- Hon. Victoria A. Graffeo
- Judge Susan P. Read
- Hon. Robert S. Smith

Jon W. Dudas, Director of the United States Patent & Trademark Office  
Harry I. Moatz, Director of Office of Enrollment & Discipline for the United States  
Patent & Trademark Office  
Special Agent Stephen Lucchesi, West Palm Beach Office of Federal Bureau of  
Investigation  
Chairperson 15C, The Florida State Bar  
Detective Robert Flechaus, Boca Raton Police Department and Securities & Exchange  
Commission  
Barbara Williams & Noel Sengel, Virginia State Bar  
Iviewit Shareholders  
Proskauer Rose LLP - Partners



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EXHIBIT 1 – BIOGRAPHY OF STEVEN KRANE OF THE LAW FIRM  
PROSKAUER ROSE LLP

**STEVEN C. KRANE**

Phone 212.969.3435  
[skrane@proskauer.com](mailto:skrane@proskauer.com)

New York, NY  
 PARTNER

**New York, NY Office:**

1585 Broadway  
 Fax 212.969.2900

**Practice Areas:**

Alternative Dispute Resolution  
 Constitutional  
 Commercial Litigation  
 Securities  
**Sports**  
**Trademark & False Advertising**  
 Appellate  
 Legal Ethics Counseling  
 Gambling / Lotteries  
 Licensing / Sports  
 Limited Liability Companies And Partnerships

**Education:**

- NEW YORK UNIVERSITY SCHOOL OF LAW, J.D., 1981
- EDITOR, NEW YORK UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLITICS, 1979-1981
- STATE UNIVERSITY OF NEW YORK AT STONY BROOK, B.A., CUM LAUDE, 1978
- PHI BETA KAPPA

**Bar Admission:**

- 1982 NEW YORK

**Court Admissions:**

- 1982 U.S. DISTRICT COURT, NEW YORK, EASTERN DISTRICT
- 1982 U.S. DISTRICT COURT, NEW YORK, SOUTHERN DISTRICT
- 1987 U.S. COURT OF APPEALS, SECOND CIRCUIT
- 1987 U.S. SUPREME COURT
- 1997 U.S. COURT OF APPEALS, SIXTH CIRCUIT

**Bar Affiliations:**

- NEW YORK STATE BAR ASSOCIATION, PRESIDENT, 2001-2002
- NEW YORK STATE BAR ASSOCIATION, MEMBER, HOUSE OF DELEGATES, 1996 - PRESENT
- NEW YORK STATE BAR ASSOCIATION, VICE-CHAIR, COMMITTEE ON THE FUTURE OF THE PROFESSION, 1997 - PRESENT
- NEW YORK STATE BAR ASSOCIATION, CHAIR, SPECIAL COMMITTEE TO REVIEW THE CODE OF PROFESSIONAL RESPONSIBILITY, 1995 - PRESENT
- NEW YORK STATE BAR ASSOCIATION, MEMBER, SPECIAL COMMITTEE TO REVIEW THE CODE OF PROFESSIONAL RESPONSIBILITY, 1992-1995
- NEW YORK STATE BAR ASSOCIATION, MEMBER, COMMITTEE ON PROFESSIONAL ETHICS, 1990-1994
- NEW YORK STATE BAR ASSOCIATION, CHAIR, TASK FORCE ON SIMPLIFICATION OF LAW, 1989-1991; MEMBER 1988-1989, 1991-1992
- NEW YORK STATE BAR ASSOCIATION, MEMBER, COMMITTEE ON COURTS OF APPELLATE JURISDICTION, 1984-1988
- ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, CHAIR, COMMITTEE ON PROFESSIONAL AND JUDICIAL ETHICS, 1993-1996
- ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, SECRETARY, COMMITTEE ON PROFESSIONAL AND JUDICIAL ETHICS, 1985-1988
- ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, MEMBER, COMMITTEE ON PROFESSIONAL AND JUDICIAL ETHICS, 1990-1993
- ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, CHAIR, DELEGATION TO THE NYSBA HOUSE OF DELEGATES, 1997 - PRESENT; MEMBER 1996 - PRESENT
- ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, MEMBER, COMMITTEE ON PROFESSIONAL RESPONSIBILITY, 1985-1988
- ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, CHAIR, SUBCOMMITTEE ON PROVISION OF LEGAL SERVICES, 1987-1988



- ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, MEMBER, COMMITTEE ON FEDERAL COURTS, 1996 - PRESENT
- ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, MEMBER, AD HOC COMMITTEE ON PRIVATE LEGAL REFERRAL SERVICES, 1987-1989
- ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, MEMBER, AD HOC COMMITTEE ON MASS DISASTER PREPAREDNESS, 1996 - PRESENT
- ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, MEMBER, SPECIAL COMMITTEE ON GOVERNMENT ETHICS, 1988-1990
- NEW YORK STATE BAR ASSOCIATION, MEMBER, EXECUTIVE COMMITTEE, JUNE 1998 -

**Other Affiliation:**

- AMERICAN LAW INSTITUTE, MEMBER, 1993 - PRESENT

**Clerkship:**

- LAW CLERK, HON. JUDITH S. KAYE, NEW YORK STATE COURT OF APPEALS, ALBANY, NY, 1984-1985

**Government Service:**

- CHAIR, GRIEVANCE PANEL, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK, 1995 - PRESENT
- MEMBER, DEPARTMENTAL DISCIPLINARY COMMITTEE OF THE APPELLATE DIVISION, FIRST DEPARTMENT, 1996 - PRESENT
- SPECIAL TRIAL COUNSEL, DEPARTMENTAL DISCIPLINARY COMMITTEE OF THE APPELLATE DIVISION, FIRST DEPARTMENT, 1991-1993
- MEMBER, NEW YORK STATE OFFICE OF COURT ADMINISTRATION TASK FORCE ON ATTORNEY PROFESSIONALISM AND CONDUCT, 1996 - PRESENT

**Biography:**

Steven Krane joined Proskauer upon his graduation from the New York University School of Law in 1981, taking a year off in 1984-85 to serve as law clerk to Judge Judith S. Kaye of the New York Court of Appeals. He became a partner in the Litigation and Dispute Resolution Department in 1989. Although a general commercial litigator, Steven has considerable experience in representing sports leagues and teams in a wide variety of matters, and also maintains a practice concentration in the field of legal ethics and professional responsibility.

**Sports Law**

Sports leagues and teams frequently need advice on a wide variety of issues, and Steven has been consulted by them on questions relating to, among other things, antitrust law, trademark law and labor relations. Over the past several years, Steven has represented the National Basketball Association, National Hockey League, Major League Baseball, Major League Soccer and the Women's National Basketball Association in a broad range of litigated and non-litigated matters. Among the more prominent matters in which Steven has been involved were the NBA's successful challenge to Oregon's basketball lottery, the Bridgeman and Williams antitrust lawsuits that led to the NBA's 1988 and 1994 collective bargaining agreements, the NBA players' 1995 campaign to "decertify" their union, and the 1991 arbitration concerning Patrick Ewing's claimed status as an unrestricted free agent.

A few months ago, Steven brought to a successful conclusion a racketeering case brought against the NHL by an alleged class of former players against the League and Alan Eagleson, the former Executive Director of the players' union. The players contended that the NHL and its team owners permitted Eagleson to divert money from the players' union for his own personal benefit in exchange for concessions in collective bargaining. Steven is currently defending Major League Soccer in an antitrust class action challenging the terms and conditions under which professional soccer players are employed. Major League Soccer is not a traditional, franchise-based sports league, but is structured as a single entity. The litigation, which challenges the structure of the league, has far-reaching implications for all sports leagues.

He has also been involved in successfully lobbying the U.S. Congress, which led to the Professional and Amateur Sports Protection Act of 1992 -- the law that prohibits most sports betting in the United States -- and the Governor of Oregon who, in response to legal arguments, withdrew his support for sports betting at gambling casinos in the state.

**Professional Responsibility/Ethics**

It has been said that "sometimes even lawyers need lawyers." Steven has been active in representing

lawyers and law firms in a variety of professional matters, such as defending them against charges before grievance and disciplinary committees, representing them in disputes concerning admission to the bar, defending them in cases charging that they participated in securities fraud committed by their clients, as well as rendering opinions and otherwise counseling them on a broad range of ethical issues. He has served as a litigation consultant and has been an expert witness on a variety of issues such as conflicts of interest and solicitation of clients by lawyers leaving a law firm. Steven has written extensively on issues of professional responsibility. One of his major articles, "When Lawyers Represent Their Adversaries: Conflicts of Interest Arising out of the Lawyer-Lawyer Relationship," was published in the Hofstra Law Review in 1995 and has been relied upon by the American Law Institute's Restatement of the Law Governing Lawyers.

Steven currently serves as Chair of the New York State Bar Association's Committee on Standards of Attorney Conduct, the successor to the Special Committee to Review the Code of Professional Responsibility. These groups conducted a five-year project of reviewing and proposing a series of amendments to the ethical rules governing lawyers, which were adopted by the New York courts in 1999. He is a member at large of that Association's Executive Committee and a Fellow of the New York Bar Foundation. He served as a member of the NYSBA Committee on Professional Ethics for four years (1990-94). On June 1, 2001, he took office as President of the NYSBA, the youngest person ever to hold that post.

Steven spent nine of the 11 years from 1985 to 1996 associated in various capacities with the Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York, most recently serving a three-year term as the Committee Chair. During his tenure, the City Bar Ethics Committee published an unprecedented 35 formal opinions on a broad range of topics of general interest to the bar. Additionally, he has been a member of the New York State Office of Court Administration Task Force on Attorney Professionalism and Conduct since 1996, and was elected to membership in the American Law Institute in 1993. Steven served as a Hearing Panel Chair for both the Departmental Disciplinary Committee for the First Judicial Department and the Committee on Grievances of the United States District Court for the Southern District of New York. He also previously served as a special prosecutor for the First Department Disciplinary Committee.

Steven has taught and lectured extensively in both of his fields of concentration. He developed and taught a course in sports law at the Georgia Institute of Technology, and for several years taught legal ethics at the Columbia University School of Law as a member of its adjunct faculty. He is a frequent lecturer on professional responsibility and on antitrust and other issues affecting the sports industry.



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May 19, 2004  
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EXHIBIT 2 – BIOGRAPHY OF KENNETH RUBENSTEIN OF THE LAW FIRM  
PROSKAUER ROSE LLP

**KENNETH RUBENSTEIN**

Phone 212.969.3185  
 krubenstein@proskauer.com

New York, NY  
 PARTNER

**New York, NY Office:**

1585 Broadway  
 Fax 212.969.2900

**Practice Areas:**

**Antitrust**  
 Licensing / Computer Software  
**Copyright**  
 Commercial Litigation  
**Intellectual Property & Computer**  
 Regulatory / Fcc  
**Trademark & False Advertising**  
 International  
 Israeli Companies  
 Japanese Companies  
 Pacific Rim  
**Entertainment, Media, Information & Technology**

Internet Commerce  
 Licensing / General Commercial  
 Licensing / Entertainment  
 Regulatory / Ftc  
**Patent Law**  
**Non-Compete & Trade Secrets**

**Education:**

- NEW YORK LAW SCHOOL, J.D., CUM LAUDE, 1983
- MASSACHUSETTS INSTITUTE OF TECHNOLOGY, PH.D., 1979
- MASSACHUSETTS INSTITUTE OF TECHNOLOGY, B.S., 1975

**Bar Admissions:**

- 1983 NEW YORK
- 1984 NEW JERSEY

**Court Admissions:**

- 1984 U.S. DISTRICT COURT, NEW JERSEY
- 1984 U.S. DISTRICT COURT, NEW YORK, EASTERN DISTRICT
- 1984 U.S. DISTRICT COURT, NEW YORK, SOUTHERN DISTRICT

**Bar Affiliation:**

- REGISTERED TO PRACTICE BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE, 1982

**Biography:**

Ken received his Ph.D. in physics from the Massachusetts Institute of Technology where he also graduated with a B.S. Degree.

Ken received his law degree, cum laude, from New York Law School. He is a registered patent attorney before the U.S. Patent & Trademark Office. Ken is a former member of the legal staff at Bell Laboratories. While there are numerous patent law groups at various firms, Ken and his group distinguish themselves from competitors by being able to deal with very sophisticated technology.

Ken and his group are currently undertaking a number of significant patent and high tech litigations. The group is representing Alcatel, one of the world's leading telecommunications equipment companies, in a major trade secret case against a competitor. The group is also representing Standard Microsystems in a litigation related to Fast Ethernet LANs, Hauppauge Computer in a litigation involving video cards for personal computers, and System Management Arts in a litigation involving object oriented software. The group has also been involved in patent litigation relating to semiconductor memories and service platforms for providing enhanced telecommunications services.

Ken has worked on the formation of a patent pool for MPEG-2 technology, first on behalf of CableLabs, the research and development consortium of the cable TV industry, and now on behalf of MPEG LA LLC, an entity set up to license MPEG-2 essential patents. In particular, Ken worked on selecting those patents which are "essential" to the MPEG-2 standard and therefore suitable for inclusion in the pool. He worked with major

consumer electronics companies and set top makers in doing this job. Under this arrangement, the MPEG-2 "essential" patents of a number of major companies are being made available in a single license. The pool has been operational since July 1997 and now has over one hundred and fifty licensees and royalty revenues in nine figures.

This pioneering approach to licensing has been utilized in other contexts. Ken and his associates are now working on another patent pool involving large consumer electronics and entertainment companies concerning DVD technology.

Ken's group is also working on evaluating patents for a pool for the IEEE 1394 standard which is related to interconnecting PCs and various peripherals and a pool for the HAVi standard which is related to interconnection of home audio/video devices.

Ken counsels his clients with respect to the validity and infringement of competitors' patents. Such clients include Standard Microsystems, an IC and local area network component company; C-Cube Microsystems, a developer of video encoder and decoder chips; Divicom, a developer of video encoders and decoders; Starlight Networks, a developer of video server software; and Maker Communications, Inc., a developer of telecommunications integrated circuits. In the area of cryptography, Ken represents Telcordia and CableLabs. He has in the past also represented Tele-TV, a joint venture of NYNEX, Bell Atlantic and Pacific Telesis.

Ken is also heavily involved in licensing, technology transfer and joint development. Ken has successfully concluded a number of license and technology transfer agreements for his clients with companies such as Lucent and Intel.

Ken and his wife, Randee, a social worker, have four children, Ari, Sara, Debbie and Rebecca. Ken enjoys baseball and reading, especially history books.



