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LEGAL ISSUES

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Contributed
by Mike

Thursday,
January 19th,
2006 @ 12:26PM

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MPEG Lawyers Accused Of Taking Inventions They Reviewed And Patenting Them

from the *seems-questionable* dept

Someone anonymous has submitted this story which we're initially pretty skeptical about. At this point, it's all quite one sided, and some more details would be useful. However, we're posting it here to see if others have more info on the story: *"Primary patent reviewer for MPEG, Kenneth Rubenstein and a former IBM patent counsel (and few others) are **accused of taking inventions** from small inventors and patenting them in their own names, when they were acting as patent counsel for them. A patent attorney filing for 90 patents in his own name is definitely not ok. Who can you trust if not your own patent lawyer?"* There are some pretty wild claims as you read through the details (death threats and attempted car bombings, included). While MPEG is no saint, it's a huge jump to go from similar patents being filed to claiming that the patent reviewers literally took the invention and patented it in their own names. It's possible -- we're not denying that -- but it seems that it should be backed up with more proof. Considering the space they were in, it's quite possible that multiple people came up with similar ideas -- and, in fact, this could be an argument that these particular patents aren't valid (if multiple people all had the same idea, that suggests it fails the "non-obvious to the skilled practitioner" test). As we said, the details so far are one-sided and not entirely clear -- so we'd love to hear from others with more details.

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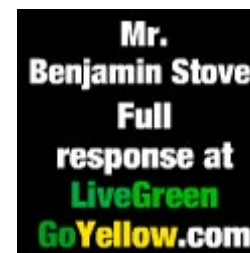
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1. **legalities** by **David Amherst** on Jan 19th, 2006 @ 3:24pm

its true - multiple inventors filing applications close in time suggests obviousness - however - whether or not the distinct publications can actually be used for obviousness-type rejection is an unsurety.

However, more generally, one cannot patent invention of which he is not the actual inventor (in US at least) - if in court, the outcome would rely on proving derivation, and likely require evidence of conception/reduction to practice and/or privity amongst inventors.

generally speaking, I don't see any reason why patent attorneys should be barred from inventing -invention is sort of one of our most treasured civil rights. i know of many, many patent attorneys whom file patent applications on several occasions.

finally, should a court find the attorney's application to be valid, ethical considerations may come into play. i.e. even though their applications may be valid, original, and not specifically derived from the mpeg, issues such as breach of confidentiality, and conflict of interest come into play - resulting in possibility of sanctions before the bar ... who knows ... lol, but please don't chalk this up to "another patent problem" - attorneys are in a priveleged position and sometimes act in bad faith... hopefully, appropriate action will take place

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2. **No Subject Given** by ? on Jan 20th, 2006 @ 9:44am


"I call it...Smith's Theory of Relativity!"

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3. **MPEG - Proskauer Stealing Inventions - A fraud on by Eliot I. Bernstein** on Jan 22nd, 2006 @ 9:21pm

My name is Eliot Bernstein and I am one of the inventors of the Iviewit inventions. Many of the quotes here are from me and the proof for many of these claims can be found at the iviewit.tv website. Simply go to left navigation bar and click on the Supreme Court button and then click on either Appendix C or Exhibit Gallery. Although voluminous in size, the exhibits are chalk full of evidence and information regarding the ongoing investigations. Also, much can be learned at the Iviewit blog at <http://patentgate.blogspot.com>.

In response to this post, Rubenstein and Proskauer took invention disclosures from Iviewit inventors and patented those concepts into their management referral, Brian Utley's name. Rubenstein also contracted Raymond Joao at the law firm Meltzer Lippe Goldstein Wolfe & Schlissel to file the applications, while Rubenstein and Proskauer handled all of the other intellectual property work, including Rubenstein acting as a board member and opining to many investors on the inventions. Joao worked at the law firm that Rubenstein was at immediately prior to his learning of the Iviewit inventions, MLGWS and then after learning of the inventions, Rubenstein instantly jumped to Proskauer, a firm that had no other intellectual property department to speak of and had been a real estate firm since the 1800's. Proskauer had already been retained and began work for Iviewit prior to Rubenstein leaving Meltzer and in fact, Rubenstein and Joao were initially represented as Proskauer attorneys, although they were still at Meltzer.

Joao filed patents into his own name while retained by Iviewit to file patents as Rubenstein's lackey. Joao's patents contained many of the ideas he and Rubenstein learned from the Iviewit inventors, the disclosures and business plans of Iviewit. It is absurd to think that a patent attorney could file any patents in his name without a thorough conflict waiver from all clients and approval from the patent bar. History has never had a case where the patent attorney ran out and filed a blizzard of patents all crossing into his clients patent applications.