Thomas J. Cahill  
May 19, 2004  
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EXHIBIT 3 – RESPONSE OF KENNETH RUBENSTEIN AUTHORED BY STEVEN  
KRANE TO THE NEW YORK STATE BAR TO THE COMPLAINT FILED ON  
BEHALF OF IVIEWIT HOLDINGS, INC.

# PROSKAUER ROSE LLP

1585 Broadway  
New York, NY 10036-8299  
Telephone 212.969.3000  
Fax 212.969.2900

**Steven C. Krane**  
Member of the Firm

Direct Dial 212.969.3435  
skrane@proskauer.com

LOS ANGELES  
WASHINGTON  
BOCA RATON  
NEWARK  
PARIS

April 11, 2003

## **Via Hand Delivery**

Thomas J. Cahill, Esq.  
Chief Counsel  
Departmental Disciplinary Committee  
First Judicial Department  
61 Broadway  
New York, New York 10006

Re.: Complaint of Eliot I. Bernstein against Kenneth Rubenstein, Esq.  
Docket No. 2003.0531

Dear Mr. Cahill:

This letter is in response to your March 6, 2003 letter to Kenneth Rubenstein and the accompanying complaint filed by Eliot I. Bernstein. As you would expect, both Mr. Rubenstein and Proskauer take this matter very seriously. Obviously, if you need any further information or documentation, we welcome the opportunity to assist in that regard.

## **Summary**

Before addressing the allegations in detail, we would like to provide you with a summary of certain key points to be made below in our response:

- The Disciplinary Complaint of Mr. Bernstein must be understood in the context of a fee litigation brought by Proskauer against Mr. Bernstein's company Iviewit to collect outstanding fees of \$370,000 and the fact that Iviewit is a failed "dot.com" company looking for someone to blame for its failure.
- For Mr. Bernstein's allegations to be true, Mr. Rubenstein and Proskauer would have had to act totally against their own economic interests. Proskauer owns 2.5% of Iviewit. Why would Proskauer engage in an alleged conspiracy to cause Iviewit \$10 billion in damages, and thereby cause Proskauer itself to lose \$250 million? This is an amount

more than twenty times larger than the cumulative amount paid to Proskauer by its largest client in the 2002 fiscal year.

- Iviewit's own conduct shows that it does not really believe the allegations in the complaint. While Iviewit's CEO, Mr. Bernstein, is alleging that in the years 2000 and 2001 Mr. Rubenstein participated in a conspiracy to steal Iviewit's technology, on November 20, 2002, Iviewit presented Mr. Rubenstein with a letter requesting that he perform legal work for Iviewit. The Committee should consider how a party could almost simultaneously make serious allegations with respect to the conduct of an attorney and also request (or more accurately, pressure) the very same attorney to represent it.
- Mr. Bernstein has presented no evidence whatsoever to support the allegations in the complaint. In contrast, the deposition and documentary evidence presented below, show that the accusations are without merit. The evidence shows Mr. Rubenstein performed no patent work for Iviewit and engaged in no activities whatsoever that were adverse to Iviewit.
- Excerpts of Mr. Bernstein's deposition taken in the aforementioned litigation show that he lacks credibility with respect to the allegations in the complaint.

### **Background**

The complaint relates to an attorney-client relationship between Proskauer (primarily its Boca Raton, Florida office) and several corporations bearing the name "Iviewit," of which Mr. Bernstein was a principal. Christopher Wheeler, a partner resident in Proskauer's Boca Raton office, was primarily responsible for representing Iviewit as general corporate counsel from approximately December 1998 through May 2001, when Proskauer withdrew from its representation due to Iviewit's nonpayment of Proskauer's legal bills. During this two and a half year relationship, approximately twenty Proskauer attorneys in its Florida and New York offices performed a vast array of corporate, securities, restructuring, and refinancing work for the Iviewit entities. However, as will be shown below, neither Proskauer nor Mr. Rubenstein performed any patent work for Iviewit.

Iviewit fell victim to the same plague that affected many "dot.com" companies during this time period -- a lack of funding. As a result, Iviewit suffered financial problems, and amounts owed to Proskauer continued to grow. Ultimately, Iviewit owed Proskauer a total of almost \$370,000 for legal services by the time Proskauer ceased to represent it. When Iviewit was unable to arrive at a satisfactory payment arrangement, Proskauer filed a lawsuit in May 2001 in Palm Beach County, Florida Circuit Court (the "Litigation") seeking to collect its attorneys' fees. The action is entitled *Proskauer Rose LLP v. Iviewit.com, Inc. et al.*, Case No. CA 01-04671 AB (the



"Litigation"), and is currently set for trial in West Palm Beach, Florida on May 28-29, 2003. A copy of the Amended Complaint filed in the Litigation is attached hereto as **Exhibit 1**.

On January 28, 2003, after the Litigation had been pending for over 21 months, Iviewit sought leave to assert what it contended was a **\$10 billion** counterclaim, raising allegations similar to those contained in Mr. Bernstein's complaint against Mr. Rubenstein. A copy of the proposed counterclaim is attached hereto as **Exhibit 2**. The Court denied Iviewit's motion for leave to amend by order dated February 4, 2003, a copy of which is attached as **Exhibit 3**. Mr. Bernstein's complaint against Mr. Rubenstein followed on the heels of that denial.<sup>1</sup>

On January 31, 2003, Mr. Bernstein's deposition was taken in the Litigation. At that time, Mr. Bernstein offered sworn testimony of what he described as a conspiracy, occurring in 2000 and 2001, to steal his technology. According to Mr. Bernstein, the conspiracy was set in motion by Mr. Wheeler, along with such alleged co-conspirators as Mr. Rubenstein, Iviewit's former President (Brian Utley), special counsel at the nationally known law firm of Foley & Lardner (William Dick), and another lawyer previously employed by the law firm Meltzer, Lippe, Goldstein & Schlissel, LLP (Raymond Joao).<sup>2</sup> According to Mr. Bernstein's sworn testimony, this plot involves an alleged death threat made by Iviewit's former President and Chief Operating Officer, which, as Mr. Bernstein testified, has caused him to fear for his life and, as we will show below, has caused Mr. Bernstein to believe that Proskauer is "evil."

Obviously, there was no murder plot, no conspiracy, and no attempt on the part of anyone to injure Mr. Bernstein or his business. We point this out only to highlight the rather extreme and unfounded nature of the accusations leveled against a whole host of attorneys, at several law firms throughout the United States. We respectfully suggest that, viewed in context, Mr. Bernstein's submission to the Committee is simply an ill-advised litigation tactic that is devoid of any factual or legal support. Unfortunately, Mr. Rubenstein is simply one of several attorneys caught in the crossfire of a fee dispute. Regardless of Mr. Bernstein's motives, his accusations are squarely negated by the record.

Despite Mr. Bernstein's allegations of malpractice and "malfeasance," as recently as November of this past year (well after the alleged malfeasance and malpractice was alleged to occur), Iviewit sought to enlist Mr. Rubenstein's assistance:

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<sup>1</sup> Contemporaneously with the filing of the complaint against Mr. Rubenstein, Mr. Bernstein also filed a similar complaint against Mr. Wheeler with the Florida Bar. Mr. Wheeler's response was filed on April 7, 2002 and the matter is currently pending.

<sup>2</sup> We understand that Mr. Bernstein also filed a similar complaint with the Departmental Disciplinary Committee against Mr. Joao.

“to review the conclusions of past and present patent counsel, and to further assist Iviewit in further defining the inventions in any intellectual property arena of [Iviewit’s] choosing . . . .”

A copy of Iviewit’s November 20, 2002 correspondence to Mr. Rubenstein is attached as **Exhibit 4**. For obvious reasons, most notably the pendency of the Litigation, Mr. Rubenstein declined this request. Prior to that, but subsequent to the termination of Proskauer’s representation of Iviewit and filing of the aforementioned lawsuit, Iviewit had sought to capitalize on the existence of an attorney-client relationship between Mr. Rubenstein and Warner Bros. by essentially asking Mr. Rubenstein to vouch for Iviewit’s technology to a client contact at Warner Bros. Mr. Rubenstein refused this request, citing conflict of interest issues. This conduct of Iviewit shows that Mr. Bernstein and Iviewit are not serious about their own allegations.

As an aside, Mr. Bernstein also notes in his complaint to this Committee the fact that he gave a gift to Proskauer of a small percentage of stock in Iviewit. Mr. Wheeler testified in his deposition in the Litigation that Mr. Bernstein wanted to grant shares of Iviewit stock to Proskauer because Mr. Bernstein felt that “all members of his team should be stakeholders in his company.” (Wheeler dep. At 62-24). Mr. Utley also testified that it was Mr. Bernstein’s “personal decision” (Utley dep. At 241-9) to grant a small interest in Iviewit, LLC (a corporation that is no longer in business) to Proskauer “because of the quality of work that [Proskauer] had performed for the company over the prior six months.” Id. at 238-19. Clearly, there is no ethical prohibition to Proskauer accepting this gift of stock from Mr. Bernstein. But even more to the point, the fact that this gift was made at all provides compelling evidence to refute Mr. Bernstein’s conspiracy theories. If Proskauer owned 2.5 percent of Iviewit, LLC, why would, as Mr. Bernstein alleges, Proskauer engage in a conspiracy to cause \$10 billion in damages to Iviewit? Such conduct would be directly adverse to Proskauer’s economic interest by causing Proskauer to lose \$250 million. Simply put, Mr. Bernstein’s allegations make no sense.

## **I. The Issues Raised in Mr. Bernstein’s Complaint**

As far as we can discern from Mr. Bernstein’s submission to the Committee, he appears to raise two main issues. They are summarized below, and our response is noted.

A. **Patent Work**: Most of Mr. Bernstein’s allegations derive from his claim that Mr. Rubenstein mishandled certain patent work. To the contrary, as we show below (see Section II), there is overwhelming testimonial and documentary evidence showing that this allegation is false. Approximately twenty Proskauer attorneys performed legal services for and billed time to Iviewit matters. Mr. Rubenstein wasn’t one of them. Of the almost \$370,000 owed by Iviewit for legal services rendered by Proskauer, Mr. Rubenstein did not bill a minute of time to the engagement. Further, even ignoring Mr. Rubenstein’s lack of involvement, no one else at

Proskauer performed patent work for Iviewit. Iviewit's patent work was handled entirely by patent attorneys at other law firms. Whether there were any errors or omissions with the patent work is immaterial. Proskauer simply did not perform that work.

B. Conflicts of Interest: Mr. Bernstein alleges that Mr. Rubenstein, through "deceptions, improprieties . . . , and outright malfeasances" : (i) represented other clients with a conflict of interest to Iviewit; (ii) allowed the infringement by other clients of Iviewit's "intellectual property rights"; (iii) tortiously interfered in Iviewit's relationship with Warner Bros.; and (iv) personally benefited, along with Proskauer clients, to the detriment of Iviewit. The reality is that Mr. Rubenstein engaged in no activities whatsoever that were adverse to Iviewit, there was no tortious interference, no personal profiting at the expense of Iviewit and, to Proskauer's knowledge, no other parties have infringed upon Iviewit's "intellectual property rights." (see Section III, below)<sup>3</sup>.

## II. Neither Mr. Rubenstein Nor Proskauer Performed Patent Work for Iviewit

Mr. Bernstein's complaint is replete with allegations concerning alleged improper or mishandled patent work somehow overseen or performed by Mr. Rubenstein. But Mr. Bernstein cannot point to a single document relating to patent work which is signed by Mr. Rubenstein or any other patent attorney at Proskauer. The work performed by Proskauer is reflected in billing statements submitted to Iviewit on a monthly basis. Copies of these billing statements are attached hereto as **Exhibit 5**. Proskauer attorneys who performed legal services for Iviewit would record their time, and the bills submitted by Proskauer represent a compilation of those time entries. Importantly, in all of the bills submitted to Iviewit, there is not a single time entry for Mr. Rubenstein. The reason for this is simple : he did not provide legal services on behalf of Iviewit. Apparently realizing the significance of this fact, Mr. Bernstein claims without any factual basis that Proskauer improperly altered its billing statements. There is simply no truth to this unsupported accusation, which we find very troubling. The billing statements are attached to this response. Should you have any question whatsoever as to whether the bills are genuine, our billing file is available for your review.

In addition to Proskauer's billing statements, which are devoid of any time entries by Mr. Rubenstein, both Proskauer attorneys and corporate representatives of Iviewit have confirmed under oath that neither Mr. Rubenstein nor Proskauer performed any patent work for Iviewit.

In short, the deposition testimony in the Litigation and the documentary evidence unequivocally establish that Mr. Rubenstein did not perform any patent work for Iviewit. To the contrary, all of Iviewit's patent work was performed by Raymond Joao, who at the time was employed by Meltzer Lippe, and thereafter by William Dick of Foley & Lardner. This is confirmed by the

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<sup>3</sup> We note that Iviewit has not been able to secure any patents on its technology, so we are not even aware of what "intellectual property rights" Mr. Bernstein is referring to.

depositions taken during the course of the Litigation, including that of Iviewit's former President and COO, Brian Utley, who testified that "Rubenstein and Mr. Wheeler, I'll repeat, had nothing to do with the patents" (Deposition of Brian Utley ("Utley dep.") at 150-9) and "I'm not aware - other than referring Iviewit to Meltzer, Rubenstein never did any work for Iviewit." (*Id.* at 121-3). Moreover, Mr. Utley testified numerous times that Mr. Rubenstein, who is a patent attorney, simply recommended Mr. Joao's firm to Iviewit when asked for a recommendation for outside patent counsel. *Id.* at 70-4; 121-3. Mr. Utley also testified that he has never met Mr. Rubenstein. *Id.* at 121-20. Mr. Wheeler also verified that that Mr. Joao was Iviewit's patent counsel (Deposition of Christopher Wheeler ("Wheeler dep.") at 23-20) and that Mr. Rubenstein did not do any patent work for Iviewit (*Id.* at 24-11).

When asked to opine as to the veracity of an interrogatory answer submitted by Mr. Bernstein during the course of the Litigation which suggested that Proskauer played a role with respect to Iviewit's patent work, Mr. Utley was unequivocal in his response:

Q. The answer to [Eliot Bernstein's] Interrogatory 20 in Subparagraph Roman Numeral XI, 11, it says: "Chris Wheeler agreed to investigate charges that Rubenstein and the name J-O-A-O, which I think is Joao. . . . [w]ere forging and changing patent documents and leaving inventors off patents. Wheeler and Utley suggest using their friend William D-I-C-K, and then it looks like it's cut off, Foley & Lardner to correct the gross negligence uncovered in Rubenstein/Joao work."

How do you respond to that statement?