Joao was also part of an elaborate scheme to move the patents out of Iviewit and into companies that Proskauer set up that had similar and identical names to the Iviewit companies. Yet, the shareholder of those companies appears to be Proskauer and others, not the true Iviewit shareholders or inventors. Iviewit shareholders, including the SBA were totally unaware that these similar companies had been set up and unaware that that similar patents were being filed into these companies with the false inventor Utley, false owners and assignees. Joao was discovered patenting ideas into his name and other dubious behavior and he was fired for his actions.

Proskauer and Utley referred William Dick of Foley and Lardner to replace Joao, Utley stated that Dick was the IBM Far East patent attorney and his very close personal friend. The original Proskauer attorney, Christopher Clarke Wheeler, Esq.

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(recently arrested in Del Ray Beach, FL for DUI with bodily injury) failed to disclose that he, Utley and Dick were involved in intellectual property crimes from Utley's former employ, Diamond Turf Equipment owned by Monte Freidkin of Boca Raton. Friedkin discovered that patents were walking out the door to Utley's sole (souless) name and fired him. It was not learned until Wheeler and Utley's deposition and Dick's response to the Virginia Bar that the three of them had been involved in the crime. Wheeler set up the company, Dick wrote the patents from Utley's employer secretly into Utley's name at home and Utley got in and stole the inventions from his employer. This is the same type of scam that they instituted on Iviewit and again appear to be failing achieving their ends.

Dick was Joao's replacement and since it was never disclosed by any of them the fact of their prior past patent theft attempt, Iviewit was dumbfounded to find this prior history out after learning they were stealing Iviewit inventions. Moreover, Wheeler and Proskauer submitted a resume on Utley that claimed that Diamond Turf went on to be a huge success do to Utley's inventions, when the truth was that the company was instantly closed by Friedkin after he found Utley stealing from his company while acting as the President of Friedkin's company. Utley failed to disclose this, Wheeler and Proskauer never disclosed this when Iviewit retained them and Dick and Foley failed to inform us of Dick's past with this group. This is a criminal organization of patent thieves, they have a history and they are a danger to inventors, good lawyers everywhere and the United States and foreign countries patent systems.

I am not against patent attorneys filing patents as long as there is a hefty review by the patent department or the USTPO OED, to investigate if those attorney inventions lay claim on any client inventions they may have represented or as in our case misrepresented. It is very dangerous for patent attorneys to be patenting inventions for themselves while representing client interests, and the obvious collusion amongst patent attorneys to work together to steal each others clients inventions remains a gaping hole. Yet these guys filed false oaths on applications in others names for inventions they learned while retained by the Iviewit inventors, no excuse can be had for this, this is plain theft, fraud on the patent office, fraud on the Iviewit inventors, the Iviewit shareholders and all the EPO foreign offices and the history of the world and invention. This is not even close to a patent attorney having a novel idea (although that seems far fetched as attorneys are not typically inventive) and then patenting it in his name with no client involved. Joao has stated that some of his inventions were prior to ours and that Iviewit was in fact infringing on his inventions (he claimed this to the New York Supreme Court Appellate Division First Department Departmental Disciplinary Committee), yet Joao failed to seek waivers or disclose this in writing or verbally to anyone seems absurd.

I find it further disgusting that MPEG patent inclusion is controlled by a single person, Rubenstein, where the temptation is all too obvious. Patent pooling schemes have been killed historically by the Justice Department for the very reasons that Iviewit complains of, anti-competitive monopolistic practices that violate Sherman

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and Clayton and almost every antitrust practice. Patent pooling schemes created by lawyers to make money as middlemen also seems to violate ethics. For instance, how can Proskauer and Rubenstein profit from MPEG as counsel for MPEG, as Rubenstein discloses in his deposition at the Iviewit Exhibit gallery and at the same time taking invention disclosure as counsel under Proskauer for review from the inventors for patent concepts that could completely render MPEG useless, as the Iviewit inventions do? How can Rubenstein review Iviewit patents for MPEG and at the same time give Iviewit unbiased advice on their patents or control their fate by inclusion or exclusion. The conflict is as wide as the Grand Canyon, no China Wall, in fact an open door for crime to occur, crimes that violate Article 1, Section 8, Clause 8 inventor protections by those entrusted to protect those rights as part of the patent bar. The obvious is happening here, MPEG and Proskauer have found a way to review patents as patent counsel and then steal them as patent poolers looking to profit from others inventions.

The first complaint that was filed at the patent office was in an invention format as a joke, not a joke to laugh at, it was appropriately titled, "System and Method for Committing Fraud on the United States Patent Office and the Iviewit Inventors". I wonder if the patent department will approve it. This is the only thing that Joao, Proskauer, Rubenstein, Utley and others accused ever invented.