A. Well, Rubenstein was never involved in any of that work.

Q. Is that a misrepresentation?

A. That's a misrepresentation.

Q. Were there any charges by you or anyone at Iviewit that Joao was forging and changing patent documents and leaving inventors off patents?

A. No.

Utley dep. at 83-15.

Gerald Lewin, a certified public accountant and principal of the CPA firm of Goldstein, Lewin & Company in Boca Raton testified similarly. He testified that he was initially approached by Eliot Bernstein's father, Simon Bernstein, who is also Mr. Lewin's neighbor, and asked to be a consultant for the Iviewit entities. (Deposition of Gerald Lewin ("Lewin dep.") at 7-14). Mr. Lewin agreed and ultimately became a member of Iviewit's board of directors. *Id.* at 9-1. Mr. Lewin introduced Eliot and Simon Bernstein to Mr. Wheeler at Proskauer's Boca Raton office, after the Bernstein's asked Mr. Lewin for a referral to a national law firm to represent the Iviewit entities. *Id.* at 8-3. Like Messrs. Utley and Wheeler, Mr. Lewin testified that Proskauer did not perform patent work for Iviewit and that the patent work was handled by other law firms. *Id.* at 10-25; 17-16; 50-8. Further, Mr. Lewin confirmed that Mr. Rubenstein's only involvement with



Iviewit was to provide a referral to an outside law firm to handle Iviewit's patent work. *Id.* at 17-16.

Mr. Rubenstein, who was also deposed in connection with the Litigation, could not have been clearer as to the scope of Proskauer's representation:

- Q. Did you ever opine with regard to the validity of any patent applied for or received by Iviewit.com?
- A. Like I say, I was not in any way involved with getting patents for Iviewit.
- Q. What were you involved with, if you were, with Iviewit?
- A. The only thing I did for Iviewit is I referred them to another patent lawyer.
- Q. And who is that?
- A. A guy named Ray Joao.
- Q. And where did Mr. Joao work?
- A. I believe he was working at the time at my former law firm, Meltzer Lippe.

(Deposition of Kenneth Rubenstein ("Rubenstein dep.") at 23-4).

Finally, Raymond T. Hersh, Iviewit's former Chief Financial Officer, also confirmed in his deposition that Proskauer did not perform any patent work for Iviewit, and stated that Iviewit "always had separate patent counsel." (Deposition of Raymond Hersh ("Hersh dep.") at 12-25).

Thus, regardless of whether Mr. Bernstein is pleased or displeased with the patent-related services provided to Iviewit, Proskauer simply did not provide those services. Moreover, Mr. Bernstein's accusations relating to Mr. Rubenstein's involvement in Proskauer's representation of Iviewit are demonstrably baseless. Every fact witness other than Mr. Bernstein has confirmed Mr. Rubenstein's testimony that he was not actively involved in Proskauer's representation of Iviewit.

### **III. Mr. Rubenstein Did Not Engage in Any Conduct Adverse to Iviewit**

Mr. Bernstein's complaint makes accusations that Mr. Rubenstein represented clients in conflict with Iviewit and failed to disclose such representations and/or secure conflict waivers from Iviewit. These accusations are factually unsupportable.

Although Mr. Bernstein alludes to some alleged conflict involving Warner Bros., there is no merit to any such claim. While it is true that Proskauer provides legal services to Warner Bros. in various contexts, none of them involve taking a position adverse to Iviewit and, in fact, none of them even related to Iviewit at all. Aside from a brief review of a draft confidentiality

agreement with Warner Bros. by a lawyer in our Boca Raton, Florida office,<sup>4</sup> Proskauer performed no work for Iviewit that is in any way related to its dealings with Warner Bros. More to the point, Mr. Rubenstein's only involvement with Iviewit concerning Warner Bros. was at the urging of Mr. Utley, who suggested that Mr. Rubenstein call his contact at Warner Bros., Gregory Thagard, to simply suggest that Warner Bros. talk to Iviewit. At a later date, subsequent to the termination of Proskauer's representation of Iviewit and after the filing of the lawsuit, Stephen Lamont, an Iviewit representative sought to enlist Mr. Rubenstein's assistance by having him tout Iviewit's product to Warner Bros. Mr. Rubenstein declined this request, specifically citing Proskauer's existing relationship with Warner Bros.

In short, when asked by Iviewit to do so, Mr. Rubenstein refused to place himself in a potential conflict of interest situation. And while Mr. Bernstein labels Mr. Rubenstein's refusal as tortious, the reality is that his decision was strictly guided by ethical considerations and entirely justified under the circumstances. Certainly it cannot be said that Mr. Rubenstein had any obligation to tout Iviewit's product months after Proskauer ceased representing Iviewit and after the filing of the Litigation.

As for Mr. Bernstein's claim that Iviewit has suffered damages as a result of Mr. Rubenstein's refusal, the record in this matter clearly establishes that Iviewit had an independent relationship with Warner Bros. that continued on even after Proskauer's involvement with Iviewit ended. In fact, Iviewit's "Business Plan," attached hereto as **Exhibit 6**, reveals that Iviewit maintained an independent relationship with Warner Bros. well after Proskauer's representation of Iviewit ended. The Business Plan lists, at pages 35-36, "Gregory B. Thagard – Former Vice President, Advanced Technology Technical Operations, Warner Bros." and "David J. Colter – Vice President of Technology and Standards, Warner Bros." as members of Iviewit's advisory board. The Business Plan further details, at page 20, a relationship with Warner Bros. beginning in 2000 and lasting through November 2001 – six months after Proskauer ceased representing Iviewit.

Iviewit's independent relationship with Warner Bros. is further demonstrated by an email shown to Mr. Rubenstein during his deposition in the Litigation. The email, dated August 1, 2001 -- three months after Proskauer ceased representing Iviewit -- was sent by David Colter of Warner Bros. to Crossbow Ventures, and explains that Iviewit is "currently finalizing a contract with WB Online. . . ." A copy of the email is attached as **Exhibit 7**. The email not only refutes Mr. Bernstein's claim that Mr. Rubenstein somehow interfered with Iviewit's relationship with Warner Bros., it negates Mr. Bernstein's claim that Mr. Rubenstein or Proskauer somehow caused Crossbow Ventures to cease funding Iviewit, as the email shows a relationship between Iviewit and Crossbow Ventures well after Proskauer stopped performing work for Iviewit.<sup>5</sup>

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<sup>4</sup> The attorney in Boca Raton was unaware that there were attorneys in the New York office who performed legal services for Warner Bros.

<sup>5</sup> We note that the email provides a characterization of Iviewit's patents attributed to Mr. Rubenstein. We would like to note that this attribution is hearsay of hearsay, as Mr. Rubenstein has never spoken to the writer of the email.

Mr. Bernstein's complaint also alleges that Mr. Rubenstein served as a member of Iviewit's advisory board. Although the relevance of this claim is unclear, there is no truth to it. Iviewit apparently listed Mr. Rubenstein as an advisory board member on its website without Mr. Rubenstein's permission. Indeed, Mr. Utley confirmed at his deposition that Mr. Rubenstein was not on Iviewit's advisory board:

- Q. Okay. So Rubenstein's sole role, from what you understand, is he referred Iviewit to the Meltzer Lippe Law Firm in New York?
- A. Yes.
- Q. Was he ever part of an advisory board or was he an advisory board member to Iviewit? And we're talking about Mr. Rubenstein.
- A. I have never used him as an advisory board member.
- Q. Are you aware of whether or not he ever attended any board meetings with the directors of Iviewit?
- A. He never attended a board meeting. I've never met the man.

Utley dep. 121-6. In fact, Mr. Wheeler had discovered that both he and Mr. Rubenstein had been listed, without their permission, as advisory board members on Iviewit's website. Mr. Wheeler asked Iviewit to remove their names from the website in the Spring of 2001.

Finally, as for Mr. Bernstein's unspecific claim that Mr. Rubenstein somehow inserted his own interests or the interest of third parties ahead of Iviewit, such allegation is absurd. The overwhelming testimony of third parties and documentary evidence shows that, other than placing a gratuitous call to his contact at Warner Bros. and recommending Mr. Joao as outside patent counsel, Mr. Rubenstein had nothing to do with Iviewit. In the event the allegations are related to Iviewit's patent applications, we would like to point out to the committee that WIPO (World Intellectual Property Organization) has published Iviewit's PCT patent applications in its database. Please go to <http://ipdl.wipo.int/>. Copies of the cover pages of Iviewit's published applications as obtained from the aforementioned WIPO website are attached hereto as **Exhibit 8**. We note that these patent applications list Foley & Lardner as Iviewit's patent attorneys.

#### **IV. Mr. Bernstein's Accusations Must Be Considered In Light Of His Recent Deposition Testimony**

Mr. Bernstein's deposition testimony in the Litigation, taken just over a month ago, provides important context for consideration of his charges against Mr. Rubenstein. Almost irrespective

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We would also like to note that the characterization is not one that Mr. Rubenstein could have provided. First of all, Iviewit has no patents (only patent applications). Second of all, Mr. Rubenstein never did any legal work which could form the basis of an opinion with respect to Iviewit's patent application.

of the topic of questioning being pursued, Mr. Bernstein's testimony drifted into tales of murder, conspiracy, and theft involving several lawyers of national law firms and well respected businessmen and philanthropists:

\* \* \*

A. . . . Well, my attorney Caroline has been working with people to protect me. Utley came out after being terminated, and they found patents had been written into his own name going to his house without assignment to the company, et cetera.

And [Brian Utley] came out and basically told me that my life was in danger if I continued to pursue to be vocal about the fact that, you know, his background was clouded and that these patents were found -- well, that malfeasances were occurring is how I could basically couch that. And he said that him and Chris [Wheeler] would bring the company down brick by brick.

Q. Utley said this?

A. Yes.

Q. When was this?

A. This was around the end of 2000, in the January period.

Q. So you started learning about a conspiracy around that time?

A. Well, you know, the real -- you know, again, you ask about conspiracies. And you know, with hindsight, I could basically call it a conspiracy. But the real first conspiracies I learned of -- if you're asking for the whole conspiracy, is Ray Joao's work.

(Deposition of Eliot Bernstein ("Bernstein dep.") at 47-11).

As seen below, the alleged conspirators are numerous:

Q. You have no idea why Mr. [Hank] Powell was fired from Crossbow?

A. Perhaps for being involved in this conspiracy to steal my technologies.

Q. Mr. Powell was involved in the conspiracy?

A. I am not sure if Crossbow is involved, although they were referred to us by Chris Wheeler who spearheads the conspiracy. But, you know, you don't find these things out when there's a conspiracy until after the conspiracy is over.

*Id.* at 59-17.

Q. -- was [Maurice] Buchsbaum involved in the conspiracy?



A. Buchsbaum is related to Chris Wheeler, so we're not sure yet 100 percent.

*Id.* at 60-10.

Q. What did [Utley] tell you when he threatened your life?

A. He said: If you continue to expose these issues and pursue a course against me and Proskauer, we will kill you.

Q. Who is "we"?

A. Mean him, Chris Wheeler and Mike --

Q. Are you paraphrasing or are you quoting him?

A. I'm quoting him. And we will bring you down brick by brick by brick, your companies.

Q. He said: We will kill you --

A. Yes.

Q. -- and we will bring you down brick by brick?

A. Correct. So I called my wife and moved her into a hotel in California. She packed up overnight to move our children into a hotel. And we so lived in a hotel until we could get adequately --

Q. When was this?

A. We told everybody this.

Q. When was this?

A. This is right around January of 2001.

*Id.* at 93-14.

Q. Did Mr. Utley threaten you in person or over the phone?

A. In person.

Q. Do you feel that he had the means to kill you?

A. Well, he was touting Mr. Wheeler and Proskauer as being uncovered at this point for some of these malfeasances, like his background education. Yeah.

Q. Do you feel that he had the means to kill you, is the question.

A. Yes. With those he was saying he's conspiring with absolutely.

Q. Who was he conspiring with to kill you?

A. Mr. Wheeler, Mr. Bill Dick of Foley & Lardner. These are some major law firms.

Q. So you felt at the time that if Mr. Utley was going to kill you, he was going to do it in conspiracy with Foley & Lardner and Proskauer Rose?

A. With members of those firms that he's good friends with.

\* \* \*

Q. What other law firms were conspiring with Wheeler, Utley, and Proskauer?

A. Meltzer, Schnitzel & Gold (ph)--

Q. Meltzer Lippe --

A. Meltzer Lippe Schnitzel & -- I think Goldstein or something.

*Id.* at 98-10.

Q. Have you feared for your life because of this lawsuit?

A. You bet, every single day. I've hidden my children off the streets. I'm scared to death to leave my house. My wife is scared to death to leave the house.

\* \* \*

Q. Do you think Proskauer Rose wants you dead?

A. Yes.

Q. Why?

A. Well, the technologies are valued to be worth billions; that, in itself, is a motive.

\* \* \*

Q. Why did you come here today if you are afraid for your life?

A. I fear no evil.

\* \* \*

Q. --in your mind you agreed to come here for your deposition today if this firm wants you dead.

A. I fear no evil. I fear no evil.

Q. Is Proskauer evil?

A. Yes. Because of these actions, yes.

*Id.* at 107-24.

Q. Why do you come [to Proskauer's offices] and -- you have been here about three days now to review the files.

A. Yeah.

Q. Why do you come here and spend the day here when you fear for your life?

Why don't you just have Kinko's come and pick the files up and copy them for you?

A. I fear no evil, A, okay; I expressed that on the record before.

\* \* \*

You know, if I died tomorrow from a hiccup, perhaps, everybody would look back here.

Q. At Proskauer?

A. Absolutely.

Q. And think that --

A. Chris Wheeler.

Q. -- that they orchestrated an accidental death?

A. Correct. Or something, or purposely done.

*Id.* at 125-14.

Q. Do you think your lawyer fears for his life?

A. I asked him that the other day.

Q. What did he say?

A. He said he fears nobody. He doesn't care that you are big. He doesn't care how big you are, he is not afraid of you.

Q. Do you think he is?

A. Yeah.

Q. You think he's in fear for his life because of this lawsuit?

A. Yes. I think it has run across his mind that he is sitting on a can of worms that could lead to the destruction of three large law firms.

*Id.* at 117-1.

Q. Why did you move back to close proximity of Proskauer Rose, if you are in fear for your life of Proskauer?

A. I study the art of war, so deception and distance are often key tactics to warfare.

Somebody made a threat on me in their home ground, so I left their home ground to a ground where I have many legal friends. People to help me protect myself.

Q. Here?

A. No, California. I don't know shit here.

So -- and that's why I'm scared here. And I was scared for collateral damage to people like my parents, and whatnot, so I broke ties with them,

hardly talked to them over the last year and a half, didn't let them see their grandchildren, never flew back here, okay.

Now I am prepared to wage war and have my evidence and guns in lie, I have no fear of --

Q. When you say "guns," are you speaking metaphorically?

A. Yes, of course.

Q. Okay.

A. And so, it's best to be here so that I can present my case, and I am not worried about you anymore killing me too much.

Q. Proskauer?

A. Proskauer, because now I think you've realized that there's a lot of people behind it that you didn't see coming, or you weren't paying attention and suddenly you've got a case.

*Id.* at 118-19.

As can be seen, the "truth" regarding the Litigation and the claims asserted by Mr. Bernstein's complaint against Mr. Rubenstein proved to be a fluid concept in his deposition. As the deposition demonstrates, a person is either supporting Mr. Bernstein fully and unconditionally or is part of a conspiracy to destroy him. Mr. Bernstein's response to questions concerning Mr. Lewin and his possible involvement in a conspiracy is telling in this regard:

Q. Was [Gerald] Lewin part of the conspiracy?

A. Gerri just referred me to Chris [Wheeler].

\* \* \*

Q. [w]ere you on the telephone during Gerri Lewin's deposition?

A. No.

Q. He testified in his deposition that the only reason the bills weren't paid was because there wasn't any money?

A. **Well, then, we might have a problem with him being involved in the conspiracy.**

*Id.* at 186-25.

Mr. Bernstein's deposition testimony concerning his claim of "destruction" of documents is equally telling. Without a shred of evidence, Mr. Bernstein was willing to swear to the "destruction" of documents simply because he had not seen them:

Q. Did you ever see with your eyes anyone at Proskauer destroying any documents pertaining to Iviewit?

A. No.

Q. Did anyone ever tell you that they saw anyone at Proskauer destroying documents relating to Iviewit?

A. No.

*Id.* at 169-13.

Q. So you are still sticking to your story that Proskauer destroyed documents

--

A. In my interpretation --

Q. -- but you have no personal knowledge of whether they did?

A. -- of the word destruction, because they are not present in any records that the company can now get, yes, they have been, since Mr. Wheeler was keeping records of them.

Q. So destroyed means missing to you?

A. Yes.

*Id.* at 238-6.

### **VIII. Conclusion**

In order to assist you in your review of this matter, we have endeavored to provide you with specific references to deposition testimony and documents which refute Mr. Bernstein's assertions. In the process, we hope we have answered any questions you may have concerning Proskauer's representation of Iviewit and Mr. Rubenstein's lack of involvement in that representation. Mr. Bernstein's accusations are simply unfounded and in many respects scandalous. As can be seen, Iviewit's own officers and directors have given sworn testimony refuting each and every assertion made by Mr. Bernstein. Our files are open and available for your review should you have any questions concerning this matter or need any additional information or documentation.

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April 11, 2003

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We thank you for giving us the opportunity to be heard.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven C. Krane", with a long horizontal flourish extending to the right.

Steven C. Krane

Encl.



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EXHIBIT 4 – REBUTTAL OF IVIEWIT TO THE NEW YORK STATE BAR OF  
RESPONSE OF KENNETH RUBENSTEIN AUTHORED BY STEVEN KRANE



## IVIEWIT HOLDINGS, INC.

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

July 2, 2003

### **By Overnight Delivery**

Thomas J. Cahill, Esq.  
Chief Counsel  
First Judicial Department Departmental Disciplinary Committee  
61 Broadway, 2nd Floor  
New York, New York 10006

Re: **Rebuttal of Kenneth Rubenstein, Esq. Response to Complaint of Iviewit Holdings, Inc., Docket 2003.0531**

Dear Mr. Cahill:

By way of introduction, I am Chief Executive Officer (Acting) of Iviewit Holdings, Inc. and its subsidiaries (collectively, "Company") with a background of which the Company invites you to view at <http://www.iviewit.com/management.htm>, and I write to rebut all those material feints, denials, and, therefore, inconsistencies in the response of Kenneth Rubenstein, Esq. ("Respondent") to the Company's New York Bar Complaint of February 26 ("Complaint").

Moreover, the facts of the Complaint find Respondent so uncloaked that he resorts to disingenuously traversing from tall tales of retaliation to some irrelevant litigation, to stories of a "failed dotcom company looking for someone to blame," and even to the personal attacks on the founder and principal inventor of the Company, whose passion for his inventions confounds the mind of Respondent whose personal, financial, and other ambitions rise above all, to the detriment of his clients. Furthermore, Respondent continues this transparent discourse and all the while maintaining "The only thing I did for Iviewit is I referred them to another patent lawyer,"<sup>1</sup> which the Company shall incite in the minds of First Judicial Department Departmental Disciplinary Committee

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<sup>1</sup> Deposition of Kenneth Rubenstein at 23, *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), attached herein as [Exhibit A](#).





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that such a statement by Respondent could not be farther from the truth, as evidenced by Section I to Section XII, *infra*.

Prior to Section I to Section XII, *infra*, however, the first feint we need to address, and as Respondent has chosen to apprise you, is that the Company and Respondent's employer, Proskauer Rose LLP ("Proskauer"), are parties to that certain litigation 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") that, as Respondent is aware, yet prefaces and attributes the Complaint to said Litigation, bears not one iota of relevance to the specific allegations contained in the Company's Complaint.

Second, another important feint to correct, and wherein Respondent hopes that First Judicial Department Departmental Disciplinary Committee fails to see the forest from the trees, is that the Company is not now nor has ever been a so called "dotcom" company, but rather is a designer and developer of video scaling and imaging technologies where, in combination and among other things, said technologies have the capability of "panning and zooming" on any image or any image within a video without degradation to the quality of that image (where degradation is termed "pixelation" to those skilled in the art).

Additionally, the Company technologies are targeted to device original equipment manufacturers ("OEMs") who, when individually, or in combination with other third party hardware, firmware, and/or software, shall include them in OEM products such as, but not limited to, cable set top boxes, satellite set top boxes, analog-to-digital converter boxes, next generation DVD players, digital cameras, personal video recorders, and personal computers; alternatively the Company has the option of exclusively contributing said essential technologies to the multimedia patent pools known as MPEG 2 (digital compression according the digital television standard), MPEG 4 (another compression standard at a lower bit rate, and wherein interactive objects may be embedded), and DVD ("digital video disc") player-drive-codec and the discs themselves.

Third, and most disingenuously, Respondent attempts to point to the two and one half percent (2.5%) interest in, an interest that Proskauer paid a nominal, par value price for, and that was supposedly in return for adoption by the MPEG 2 patent pool of the Company's essential inventions, the Company's direct, 92.03% owned, subsidiary, Iviewit Technologies, Inc., that more specifically translates into a one and ninety nine one hundredths of a percent (1.99%) fully diluted interest in lower valued Class B Non-Voting shares of the Company's direct subsidiary, as a motivation for Proskauer to see the Company succeed, yet fails to apprise First Judicial Department Departmental Disciplinary Committee that in Respondent's stewardship of the MPEG 2 patent pool,



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which presently generates royalties in the nine figures, according to industry observers, and that once digital television and the content therewith assumes a penetration rate in U.S. households akin to analog color television that said royalties from MPEG 2 shall rise into the trillions of dollars, and much to the benefit of Respondent in his role as counsel, by his admission<sup>2</sup>, and to the best of the Company's knowledge, patent evaluator, and Proskauer, thereby dwarfing any potential realized gain from the nominally priced equity position in the Company's direct subsidiary. Clearly, by this analysis, the Company suggests that Respondent and his author, Steven C. Krane ("Author"), continue to apply their skills sets towards, physics and technology licensing, and legal ethics and dispute resolution, respectively, as their prospects of future careers as financial analysts have diminished as a result of this poorly attempted feint in the response of Respondent.

Fourth, and an equally poorly analyzed feint, is Respondent's reference to a letter presented in his deposition to that certain Litigation on November 20, 2002, wherein such Litigation is wholly irrelevant to the Complaint, but is instructive for these purposes, seemingly attempting to engage Respondent's services future services, but by viewing an electronic copy and right clicking the mouse of a IBM compatible personal computer and selecting "properties" it is clear to Respondent that said letter's date of creation was April 25, 2002, which was designed as a means for which to allow Respondent to "save his soul" by reaffirming prior statements to potential licensees, and inapposite to Respondent's assumed intention (see Section IX Subsection A and Exhibit O – Statement of CEO Lamont).

Lastly, Mr. Cahill, and as Respondent would have you believe, this is NOT the Complaint of Eliot I. Bernstein, but of Iviewit Holdings, Inc. (a Delaware Corporation) funded in total of approximately Six Million Dollars (\$6,000,000) by prominent investors and entertainment professionals alike, including, but not limited to: Wayne Huizenga, Wayne Huizenga Jr., Alan Epstein, Esq. and Michele Mulrooney, Esq. of Armstrong Hirsch Jackoway Tyerman & Wertheimer of Los Angeles. Cal., Kenneth Anderson, CPA, Donald Kane (formerly Managing Director of Goldman Sachs), James Osterling, James Armstrong, Ellen DeGenres, Alan Young, Allan Shapiro (Atlas Entertainment), Mitchell Welsch (Vice President of UBS Paine Webber), and Jeffrey Friedstein (Vice President of Goldman Sachs), Caroline P. Rogers, Esq. and many others.

Furthermore, the allegations in the Complaint stem from legal reviews by Irell and Manella of Beverly Hills, Cal, Blakely Sokoloff Taylor & Zafman LLP of Los Angeles, Cal., Caroline P. Rogers, Esq., the Chicago office of Greenberg Traurig LLP, Steven M. Selz, Esq., and by executives of Warner Bros., a unit of AOL Time Warner, Inc., who in the course of discussion both at the business level and personal level have advised that

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<sup>2</sup> *Supra* Note 1 at 22.



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looks can be deceiving when viewing the Company's patent applications filed by patent counsel under the supervision of Respondent, as the filings they viewed differ materially, and, perhaps, fraudulently, the Company alleges, from the teachings and disclosures of the Company's inventors, Mr. Bernstein, Zakirul Shirajee, and Jude Rosario, and to the detriment of the Company's filings.

Now, with the above clarified, the Company points straight to the heart of the matters, and despite Respondent's statements in his deposition, wherein such Litigation is wholly irrelevant to the Complaint, but is instructive for these purposes, and laughable statements at that, the Company alleges, that include but are not limited to, "The only thing I did for Ivieviewit is I referred them to another patent lawyer" and "I consider the deposition nothing but harassment, considering that I had nothing to do with the company<sup>3</sup>," and his denial of making any representations to any party with regard to the Company's technologies<sup>4</sup>, we summarily state that from the benefit of the narrative and attached exhibits below, the Company shall incite in the minds of First Judicial Department Departmental Disciplinary Committee that Respondent: (I) engaged in a series of dishonesties, appearances of untrustworthiness, conduct involving dishonesty, fraud, deceit, and misrepresentation with, and as the supervising attorney of, one Raymond A. Joao<sup>5</sup> who at the time of Respondent's referral was in transition from places unknown, but later figuratively drops out of the sky, while misrepresented as a member of Proskauer, and as of February 1999, becomes of counsel to Meltzer, Lippe Goldstein & Schlissel LLP ("MLGS"), Respondent's former employer, in an attempt to bury the Company's inventions that are a competitive threat to the multimedia patent pools of which Respondent holds the position of counsel, by self admission, and, to the best of the Company's knowledge, patent evaluator; (II) engaged in a series of improprieties and deceptions with a one Christopher C. Wheeler<sup>7</sup>, a Partner in the Boca Raton office of Proskauer Rose LLP ("Proskauer") in a further attempt to deprive the Company of its technologies for the benefit of Respondent, Mr. Wheeler, and Proskauer by directing Mr. Wheeler to proliferate the Company's technologies across a wide array of clients of Respondent, Mr. Wheeler, and Proskauer, according to Non-Disclosure Agreements ("NDAs") never enforced by Mr. Wheeler, and a true list of clients conducting said unauthorized use is attached herein as [Exhibit D](#); (III) by virtue of his actions in (I)

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<sup>3</sup> *Supra* Note 1 at 12.

<sup>4</sup> *Supra* Note 1 at 40.

<sup>5</sup> First Judicial Department Departmental Disciplinary Committee should be apprised of the fact that the Company has filed, as it relates to Mr. Joao, a complaint with the New York State Bar Association wherein such complaint, response to said complaint, and the Company's rebuttal are attached herein as [Exhibit B](#).

<sup>6</sup> *Supra* Note 2.

<sup>7</sup> First Judicial Department Departmental Disciplinary Committee should be apprised of the fact that the Company has similarly filed, as it relates to Mr. Wheeler, a complaint with The Florida Bar Association wherein such complaint, response to said complaint, the Company's rebuttal to said complaint, Mr. Wheeler's second response, and the Company's second rebuttal are attached herein as [Exhibit C](#).



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thereby perpetrating a fraud upon the United States Patent and Trademark Office (“USPTO”) in the supervision of Mr. Joao; and (IV) by virtue of (I) through (III) all to the detriment of the patent filings and present fortunes of the Company and its stakeholders alike.

Accordingly, on behalf of the Company, and for ease of reference I insert the major allegations of the Complaint within the framework of The Lawyer’s Code of Professional Responsibility of the New York State Bar Association,<sup>8</sup> cross referencing Title 22 of New York Codes, Rules and Regulations<sup>9</sup> (“NYCRR”), and shall cite specific documentation in exhibits attached hereto:

**I. DR 1-102 [§1200.3] Misconduct.**

The Company rebuts the feints, denials, and, therefore, inconsistencies in the response of Respondent and re-alleges that Respondent had, during the period of representation of the Company from 1998 to mid 2001, and irrespective of at which date, and in which form, an engagement agreement was executed by and between Proskauer and the Company: (I) engaged in illegal conduct that adversely reflected on Respondent’s honesty, trustworthiness, and fitness as an attorney; (II) circumvented a Disciplinary Rule through actions of another, Mr. Joao; (III) engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; and (IV) engaged in other conduct that adversely reflects on Respondent’s fitness as a lawyer.