Please feel free to contact me for further information or an interview

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4. **Iviewit Patents Pending** by **P. Stephen Lamont** on Jan 25th, 2006 @ 6:33am

By way of introduction, I am P. Stephen Lamont, the former CEO of Iviewit Holdings, Inc. and its subsidiaries, affiliates and related parties (collectively ? Iviewit?), from 2001 to 2005, with more than a fifteen year track record as a multimedia technology and consumer electronics executive and holder of a J.D. in Intellectual Property Law, an M.B.A in Finance, and a B.S. in Industrial Engineering, and I write in reply to ?Mike? and in support of Eliot I. Bernstein, the founder of Iviewit and the principal inventor of the technologies in question; I have been silent since my departure, but in this age of on-line blogs, I can be silent no more.

Moreover, and while grant it I was not a participant during the alleged burying and purported theft of the technologies, I found myself leading a company in the midst of a cover up of the aforementioned depictions of frauds, deceits, and

misrepresentations that run so wide and so deep that it tears at the very fabric of what has become to be know as free commerce in this country, and, in the fact that it pertains to inventors rights, tears at the very fabric of the Constitution of the United States.

Furthermore, early in my tenure based in New York, rumors began swirling around the company with finger pointing and all from Florida to Los Angeles wherein it catches the jet stream and arrived very soon in New York of alleged breaches of confidentiality pertaining to Iviewit technology, transfers of trade secrets, and, even in certain circumstances, the knowing and willful invention fraud by the outright switching of signature pages of patent filings by early patent counsels. Additionally, during my tenure, I was in possession of an executed patent application pertaining to Iviewit's core imaging technology with the inventors of Bernstein and Shirajee, when, out of thin air, and just prior to filing, such patent application witnesses the addition of a one Brian G. Utley (?Utley?) as an inventor, and an individual who could not have been farther from the heat of the inventive stage of the imaging technology.

Still further, and this is where I may depart from Mr. Bernstein and the Iviewit board (this is a democracy after all), I submit that at the first disclosures of the inventions, patent counsel, who had spent half a lifetime procuring technologies for the transmission of full screen, full frame rate video across a variety of transmission networks, and who during the Iviewit disclosures have been known to state "[I] missed that," and "[I] never thought of that," and "[This] changes everything," or words to those effects, were so fearful that Iviewit would partner with other proprietary technologies across the video value chain and wipe the carefully crafted patent pools off the face of the map, therefore, the Iviewit inventions HAD to be buried to preserve those pools.

That was the first step, with the second step, through the direct and indirect introductions of Iviewit, with executed NDA's, to some five hundred potential licensees by colleagues of patent counsel, being the proliferation of Iviewit disclosures across a wide array of potential licensees and competitors (have you ever wondered why the free download of Windows Media Encoder defaults to a 320x240 frame size, the first essential characteristic of the Iviewit video scaling technology that proceeds to innovate and enhance that frame size?).

Following along, we arrive at the point in the past when the Iviewit inventions had been buried and that everyone had begun to use it, when past management in the company and new patent counsel may have thought "Hey, okay, great, but now what's in it for us," that proceeded to a final step, and in addition to the intentional change of inventors with the inclusion of Utley, the corporate shell game that involved multiple, unauthorized, similarly named corporate formations and unauthorized stock swaps and unauthorized asset transfers that resulted in the core patent applications assigned to an entity that may have only one shareholder, the limited liability partnership of the alleged perpetrating patent counsel, perhaps, with

a view towards resurrecting the backbone technologies at some future point.

Lastly, does it seem too far fetched when you include house break-ins, death threats, car bombings, and wrongful evictions? I further submit that I had been a victim as well where every file on my former Iviewit machines were changed from the original date of creation to on or about August 25, 2003, a time in which I was on a business trip in Florida to meet with the Boca Raton Police Department. Still too unbelievable? Then recall the browser wars, particularly the Internet Explorer/Microsoft/Spyglass/University of Illinois at Urbana battle, a situation I was very close to during my tenure at Thomson Multimedia S.A. (in IE click ?Help? then ?About IE? and read all about it), and you may agree that, as I had many times termed it, ?invention stealing is the world?s second oldest profession,? only this time, as Jack Nicholson has termed it, ?[They] fucked with the wrong marine.?

Finally, I wish I could have continued in the Iviewit battles, but personal events took an unexpected turn in losing my 38 year old Midwestern gem to breast cancer in December 2003 and left with our then seventeen month old baby boy; I know Eliot will be there for an eternity slugging it out to make it up to Jenni and little Stephen.

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