Additionally, the Company, *interalia*, shall establish: (I) that Respondent, as the first technologist to benefit from the inventions disclosures by the Company, was seen by the inventors, executive management, investors, and potential licensees, as the individual responsible for the oversight of the Company’s patent prosecution process; (II) that Respondent used the referral of Mr. Joao as the cloaking device to bury the Company’s inventions that are competitive threats to the multimedia patent pools, thereby maintaining Respondent’s personal financial gains, esteem, and clients from the multimedia patent pools where Respondent, by admission, holds the position as counsel, and also, to the Company’s best knowledge, patent evaluator; (III) that Respondent opined as to the novelty of the Company’s inventions to investors and potential licensees at the same time he was directing Mr. Joao to bury the Company’s inventions in provisional patent filings that are a competitive threat to his patent pools and directing Mr. Wheeler to proliferate the Company’s technologies among clients of Respondent, Mr. Wheeler, and Proskauer without the enforcement of NDAs; and (IV) that Respondent engaged in other conduct that adversely reflects on Respondent’s fitness as a lawyer by his unconscionable speaking of falsehoods in a recent deposition in the Litigation, wherein such litigation is wholly irrelevant to the Complaint, but is instructive for these

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<sup>8</sup> Lawyer’s Code of Professional Responsibility, New York State Bar Association (January 1, 2002)

<sup>9</sup> 22 New York Code, Rules and Regulations.



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purposes, in which he denies, *interalia*: (a) knowledge of the Company, however, has been named as overseer of the Company's patent prosecution process and has been named as a member of the Company's Advisory Board and has opined as to the novelty of the Company's inventions to investors and potential licensees alike; (b) denies knowledge of the Company's main inventor, Mr. Bernstein, and other inventors, although he has spent many hours in disclosure sessions with the Company's inventors; and (c) has refused to describe his involvement with the organization MPEG LA, LCC that through doctrines of *respondeat superior* and vicarious liability may be liable for the actions of Respondent in other forums separate and apart from the Complaint, and where said speaking of falsehoods in (a) through (c) has been steadfastly repeated in Respondent's response to the Complaint.

A. More specifically, Respondent, when first apprised of the Company's technologies states, through Mr. Wheeler, the opinion that they are "novel" and a statement relied upon by early investors in the Company. Moreover, through and in conjunction with Mr. Wheeler, Respondent becomes fully aware of the Company's inventions whereby he receives invention processes, visits the proprietary pages of the Company's web site, receives proprietary and confidential CD-ROM's, is, factually, in constant phone contact with the Company's inventors to learn the Company's techniques, often times with Mr. Joao, and transmits examples of patents to Mr. Bernstein that point to the patent prosecution process he intends to oversee and undertake in conjunction with Mr. Joao, attached herein as [Exhibit E](#).

Moreover, once knowledgeable about the Company's inventions and in disclosure teleconferences with Mr. Bernstein, the Company finds Respondent muttering to himself "I missed that" and "we never thought of that" and "**THIS CHANGES EVERYTHING.**" Furthermore, when Respondent's muttering of "I missed that" and "we never thought of that," the Company alleges that Respondent is incensed at the thought of a self taught video engineer, the likes of Mr. Bernstein and his fellow inventors, formulating video and imaging processes that trump the preeminent patent pools formed by Respondent, the patents of which were evaluated by Respondent, the organization of which is counseled by Respondent, and the licensee and licensor list of which Respondent counts as some of his clients as described at the URL at [http://www.proskauer.com/lawyers\\_at\\_proskauer/atty\\_data/4747](http://www.proskauer.com/lawyers_at_proskauer/atty_data/4747), where his client list includes some of those companies listed in the MPEG 2 patent pool, and highlighted as attached herein as [Exhibit F](#).

Furthermore, Respondent is seen pointed to by former company executive management, and named in multiple Company business plans authored by and reviewed and billed for by Mr. Wheeler and delivered to Respondent's for his review, and by potential license partners as the "go to" individual regarding information and opinions on the Company's inventions examples of which are attached herein as [Exhibit G](#).





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**B.** More importantly, the Company points to his alleged mutterings that **“THIS CHANGES EVERYTHING,”** wherein **“EVERYTHING”** allegedly refers to Respondent’s formation, patent evaluation, and counseling to the organization MPEG LA, LLC that coordinates the MPEG 2 and MPEG 4 patent pools of which the Company’s inventions are a competitive threat.

Factually, the Company has knowledge that, as well as Respondent holding the position of counsel by his own admission, Respondent holds the position of patent evaluator, and wherein Respondent: (a) may personally profit as said patent evaluator by, to the best of the Company’s knowledge, receiving a fee of Eight Thousand Five Hundred Dollars (\$8,500) per patent review<sup>10</sup>; (b) wherein Mr. Rubenstein counts as among his clients certain licensors and licensees of said patent pools, and receives remuneration as the billing Partner in representation of those clients by Respondent and Proskauer; and (c) wherein it is in the best personal, financial interest of Respondent to direct and engage with Mr. Joao and Mr. Wheeler in said series of dishonesties, appearances of untrustworthiness, conduct involving dishonesty, fraud, deceit, and misrepresentation to remove the competitive threat of the Company’s inventions to said multimedia patent pools, thereby securing his own personal gain and, perhaps, that of Proskauer.

Lastly, given this time line of events concerning Respondent, who is desirous of maintaining Respondent’s personal financial gains, esteem, probable gains to Respondent’s employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company’s inventions, it becomes strikingly unusual that Respondent and other former members and associates of MLGS who at the time just transferred with Respondent to Proskauer, pass on the patent prosecution work of the Company for their new employer, Proskauer, and

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<sup>10</sup> First Judicial Department Departmental Disciplinary Committee should be apprised of the fact that: (i) said patent pool known as MPEG 2 contains, as of even date above, approximately Five Hundred and Eighty (580) essential patents, and contains some eighty to ninety percent (80% to 90%), according to industry observers, of the essential patents relevant to this pool; (ii) that said patent pool known as DVD contains, as of even date above, approximately Six Hundred and Seventy Five (675) essential patents, and the Company has no knowledge as to what percentage of the essential patents are contained relevant to this pool; and (iii) that said patent pool known as MPEG 4 presently contains approximately One Hundred (100) essential patents, and by the Company’s estimation contains approximately twenty five percent (25%) of the essential patents relevant to this pool; (iv) that by virtue of (i) and (ii) herein, Respondent may have personally profited, absent any sharing with his former or present employers or in the operating budget of MPEG LA, LLC, in the amount of approximately Five Million Seven Hundred Thousand Dollars (\$5,700,000); and (v) that by virtue of (iii) herein, Respondent may stand, from this activity alone, to personally profit in the future, absent any sharing with his present employer or the operating budget of MPEG LA, LLC, of approximately Two Million Five Hundred Thousand Dollars (\$2,500,000), as well as profiting, the Company alleges, in other ways from the burying of the Company’s technologies, or resurrecting them with a cumulative present value of up to Seventeen Billion Dollars (\$17,000,000,000) over twenty (20) year patent life.



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refer it back to their former law firm, MLGS, and an attorney, in one Mr. Joao, who seemingly drops out of the sky and has no connection to the former attorneys, or do Respondent and Mr. Joao have a former connection? Moreover, and at this point in the time line, Respondent has already opined that the Company's inventions are "novel" and essential to MPEG, as well as, in the Company's opinion, a competitive threat to MPEG, which lends great support to the Company's contentions that Respondent saw the personal financial gains, esteem, and current and prospective clients from the multimedia patent pools as needs to bury the Company's inventions.

Finally, it is proximate to this series of events and circumstances that the Company re-alleges that Respondent, desirous of maintaining Respondent's personal, financial gains, esteem, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, engaged, with and while acting as the overseer of Mr. Joao, in conduct involving dishonesty, fraud, deceit, and misrepresentation, wherein Respondent who has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions by missing critical elements in the provisional patent applications, as attached herein as [Exhibit H](#); Mr. Bernstein, the other inventors, former President & COO Brian G. Utley, and representatives of the "seed" investor, an affiliate of Huizenga Holdings, Inc. find: (I) flaws in patent applications; (II) material differences between what was disclosed and contained in filed patent applications, as further described in Exhibit H by the letter of Mr. Utley; and (III) patent applications that do not include all the inventors<sup>11</sup>.

C. Still further, the opinions of Respondent are instrumental in the "seed" funding of the Company by an affiliate of Huizenga Holdings, Inc. (Wayne Huizenga of Blockbuster fame) wherein Respondent interfaces with the Huizenga investment professionals, and Mr. Wheeler reiterates Respondent's opinions regarding the Company's inventions. Similarly, Mr. Wheeler relays Respondent's opinions to Goldman Sachs Group, Inc., Gruntal & Co. (presently a unit of Raymond James Financial Inc.), and a whole host of other investors and potential license partners now conducting the unauthorized use of the Company technologies under NDAs not enforced by Respondent and Mr. Wheeler.

Lastly, to investors in the Company, it was the representation of Respondent and Mr. Wheeler that Respondent's patent pools and other interested clients of Respondent and Mr. Wheeler would license the Company's technologies; it was also represented that Respondent made positive decisions on the essentiality of the Company's patents pending to potential licensees of the Company, in particular with respect to Warner Bros., and his close association with a one Gregory B. Thagard, an individual who is the named, or one

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<sup>11</sup> 35 U.S.C. Sec. 116 (1985).



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of the named inventor(s) for approximately thirteen patents in the DVD patent pool<sup>12</sup> and was associated with Respondent in the Massachusetts Institute of Technology's Media Lab; instances of investor and licensee representations are more particularly described by [Exhibit I](#).

**D.** Lastly, through his many denials and, factual outright disavowing numerous items in his deposition with regard to the Litigation, wherein such Litigation is wholly irrelevant to the Complaint, but is instructive for these purposes, Respondent outright disavows:

1. any knowledge whatsoever of the Company;<sup>13</sup>
2. any knowledge whatsoever of Mr. Bernstein and the other true inventors;<sup>14</sup>
3. any knowledge whatsoever of techniques known as pan and zoom technology;<sup>15</sup>
4. and through his refusal to answer questions regarding the allegedly vicariously liable MPEG LA, LLC<sup>16</sup> amongst others;
5. his charge that the deposition was harassment in that he had nothing to do with the Company;<sup>17</sup>
6. his steadfast denial of technology known as scaled video;<sup>18</sup>
7. his claim as to never opining on the Company's technology;<sup>19</sup>
8. his denial of ever having been involved in meetings concerning the Company;<sup>20</sup>
9. his denial of ever having any discussion with anyone at Proskauer concerning the Company's technology;<sup>21</sup>
10. his admission of not keeping notes or records of his conversations to Mr. Wheeler;<sup>22</sup>
11. his acknowledgement of never having billed the Company, though his name appears more than a dozen times, absent those billings that may have purposely removed, in billings from Mr. Wheeler's office;<sup>23</sup>
12. his denial of making any representations to any party with regard to the Company's technologies;<sup>24</sup>
13. his stunning reversal of his possible conversation with third parties regarding the

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<sup>12</sup> As to conflicts of interest, it should be similarly noted that the DVD patent pool also benefits from the Company's technologies, and that Respondent fails to disclose same with respect to his discussions with Mr. Thagard that the Company was apprised by Mr. Thagard.

<sup>13</sup> *Supra* Note 1 at 10-11.

<sup>14</sup> *Supra* Note 1 at 11.

<sup>15</sup> *Supra* Note 1 at 10.

<sup>16</sup> *Supra* Note 1 at 12.

<sup>17</sup> *Supra* Note 3.

<sup>18</sup> *Supra* Note 1 at 22-23.

<sup>19</sup> *Supra* Note 1 at 23.

<sup>20</sup> *Supra* Note 1 at 24.

<sup>21</sup> *Supra* Note 1 at 26.

<sup>22</sup> *Supra* Note 1 at 43.

<sup>23</sup> *Supra* Note 1 at 43.

<sup>24</sup> *Supra* Note 4.





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Company's technologies;<sup>25</sup> and,  
14. and his lack of knowledge as to why his name appears in an electronic mail message to a member of AOL Time Warner's investment team, wherein that message states that Respondent opined on the Company's technologies.<sup>26</sup>

Accordingly, by subparagraphs 1 to 14 above, Respondent has engaged in other conduct that adversely reflects on Respondent's fitness as a lawyer, in light of said denials of which the Company shall conclusively prove otherwise, *infra*.

## **II. DR 1-103 [§1200.4] Disclosure of Information to Authorities.**

A. The Company realleges and incorporates by this reference herein, as though fully set forth, Section I Subsection A-D, inclusive. Moreover, the Company further re-alleges that Respondent who is desirous of maintaining Respondent's personal financial gains, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, possessed knowledge of a violation of DR 1-102 [§1200.3] that raises a substantial question as to the honesty of Mr. Joao, Mr. Joao's trustworthiness, Mr. Joao's fitness as a lawyer, whom Respondent has recruited to assist, the Company alleges, in the burying the Company's invention, whereby Respondent failed to report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

Still further, and by [Exhibit I](#), the Company alleges Respondent's awareness of violations of Mr. Joao during a meeting at Respondent's New York office with a one Steven Filipeck, Esq. representing Huizenga Holdings, as well as others, pertaining to the Company's patent filings, and based on Mr. Filipeck's review of Mr. Joao's, under the direction of Respondent, provisional work; Huizenga Holdings, Inc. was the initial investor in the Company and this meeting materially impacts future Huizenga investments which, as a result of the faulty provisional patent applications, were never forthcoming.

Moreover, the Company further alleges that Respondent had knowledge of a violation of DR 1-102 [§1200.3] that raises a substantial question as to the honesty of a one William J. Dick, Esq. of Foley & Lardner, Milwaukee, Wis. and Mr. Utley, whereby Respondent similarly failed to report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

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<sup>25</sup> *Supra* Note 1 at 75.

<sup>26</sup> *Supra* Note 1 at 87.



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Still further, the Company further alleges that Respondent had knowledge of a violation of DR 1-102 [§1200.3] that raises a substantial question as to the honesty of Mr. Wheeler, whereby Respondent similarly failed to report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

Lastly, the Company further alleges that Respondent may have had knowledge of factors that may raise a substantial question as to the honesty of a one H. Hickman Powell III and Stephen J. Warner, Managing Director and Co-Founder and Chairman, respectively, of one Crossbow Ventures, Inc. of West Palm Beach, Fla., an affiliate of which was the Company's lead investor, whereby Respondent similarly failed to report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

Moreover, with respect to Messrs. Powell and Warner and Crossbow, in late 1999, they were introduced to the Company by Mr. Wheeler, who had indicated to the Company that they were interested in an equity investment in the Company once they had conducted a thorough due diligence review of the Company's intellectual property and provisional patent filings with a independent third party patent counsel, and in conjunction with Respondent and Mr. Joao. Clearly, as Crossbow proceeded to invest a total of Four Million Dollars consisting of One Million Eight Hundred Thousand Dollars (\$1,800,000) in convertible preferred stock (January 2000), One Million Two Hundred Thousand Dollars (\$1,200,000) in unsecured notes (December 2000), and Eight Hundred Thousand Dollars (\$800,000) in secured notes<sup>27</sup> (May to September 2001) in the Company, said independent intellectual property review passed with flying colors, but what strikes the Company as unusual is that the independent intellectual property review by Crossbow in conjunction with Respondent and Mr. Joao, is in diametric opposition to the review of Foley & Lardner, and in diametric opposition to the review of the Company's present patent prosecution counsel of Blakely, Sokoloff, Taylor & Zafman LLP of Los Angeles, Cal., and lastly, is in diametric opposition to the review of the Company's latest patent review counsel, the Chicago office of Greenberg Traurig LLP.

Finally, following the time line of events, the termination of Mr. Utley for cause follows with a breach of contract action (since dismissed) by, among others, Mr. Utley, followed by Mr. Utley's petition in an involuntary bankruptcy (since dismissed) against the Company, followed by the Litigation (pending) by and between the Company and Proskauer, wherein such litigation is wholly irrelevant to the Complaint, but is instructive for these purposes, followed by the execution of Crossbow's secured notes collateralized by the Company's intellectual property, followed by the halting of funding by Crossbow Ventures that was far lower than the committed amount for that round, followed by a demand letter for accrued but unpaid interest by Crossbow Ventures to the Company, followed by a default notice and demand for all principal and accrued but unpaid interest

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<sup>27</sup> The secured notes, supposedly, were to protect the Company from the lawsuits of Mr. Utley and Proskauer cited directly below.



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under the secured notes by Crossbow Ventures to the Company, and followed by a notice of assignment of the intellectual property of the Company by Crossbow Ventures (presently the subject of dispute), followed by a transfer of the secured notes contrary to the rules of the Securities Act of 1933, to the best of the Company's knowledge (presently, the subject of a complaint to the United States Securities and Exchange Commission), followed by Crossbow's false statements to The Palm Beach Post that "[Crossbow] sold one of its companies, iviewit.com,"<sup>28</sup> and the Company finds itself asking:

Are not all these individuals and entities the referrals of Proskauer, Mr. Wheeler, and Respondent, and introduced after Respondent has been apprised of the Company inventions, and declaring them as 'novel,' and that '[Respondent] missed that,' and that '[Respondent] never thought of that,' and, lastly Respondent's statement that 'this changes everything,' and whereby the efforts of a preeminent multimedia patent counsel, such as Respondent or another, who is desirous of maintaining Respondent's personal financial gains, esteem, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, may be of utilization later after the above said series of events rendered the Company, its inventors, the predominance of its shareholders, absent Mr. Utley and Crossbow and Proskauer, neutralized, in the resurrection of the Company's inventions for the benefit of Respondent, Mr. Wheeler, Proskauer, Mr. Powell, Mr. Warner, Crossbow, and Mr. Utley?

Graphically, a description of the Company's question may be represented by the following:

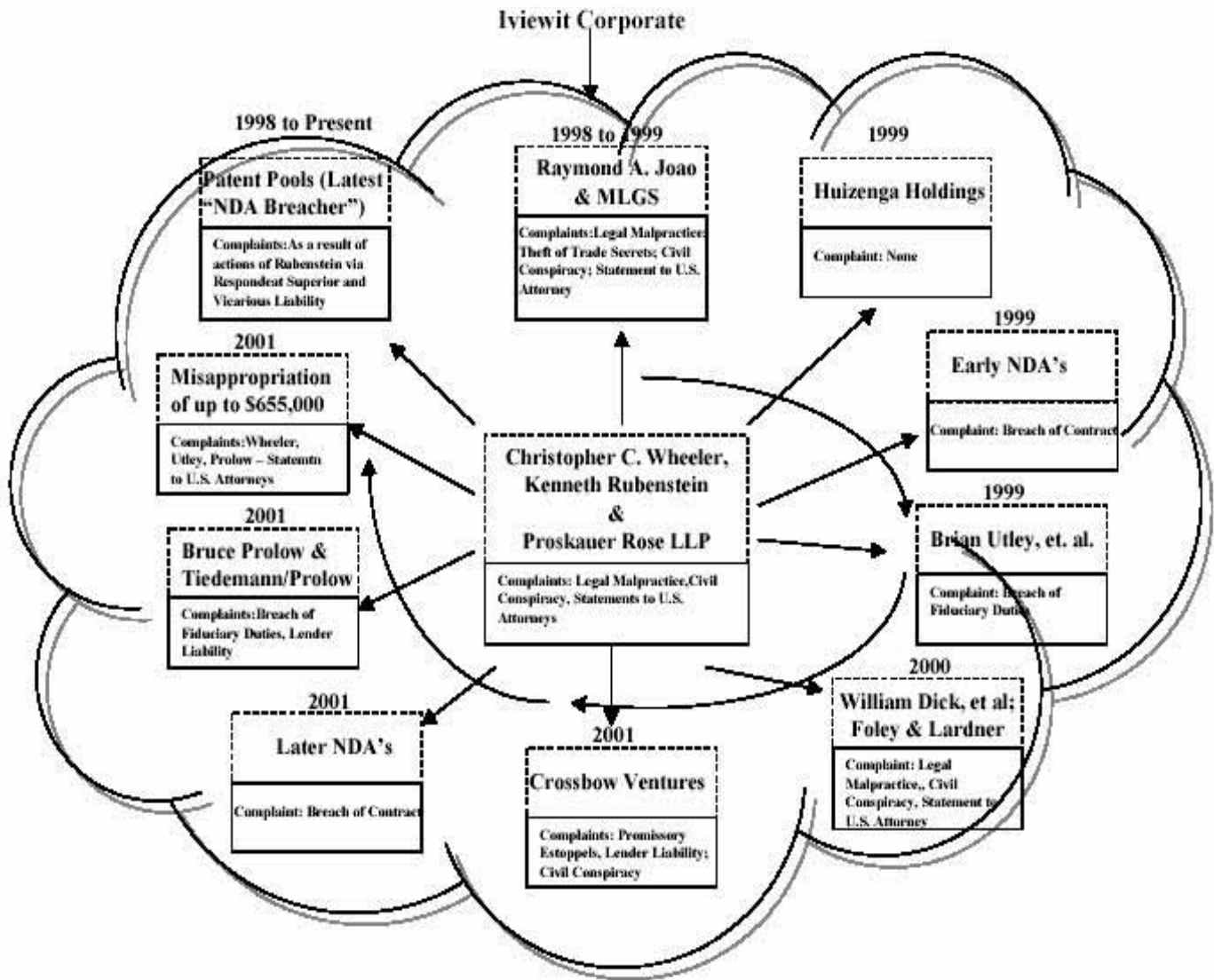
[The remainder of this page intentionally left blank]

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<sup>28</sup> Stephen Pounds, *Venture Capital Deals Suffering*, The Palm Beach Post, January 11, 2003, at 10B.



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**B.** Similarly, the Company re-alleges that Respondent, who is desirous of maintaining Respondent's personal financial gains, esteem, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions possessed knowledge or evidence, not protected as a confidence or secret, concerning Mr. Joao, without revealing such knowledge or evidence to the United States Patent and Trademark Office ("USPTO") and other authorities empowered to investigate or act upon the irresponsible conduct of Mr. Joao.

**C.** Moreover, the Company further alleges that Respondent had knowledge of a violation of DR 1-102 [§1200.3] that raises a substantial question as to the honesty of ones Steven Becker and Douglas Boehm of Foley & Lardner and, whereby Respondent similarly failed to report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

### **III. DR 1-104 [§1200.5] Responsibilities of a Partner or Supervisory Lawyer and Subordinate Lawyers.**

**A.** The Company re-alleges and incorporates by this reference herein, as though fully set forth, Section I Subsection A-D, and Section II Subsection A-C, inclusive. More specifically, the Company re-alleges that Respondent, who is desirous of maintaining Respondent's personal financial gains, esteem, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, is responsible for a violation of the Disciplinary Rules by Mr. Joao whereby: (I) Respondent ordered and directed the irresponsible misconduct of Mr. Joao in burying the Company's technologies, and, with full knowledge of Mr. Joao's specific misconduct, ratified said misconduct; (II) Respondent ordered and directed, in conjunction with Mr. Wheeler, the irresponsible misconduct of subsequent patent counsel Mr. Dick, a one Steven Becker, a one Douglas Boehm all of Foley & Lardner, and Mr. Utley in continuing to bury the Company's technologies, and, with full knowledge of their specific misconduct, ratified said misconduct; and (III) Respondent had supervisory authority over these individuals and knew of such misconduct that Respondent, ordered, directed, and ratified, and in the exercise of reasonable management and supervisory authority where Respondent knowing of said misconduct failed to take remedial action at a time when the consequences of their misconduct could be or could have been avoided or mitigated<sup>29</sup>.

**B.** Lastly, and aside from the fact that Respondent ordered and directed the irresponsible misconduct of Mr. Joao in burying the Company's technologies, and, with full

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<sup>29</sup> Much in the same way that, in other forums, the doctrines of *respondeat superior* and vicarious liability would impinge liability upon Respondent for the wanton acts of Mr. Joao, and wherein the scope of Mr. Joao's employment indicates a principal-agent relationship by and between Respondent and Mr. Joao.





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knowledge of Mr. Joao's specific misconduct, ratified said misconduct, Respondent was negligible in the referral to Mr. Joao in that Mr. Joao presently has numerous patents issued and patent applications pending since meeting the inventors, nearly eighty (80) in total, and where these inventions concern those allegedly learned through his engagement with the Company, the royalties, if measured along the lines of the MPEG 2 patent pool, can represent upwards of, if not more than, Twelve Million Dollars (\$12,000,000) per annum; similarly, Respondent was negligent in Proskauer's referral of Foley & Lardner, whereby the lead counsel to the Company, Mr. Dick, was previously involved in alleged intellectual property malfeasances with Mr. Utley, and considering the particular patent applications wrongly written into Mr. Utley as the sole inventor, and sent to Mr. Utley's home, and without Mr. Utley assigning said inventions to the Company, and where Foley & Lardner had full knowledge of Mr. Utley's inability to invent said technologies, the royalties flowing from these nearly misappropriated inventions might approach more than One Billion Dollars (\$1,000,000,000) annually.

#### **IV. DR 1-107 [1200.5-c] Contractual Relationships Between Lawyers and Nonlegal Professionals**

A. The Company re-alleges and incorporates by this reference herein, as though fully set forth, Section I Subsection A-D, Section II Subsection A-C, and Section III Subsection A, inclusive. Moreover, the Company further re-alleges that Respondent's practice of law during his representation of the Company lacked the essential tradition of complete independence and uncompromised loyalty to the Company as a result of Respondent's representation as counsel and, to the best of the Company's knowledge, patent evaluator, to the entity known as MPEG LA, LLC, or the licensor of those essential patents known as MPEG 2 and MPEG 4, the DVD patent pool administered by DVD 6C Licensing Agency, that the Company's technologies provide for a competitive threat, as evidenced by [Exhibit J](#) attached herein, and other clients, wherein Respondent refuses to answer questions in his deposition with regard to the Litigation<sup>30</sup>, wherein such Litigation is wholly irrelevant to the Complaint, but is instructive for these purposes, concerning questions pertaining to MPEG LA, LLC, as, the Company alleges, Respondent is fully aware that the misconduct of Mr. Joao as overseen by Respondent, would rise to the level of MPEG LA, LLC through doctrines of *respondeat superior* and vicarious liability, thereby impinging upon Respondent's personal financial gains whereby Respondent, who is desirous of maintaining Respondent's personal financial gains, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions

B. Moreover, the Company re-alleges that Respondent's representation of the Company

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<sup>30</sup> *Supra* Note 14.



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lacked the tradition of complete independence and uncompromised loyalty as outlined in this Section, Subsection A, as a result of Respondent's simultaneous representation of MPEG LA, LLC as well as other clients possessing overlapping interests with respect to the Company, the Company lacked the guarantee of independent professional judgment and undivided loyalty uncompromised by conflicts of interest in its representation by Respondent when viewing the Company's technologies as competitive threats to those technologies licensed by MPEG LA, LLC and Respondent's personal financial gains as its counsel, and to the best of the Company's knowledge, patent evaluator.

Lastly, as a result of this Section Subsections A and B, the Company re-alleges that Respondent failed: (I) in his responsibility to maintain his or own independent professional judgment; (II) to maintain the confidences and secrets of the Company; and (III) to otherwise comply with the legal and ethical principles governing lawyers in New York State.

**V. DR 4-101 [§1200.19] Preservation of Confidences and Secrets of a Client.**

A. The Company re-alleges and incorporates by this reference herein, as though fully set forth, Section I Subsection A-D, Section II Subsection A-C, Section III Subsection A, and Section IV Subsection A-C, inclusive. Wherein, "confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the Company had requested be held inviolate and the disclosure of which would likely be detrimental to the Company, the Company further re-alleges that Respondent (I) used the confidences and trade secrets of the Company to the disadvantage of the Company; (II) revealed, by using for Respondent's own gain, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, confidences and trade secrets of the Company, to the disadvantage of the Company; and (III) Respondent failed to exercise reasonable care to prevent his clients from disclosing and using the confidences and trade secrets of the Company.

More specifically, the Company re-alleges that Respondent revealed confidences and trade secrets of the Company to the disadvantage of the Company as evidenced by the billings of Proskauer wherein Respondent is named numerous times and has participated in numerous hours of billings by Proskauer, attached herein as [Exhibit K](#). Furthermore, in his response, Respondent points to the fact that he has not billed for one hour of work<sup>31</sup> in representation of the Company, whereby by Exhibit K, the Company finds itself asking "Does Respondent work for free?" and answers by replying "No, but only when

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<sup>31</sup> Kenneth Rubenstein, *Response to Complaint of Eliot Bernstein Against Kenneth Rubenstein*, First Judicial Department Departmental Disciplinary Committee Docket 2003.0531 5 (April 11, 2003).





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Respondent, who is desirous of maintaining Respondent's personal financial gains, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, and perhaps the facts of the matter, cross-currently, see Mr. Utley, Mr. Wheeler, and Crossbow preparing for burying the Company itself, as a means to cloak his involvement in the burying of the Company's inventions." Moreover, it should be similarly noted with respect to the billings of Proskauer that the Company further alleges that Proskauer's early bills bear eerie evidence of possible tampering, and wherein Respondent's name and patent discussion entries may have been attempted to be removed in an effort to exculpate Respondent.

Furthermore, the Company re-alleges that Respondent revealed, by using for Respondent's own gain, confidences and trade secrets of the Company, to the disadvantage of the Company according to the same analysis in this Section, Subsection A.

**B.** Lastly, the Company re-alleges that Respondent failed to exercise reasonable care to prevent his clients from disclosing and using the confidences and trade secrets of the Company as evidenced by the URL at <http://trailers.warnerbros.com/web/category.jsp?id=action>, whereby on the website of Warner Bros, a client of Respondent as evidenced by Mr. Wheeler's second response<sup>32</sup> to the Company's Complaint against Mr. Wheeler, a viewer who selects an action trailer and choosing Windows Media Player at a connection speed of 300k and when observing the trailer and right clicking the viewer's personal computer mouse and choosing the option "statistics" and then choosing the option "advanced," the quality of video seen at the specified bit rate and connection speed that deliver twenty (24) to thirty (30) full screen frames per second (termed "full frame rates" to those skilled in the art) is mathematically impossible to deliver other than by use of the Company's inventions, as corroborated by the letter of David Colter, former Vice President of Advanced Technology of Warner Bros., and all attached herein as [Exhibit L](#).

## **VI. DR 5-101 [§1200.20] Conflicts of Interest - Lawyer's Own Interests**

**A.** The Company re-alleges and incorporates by this reference herein, as though fully set forth, Section I Subsection A-D, Section II Subsection A-C, Section III Subsection A, Section IV Subsection A-C, and Section V Subsection A-D, inclusive. Moreover, the Company further re-alleges that Respondent, who is desirous of maintaining Respondent's personal financial gains, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the

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<sup>32</sup> Christopher Wheeler, Complaint of Eliot Bernstein Against Christopher Wheeler, The Florida Bar File No. 2003-51, 109 (15C) 5 (May 23, 2003).



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Company alleges, in the burying the Company's inventions, and perhaps the facts of the matter, cross-currently, see Mr. Utley, Mr. Wheeler, and Crossbow preparing for burying the Company itself, continued his employment by MPEG LA, LLC, and whereby said employment materially affected Respondent's judgment to the detriment of the Company as a result of Respondent's own financial, business, property, and personal interests, and whereby the Company gave no consent to the representation in light of the implications of the Respondent's interest.

Furthermore, by this violation of DR 5-101, it becomes more apparent when viewed in terms of that neither Respondent nor Mr. Wheeler<sup>33</sup> are cognizant of whether Proskauer conducted a no conflict of interest verification. Still further, the Company further alleges that Respondent, Mr. Wheeler, and Mr. Joao were in receipt of proprietary and confidential Company information without the benefit of a retainer agreement<sup>34</sup> or no conflict of interest verification, and whereby a no conflict of interest verification was conducted approximately twelve months after the first technology disclosures by the Company to Mr. Wheeler, Respondent, and Mr. Joao, as described in [Exhibit F](#), *supra*.

## **VII. DR 5-105 [§1200.24] Conflict of Interest; Simultaneous Representation.**

**A.** The Company re-alleges and incorporates by this reference herein, as though fully set forth, Section I Subsection A-D, Section II Subsection A-C, Section III Subsection A, Section IV Subsection A-C, Section V Subsection A-D, and Section VI Subsection A, inclusive. Moreover, the Company further alleges that Respondent, who is desirous of maintaining Respondent's personal financial gains, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, and perhaps the facts of the matter, cross-currently, see Mr. Utley, Mr. Wheeler, and Crossbow preparing for burying the Company itself, failed to decline the continued proffered employment by MPEG LA, LLC and his other clients, and that as a result of Respondent's failure to decline said employment, Respondent's exercise of independent professional judgment on behalf of the Company was adversely affected by Respondent's continuation of said proffered employment by, including but not limited to, MPEG LA, LLC, and that it was likely to involve Respondent in representing differing interests.

**B.** Furthermore, the Company re-alleges that Respondent continued the said multiple

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<sup>33</sup> Deposition of Christopher Wheeler at 10-12, *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).

<sup>34</sup> While a September 1999 retainer agreement appears to have been executed, the Company does not attest to its validity as it appears a private document between Mr. Wheeler and Mr. Utley and was executed nearly one year after patent disclosures had begun.



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employment by both, including but not limited to, MPEG LA, LLC and the Company when Respondent's exercise of independent professional judgment on behalf of the Company was adversely affected by the Respondent's representation of, including but not limited to, MPEG LA, LLC, and that it resulted in Respondent representing differing interests with material conflicts across his client roster, Proskauer's clients under NDA, the multimedia patent pools in general, and MPEG 2 in particular, that has a potential to generate royalties in the trillions of dollars at the time in which digital television is the quintessential entertainment client in end users viewing areas. Moreover, Respondent, in his deposition with regard to the Litigation, wherein such Litigation is wholly irrelevant to the Complaint, but is instructive for these purposes, states his inability to recall his financial package<sup>35</sup> as well as his date of employment<sup>36</sup> with Proskauer, which, the Company alleges, reveals Respondent's motives, when viewed in terms of his desire to maintain Respondent's personal financial gains, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions and perhaps the facts of the matter, cross-currently, see Mr. Utley, Mr. Wheeler, and Crossbow preparing for burying the Company itself, and as evidenced by [Exhibit M](#) attached herein<sup>37</sup>. Additionally, also presented in Exhibit M are: (I) a compact disc recording of a taped conversation by and between Mr. Bernstein and inventor Shirajee that points to the absolute knowledge by Respondent, Mr. Joao, and Mr. Wheeler as to the Company's true inventors; (II) the statement of former Chairman of the Company's Board of Directors, Simon Bernstein; and (III) the statements of other former employees, shareholders, investors and clients all possessing knowledge of the alleged malfeasances and misfeasances of Respondent, Mr. Joao, and Mr. Wheeler.

The Company re-alleges that Respondent's employer, Proskauer, failed to maintain records of Respondent's outside interests with, including but not limited to, MPEG LA, LLC, and similarly failed to implement a system by which the proposed engagement with the Company was checked against Respondent's employment by, including but not limited to, MPEG LA, LLC, and whereby the case of representation of the Company was a substantial factor in causing a violation of DR 5-105 by Respondent, who is desirous of maintaining Respondent's personal financial gains, esteem, probable gains to

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<sup>35</sup> *Supra* Note 1 at 8.

<sup>36</sup> *Supra* Note 1 at 6.

<sup>37</sup> The Company requests First Judicial Department Departmental Disciplinary Committee to: (I) direct Respondent and Proskauer to reveal the total financial compensation of Respondent, including but not limited to, base salary from Proskauer, bonus, profit sharing, and sharing in any of Respondent's compensation as patent evaluator; (II) the timeline pertaining to Respondent's employment by MLGS and Proskauer; (III) submission for review by the Company all files of Proskauer; (IV) the prior relationship between Respondent and Mr. Joao; and (V) matching exhibits herein due to prospect of altering by "hackings" of the Company's information systems. Such revelations would materially shed light on the Company's Complaint.



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Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, and perhaps the facts of the matter, cross-currently, see Mr. Utley, Mr. Wheeler, and Crossbow preparing for burying the Company itself.

**VIII. DR 5-108 [§1200.27] Conflict of Interest - Former Client.**

The Company re-alleges and incorporates by this reference herein, as though fully set forth, Section I Subsection A-D, Section II Subsection A-C, Section III Subsection A, Section IV Subsection A-C, Section V Subsection A-D, and Section VI Subsection A, and Section VII Subsection A-C, inclusive. Moreover, the Company further re-alleges that Respondent, after the representation of the Company continued to represent, including but not limited to, MPEG LA, LLC in the same and substantially related matter in which Respondent's and Proskauer's interests are materially adverse to the interests of the Company, as Respondent, who is desirous of maintaining Respondent's personal financial gains, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, and perhaps the facts of the matter, cross-currently, see Mr. Utley, Mr. Wheeler, and Crossbow preparing for burying the Company itself

**A.** The Company re-alleges that Respondent used the confidences and trade secrets of the Company to the detriment of the Company.

**B.** The Company re-alleges that without the consent of the Company, Respondent knowingly continued to represent, including but not limited to, MPEG LA, LLC in the same and substantially related matters in which Respondent had previously represented the Company and: (I) Respondent's interests and the interests of Proskauer are materially adverse to the Company; and (II) Respondent had acquired information protected by section DR 4-101 [1200.19](B) that is material to the matter.

**IX. DR 7-101 [§1200.32] Representing a Client Zealously.**

**A.** The Company re-alleges and incorporates by this reference herein, as though fully set forth, Section I Subsection A-D, Section II Subsection A-C, Section III Subsection A, Section IV Subsection A-C, Section V Subsection A-D, and Section VI Subsection A, Section VII Subsection A-C, and Section VIII Subsection A-C, inclusive. Furthermore, Company re-alleges that Respondent intentionally failed to seek the lawful objectives of the Company through reasonably available means permitted by law and the Disciplinary Rules.



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More specifically, the representation by Respondent, who is desirous of maintaining Respondent's personal financial gains, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, and perhaps the facts of the matter, cross-currently, see Mr. Utley, Mr. Wheeler, and Crossbow preparing for burying the Company itself, in his role as overseer of the Company's patent prosecution process, is aware that his direction of Mr. Joao has the stated goal of filing the provisional patent application for the Company's imaging invention by January 1999, and a goal not fulfilled until more than three months later, and wherein all disclosures had occurred while the Respondent and Mr. Wheeler, under the umbrella of Proskauer, had neither executed a retainer agreement with the Company nor conducted conflict checks, but only approximately twelve months after the Company's technology disclosures, all conduct of which reflects negatively on Respondent, Mr. Wheeler, and Proskauer.

Moreover, Respondent erroneously claims that foreigners could not be listed as inventors in diametric opposition to Section 115 of the Patent Act<sup>38</sup>, a true copy of which is attached herein as [Exhibit N](#), which, according to the Company's best understanding may invalidate any patents at issuance; thereafter, Mr. Wheeler expedites, and bills for such, the immigration status of Mr. Shirajee and Mr. Rosario so that they may be listed as inventors; still at this point, Mr. Joao, under the direction of Respondent, fails to state proper inventors.

Still further, the Company required Respondent's participation, and wherein Respondent willfully failed to participate, by teleconference during its first major technology disclosure with Real 3D, Inc. (then a consortium of Intel Corp., Silicon Graphics, Inc., and Lockheed Martin Corp), during which time it was found that Mr. Joao, under the direction of Respondent, protected only the imaging invention, and wherein the Company cannot make full disclosures of the video invention and the combination of imaging and scaled video where, Mr. Wheeler, after the meeting, calls Respondent who opines that no damage may result from the late filings as the protection of the inventions rest on the date of invention and not the filing dates; unfortunately, Respondent was remiss in failing to state that the international patent system relies on a "first to file" basis, rather than his stated invention date instructions, and thus potentially exposes the Company's international patent portfolio based on the late filings of imaging, video scaling, and the combination of imaging and scaled video.

**B.** Still further, the Company references the removal of Mr. Joao as the Company patent prosecutor, under the direction of Respondent, and his replacement by Foley & Lardner, specifically referred by Mr. Wheeler and Mr. Utley, and still under the direction of

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<sup>38</sup> 35 U.S.C. Sec. 115 (1985).





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Respondent. The Company further alleges that Respondent is negligent in the oversight of Foley & Lardner's work as they fail to: (a) correct the mistakes of Mr. Joao, pursue non-provisional patent prosecution for the Company that results in flawed work of their own, still under the direction of Respondent, and when corrected by the Company, still file non-provisional patent applications filled with flaws; (b) file non-provisional patent applications with missing and changed inventors; (c) write non-provisional patent applications into the name of the Company's President & Chief Operating Officer, a one Brian G. Utley, with no assignment to the Company, and an individual who had a close association with the Foley & Lardner lead, Mr. Dick, with full knowledge that Mr. Utley could not and was not inventor of the subject matter of those non-provisional applications; and (d) failed to disclose the former intellectual property malfeasances of Mr. Utley and Mr. Dick at Mr. Utley's former employer, Diamond Turf Lawnmower in Florida.

**B.** Moreover, the Company re-alleges that Respondent tortuously interfered with a business contract by and between the Company and Warner Bros, wherein a one Wayne M. Smith, Vice President and Senior Litigation and Patent Counsel called upon Respondent to re-opine, as he had many times before, and Respondent refuses based upon his stated conflicts of interest when such conflicts of interest were not stated during the times of the Company's technology disclosures to Respondent nor in Respondent's previous discussions with Warner Bros., and in light of his proffered employment by, including but not limited to, MPEG LA, LLC. Most specifically, the Company submits the statement of P. Stephen Lamont, Chief Executive Officer ("CEO Lamont") that describes his December 2001 to April 2002 discussions and correspondences with Respondent attached herein as [Exhibit O](#), prefaced by letters of David Colter, former Vice President for Advanced Technology of Warner Bros. that references Respondent's validation of the Company's inventions.

**C.** Lastly, the Company re-alleges the misfeasance of Respondent in light of his failure to file a copyright with the United States Library of Congress pertaining to the protection of the source code algorithmically enabling the Company's inventions, the drafting of which was billed for by Mr. Wheeler's office of Proskauer, although said office, to the best of the Company's knowledge, employed no intellectual property attorneys.

**X. DR 7-102 [§1200.33] Representing a Client Within the Bounds of the Law.**

**A.** The Company re-alleges and incorporates by this reference herein, as though fully set forth, Section I Subsection A-D, Section II Subsection A-C, Section III Subsection A, Section IV Subsection A-C, Section V Subsection A-D, and Section VI Subsection A, Section VII Subsection A-C, Section VIII Subsection A-C, and Section IX Subsection A-C, inclusive. Moreover, the Company further re-alleges that Respondent concealed and knowingly: (I) failed to disclose that which Respondent was required by law to disclose;



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(II) spoke falsehoods and presented false documents; (III) made false statement of law and fact; (IV) participated, under the supervision of and with Mr. Joao, who was recruited by Respondent to assist, the Company alleges, in the burying the Company's invention, in the creation or preservation of documentation when Respondent knew that said documentation is false; (V) under the supervision of and with Mr. Joao had perpetrated a fraud upon a tribunal, the USPTO, without revealing the fraud to such tribunal; and (V) engaged in illegal conduct and conduct contrary to Disciplinary Rules.

**B.** More specifically, the Company re-alleges that Respondent, who is desirous of maintaining Respondent's personal financial gains, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, and perhaps the facts of the matter, cross-currently, see Mr. Utley, Mr. Wheeler, and Crossbow preparing for burying the Company itself, knowingly failed to disclose that which Respondent was required by law to disclose, in the allegedly burying of the Company's inventions, and perhaps the facts of the matter, cross-currently, see Mr. Utley, Mr. Wheeler, and Crossbow preparing for burying the Company itself.

Moreover, the Company re-alleges that Respondent knowingly spoke falsehoods and presented false documents, in investor and potential licensee discussions while representing the Company as the ultimate responsible party in the Company's patent prosecution process, and especially in those certain discussions with the Company's "seed" investor, an affiliate of Huizenga Holdings, Inc., as further described in Section II Subsection A, and Warner Bros. as further described in Section IX Subsection C, as well as other clients.

**C.** Furthermore, the Company further re-alleges that Respondent made false statement of law and fact, and as to fact in his discussions with investors and potential license partners, particularly, including but not limited to, an affiliate of Huizenga Holdings, Inc., Warner Bros., Crossbow Ventures, and through others, SONY Corporation, and as particularly described herein.

**D.** Additionally, the Company further alleges that Respondent participated, under the supervision of and with Mr. Joao, who was recruited by Respondent to assist, the Company alleges, in the burying the Company's invention, in the creation or preservation of documentation when Respondent knew that said documentation is false, as particularly described in [Exhibit B](#) attached herein, the complaint, response, and the Company's rebuttal of Raymond A. Joao, Esq.

**E.** Lastly, the Company further alleges that Respondent according to the supervision of and with Mr. Joao and attorneys of Foley & Lardner had perpetrated a fraud upon a





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tribunal, the USPTO, via principles of *respondeat superior* and vicarious liability, without revealing the fraud to such tribunal. Finally, as evidenced by this Section, subsection B-E, inclusive, the Company re-alleges that Respondent engaged in illegal conduct and conduct contrary to Disciplinary Rules

**XI. DR 9-102 [§1200.46] Preserving Identity of Funds and Property of Others; Fiduciary Responsibility; Commingling and Misappropriation of Client Funds or Property; Maintenance of Bank Accounts; Record Keeping; Examination of Records.**

A. The Company re-alleges and incorporates by this reference herein, as though fully set forth, Section I Subsection A-D, Section II Subsection A-C, Section III Subsection A, Section IV Subsection A-C, Section V Subsection A-D, and Section VI Subsection A, Section VII Subsection A-C, Section VIII Subsection A-C, and Section IX Subsection A-C, and Section X Subsection A-E, inclusive. Furthermore, the Company alleges that Respondent failed to maintain required bookkeeping records for the seven (7) year period including, but not limited to copies of all bills that Respondent, who is desirous of maintaining Respondent's personal financial gains, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, should have rendered to the Company. Moreover, in representation of the Company, Respondent acknowledges<sup>39</sup> that he neither kept no notes, electronic mail messages, nor other records in his deposition with regard to the Litigation, wherein such Litigation is wholly irrelevant to the Complaint, but is instructive for these purposes, and said acknowledgement is attached herein as [Exhibit P](#).

Moreover, and upon request by subsequent patent counsel, Foley & Lardner, a copy of which is attached herein as [Exhibit P](#), Respondent failed, under principles of *respondeat superior* and vicarious liability, to require his charge, Mr. Joao to remit all documents required under Exhibit P, and not least of all, documentation Mr. Joao, by admission, destroyed, as further evidenced by Exhibit P.

Lastly, as previously described in Section V Subsection A above, in his response, Respondent points to the fact that he has not billed for one hour of work in representation of the Company, whereby by [Exhibit K](#), the Company finds itself asking "Does Respondent work for free?" and answers by replying "No, but only when Respondent, who is desirous of maintaining Respondent's personal financial gains, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and

<sup>39</sup> Supra Note 2 at 24, 26.



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has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, and perhaps the facts of the matter, cross-currently, see Mr. Utley, Mr. Wheeler, and Crossbow preparing for burying the Company itself, as a means to cloak his involvement in the burying of the Company's inventions."

**XII. Lastly, the negligent actions of Respondent resulted in and were the proximate cause of loss to the Company.**

A. The history of the Company, literally back to the first day of discovery of the inventions, sees the allegations described in Defendant's Motion for Leave to Amend to Assert Counterclaim for Damages, 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) attached herein as [Exhibit Q](#), a motion of which stems from that certain Litigation that is wholly irrelevant to this Complaint, but is instructive for the alleged violations I to XI above, wherein after review by the Company's subsequent patents counsels, the work product of Mr. Joao, under the supervision of Respondent, under the principles of *respondeat superior* and vicarious liability, who is desirous of maintaining Respondent's personal financial gains, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, and perhaps the facts of the matter, cross-currently, see Mr. Utley, Mr. Wheeler, and Crossbow preparing for burying the Company itself, result in the causing of damages to the Company over a twenty year patent life, as described in the Company's projections across all distribution channels as evidenced by [Exhibit R](#) attached herein projected at a present value of approximately Ten Billion Dollars (\$10,000,000,000) of potential damages, and much in the way Respondent, the Company alleges, envisioned.

The Company further alleges that, once Respondent and Mr. Joao saw the Company's inventions, Respondent sees the personal, financial need to bury these inventions, and recruits Mr. Joao as the executioner of the Company's inventions. Moreover, the Company's inventions, while certainly not end to end solutions are literally the backbone technology of, including but not limited to, MPEG and DVD, pose formidable competitive threats to those pools as graphically portrayed by [Exhibit S](#), and certainly pose a threat, by this one example, to Respondent's fee of \$8,500 per essential patent; Respondent counts among his clients both licensors (Alcatel) and licensees (Alcatel, C-Cube Microsystems, Divicom a unit of Harmonic) of MPEG evidenced by comparing his biography at [http://www.proskauer.com/lawyers\\_at\\_proskauer/atty\\_data/4747](http://www.proskauer.com/lawyers_at_proskauer/atty_data/4747) with MPEG LA licensors and licensees at <http://www.mpegla.com/>.

Moreover, in his response, Respondent relies upon the testimony of certain individuals, including, but not limited to Mr. Wheeler, Mr. Utley, Mr. Raymond T. Hersh, the former



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Chief Financial Officer of the Company, and Gerald Lewin, a principal in the accounting firm of Goldstein Lewin & Company of Boca Raton, Fla. and the Company's former outside C.P.A. firm.

Furthermore, as to Mr. Wheeler, and wherein he states in his deposition that stems from that certain Litigation that is wholly irrelevant to this Complaint, but is instructive for these purposes, that Respondent did not perform any patent work or patent oversight work,<sup>40</sup> then in another instance Mr. Wheeler states that he contacts Respondent to determine what Respondent needs to determine the patentability of the Company's inventions,<sup>41</sup> as evidenced by [Exhibit T](#) attached herein, and referencing Mr. Wheeler's letter to a one Richard Rossman also contained in Exhibit T. Additionally, in his Florida Bar response, Mr. Wheeler, while he admits of limited instances of consulting Respondent, is found consulting Respondent who fervently has claimed that "The only thing I did for Iviewit is I referred them to another patent lawyer<sup>42</sup>."

Thus, First Judicial Department Departmental Disciplinary Committee should note that the reliance in any of Respondent's filings, and/or proceedings in this matter, on the testimony of Mr. Wheeler that would seemingly exculpate Respondent, by the above declaration it is clear that the testimony of Mr. Wheeler is worthless.

Additionally, as to Mr. Utley, and wherein he states in his deposition, *interalia*, that stems from that certain Litigation that is wholly irrelevant to this Complaint, but is instructive for these purposes, at one instance that he had no discussions with Respondent pertaining to the Company's intellectual property<sup>43</sup>, and then in another instance states that he had conversations with Respondent to apprise him of the status of the Company's patent prosecution process relative to a proposed contract with Warner Bros.,<sup>44</sup> as evidenced by [Exhibit U](#) attached herein.

Thus, First Judicial Department Departmental Disciplinary Committee should note that the reliance in any of Respondent's filings, and/or proceedings in this matter, on the testimony of Mr. Utley that would seemingly exculpate Respondent, by the above inconsistencies, it is clear that the testimony of Mr. Utley is worthless.

Furthermore, the Company references the testimony of Raymond T. Hersh, former Chief Financial Officer of the Company stating the satisfaction of the Company with the

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<sup>40</sup> *Supra* Note 17 at 24-25.

<sup>41</sup> *Supra* Note 17 at 36-38.

<sup>42</sup> *Supra* Note 1.

<sup>43</sup> Deposition of Brian G. Utley at 140-141, *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)*.

<sup>44</sup> *Supra* Note 22 at 175-176.



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services of Proskauer<sup>45</sup>. However, sometime before, and during Mr. Hersh's tenure with the Company, we reference an electronic mail message from a one William R. Kasser, a former accounting consultant of the Company to Eliot Bernstein, wherein Mr. Kasser, as a result of an account reconciliation, alleges gross fraud in the booking of Company revenues by Mr. Hersh and Mr. Utley, as evidenced by [Exhibit V](#) attached herein.

Thus, First Judicial Department Departmental Disciplinary Committee should note that the reliance in any of Respondent's filings, and/or proceedings in this matter, on the testimony of Mr. Hersh that would seemingly exculpate Respondent, by the above declaration it is clear that the testimony of Mr. Hersh is worthless.

Additionally, the allegations surrounding the representation of Proskauer, through Respondent and Mr. Wheeler, finds support in the many pieces of evidence portrayed in Section I through XII, and the Complaint will still be better served by enlisting the participation of First Judicial Department Departmental Disciplinary Committee in securing the following items: (I) records of Proskauer records to determine the whereabouts of Respondent from the period of mid 1998 to February 1999; (II) records of MLGS, cross referencing the records of Proskauer to determine the whereabouts of Respondent from the period of mid 1998 to February 1999; and (III) an explanation and the series of events that led up to the referral of Mr. Joao by Respondent.

Lastly, in the near future, the Company intends to: (I) file a claim with the Lawyers' Fund for Client Protection as a result of the alleged dishonest conduct in the taking of the Company's property, to wit, the irresponsible filing of provisional and non-provisional patent applications under the supervision of Respondent; (II) fulfill its requirement to report the loss of property to an Attorney Disciplinary (Grievance) Committee; and (III) fulfill its requirement to submit a written statement to the District Attorney of New York County.

Finally, the Company attaches a witness list, as [Appendix I](#), that contains individual names, addresses, and telephone numbers, all of which shall attest to Respondent's, who is desirous of maintaining Respondent's personal financial gains, esteem, probable gains to Respondent's employer, Proskauer, other gains from representing a soon to be trillion dollar technology in MPEG 2, and clients from the multimedia patent pools and has recruited Mr. Joao to assist, the Company alleges, in the burying the Company's inventions, and perhaps the facts of the matter, cross-currently, see Mr. Utley, Mr. Wheeler, and Crossbow preparing for burying the Company itself, engagement in a series of dishonesties, appearances of untrustworthiness, conduct involving dishonesty, fraud,

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<sup>45</sup> Deposition of Raymond Hersh at 33-34, *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).



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deceit, and misrepresentation as now conclusively shown by Section I through Section XII, supra, in general, and by Section I Subsection D. paragraphs 1 to 14, in particular wherein Respondent dishonorably found the need to disavow, *inter alia*: any knowledge whatsoever of the Company; any knowledge whatsoever of Mr. Bernstein and the other true inventors; any knowledge whatsoever of techniques known as pan and zoom technology; and through his refusal to answer questions regarding the allegedly vicariously liable MPEG LA, LLC amongst others; his charge that the deposition was harassment in that he had nothing to do with the Company; his steadfast denial of technology known as scaled video; his claim as to never opining on the Company's technology; his denial of ever having been involved in meetings concerning the Company; his denial of ever having any discussion with anyone at Proskauer concerning the Company's technology; his admission of not keeping notes or records of his conversations to Mr. Wheeler; his acknowledgement of never having billed the Company, though his name appears more than a dozen times, absent those billings that may have purposely removed, in billings from Mr. Wheeler's office; his denial of making any representations to any party with regard to the Company's technologies; his stunning reversal of his possible conversation with third parties regarding the Company's technologies; and, his lack of knowledge as to why his name appears in an electronic mail message to a member of AOL Time Warner's investment team, wherein that message states that Respondent opined on the Company's technologies; the facts of the matter, Mr. Cahill, when bolstered by Exhibits A through V attached herein, and matched against Respondent's above referenced disavowals, are clearly beyond dispute.

Sincerely,

**IVIEWIT HOLDINGS, INC.**

By: P. Stephen Lamont by Eliot I. Bernstein his attorney-in-fact

A handwritten signature in black ink, appearing to be "P. Stephen Lamont".

\_\_\_\_\_  
P. Stephen Lamont  
Chief Executive Officer (Acting)

A handwritten signature in black ink, appearing to be "Eliot I. Bernstein".

By:

\_\_\_\_\_  
Eliot I. Bernstein  
President & Founder (Acting)

## Eliot I Bernstein

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**From:** P. Stephen Lamont [pstephen.lamont@verizon.net]  
**Sent:** Tuesday, July 08, 2003 9:22 AM  
**To:** Eliot I. Bernstein (E-mail)  
**Subject:** Limited Power of Attorney

### LIMITED POWER OF ATTORNEY

I. PARTIES. I, P. Stephen Lamont ("Principal"), with a principal address of Four Ward Street, Brewster, New York hereby appoint Eliot I. Bernstein ("Attorney-in-Fact") with a principal address of 10158 Stonehenge Circle, Boynton Beach, Fla. and telephone number of 561-364-4240 as attorney-in-fact to represent me in affairs consisting only of those powers listed in Section II herein.

### II. POWERS.

1. Execution of Signature Page for Iviewit Rebuttal to Rubenstein

III. DURATION. Said Attorney-in-Fact shall, subject to revocation in writing, have authority to conduct items one (1) above and perform on behalf of Principal: All acts necessary and requisite to facilitate said functions and/or proceedings from the period July 8, 2003 through July 11, 2003 ("Duration").

### IV. OTHER ACTS.

1. None.

### V. MISCELLANEOUS.

1. NOTICES. Copies of notices and other written communications addressed to the Principal in proceedings involving the above matters should be sent to the address set forth above.

2. CONFORMANCE TO STATE LAW. It is the intention of the parties that this Limited Power of Attorney conform to the laws of the State of New York, and should any section of this Limited Power of Attorney not conform to the laws of the State of New York, it is the intention of the parties that said section(s) be substituted for that section that would otherwise conform to the laws of the State of New York. Should the laws of the State of New York require any other section(s) other than the sections of this Limited Power of Attorney, it is the intention of the parties, that said section(s) be construed to be included in this Limited Power of Attorney, as if said sections were included herein.

3. NO PRIOR POWERS. This Limited Power of Attorney revokes all prior powers of attorney by and between Principal and Attorney-in-Fact with respect to the same matters and years or periods covered by this instrument.

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