

young patent professionals. I left this position with Foley in August of 2002, and once again entered private practice as a sole practitioner in patent law.

III. Background of Declarant's Relationship with Iviewit

5. In late September of 1996, Mr. Utley contacted me, asking whether I could handle certain patent matters for him. A meeting was held, where I learned at that time that Mr. Utley had taken a position with a company named Diamond Turf Equipment, Inc.¹ Shortly thereafter, on October 1, 1996, Mr. Utley sent documentation, including an invention disclosure relating to a hydraulic motor circuit, to me under cover of a letter with a heading: "Brian G. Utley, Premier Connection, 1930 SW 8th Street, Boca Raton, FL 33486". When I questioned him about the different name of the company, Mr. Utley responded that Premier Connection was his own company and that the invention(s) disclosed were his. I asked him if he had an agreement with Diamond Turf Equipment, Inc. to invent or to turn over any related inventions to them. Mr. Utley said he did not have any such agreement. I subsequently prepared a provisional patent application for the hydraulic motor circuit subject matter naming Brian G. Utley as the inventor, and I filed the application with the USPTO in November of 1996. At the direction of the client, Mr. Utley, no assignment of the invention was made. On information and belief, no nonprovisional utility patent application was ever filed based upon this provisional application (i.e., no patent rights were ever granted for the invention(s) filed in the provisional application).
6. Other than holiday greeting cards, I did not communicate with Mr. Utley until about March or April of 2000, when Mr. Utley contacted me and asked if I could do some work for Iviewit.com ("Iviewit"). (I had since moved from Foley's Milwaukee Office to a Foley Office in Palm Beach, Florida). At that time, I learned that Mr. Utley had left Diamond Turf Equipment, Inc. and was now the President of Iviewit. Mr. Utley stated that the client would be Iviewit. He was informed of my new connection as Special Counsel for Foley, and I said that a conflicts check would be made to determine if I could accommodate his

¹ It is noted that Complainant has identified a mythical company "Diamond Turf Lawnmower". I assume they are referring to a company named "Diamond Turf Equipment, Inc." which was the company Mr. Utley was employed by during the relevant timeframe. I shall hereinafter refer to them using their correct name.

and/or “knowingly, willfully, and with malice ... diversion of patents to Utley at Diamond Turf Lawnmower [*sic. Diamond Turf Equipment, Inc.*]”.

19. In Response Paragraph #6 above, I briefly described my activities in my initial interview with Iviewit. This is where I first heard of Mr. Joao, a patent attorney located in N.Y., who had written some initial provisional patent applications for Mr. Bernstein (owner of Iviewit). Mr. Bernstein told me that he wanted full, nonprovisional utility patent applications filed using the provisional patent applications written by Mr. Joao as a basis.⁴ I have no knowledge of any so-called “lapses” by Mr. Joao, and until receipt of this complaint have never talked to him or otherwise communicated with him.

20. I do not know Mr. Rubenstein, and I never have had any communications with him.

21. I have no knowledge of any impropriety of either Mr. Rubenstein or Mr. Joao.

22. With regard to the New York Bar complaints filed against Mr. Rubenstein (Docket Number 2003.0531) and Mr. Joao (Docket Number 2003.0532), it is my understanding that both of these complaints have been dismissed.

23. I also note that a similar complaint of alleged improprieties has been filed in the State Bar of Florida against Mr. Chris Wheeler of the Proskauer Rose Law firm by Mr. Lamont and Mr. Bernstein. It is my understanding that this complaint has also been dismissed.

24. The assertion by Complainant that I had been “knowingly, willfully, and with malice involved in the diversion of patents” to Utley at Diamond Turf Equipment, Inc. is patently absurd and not relevant to Iviewit. As explained in Response Paragraph #5 above, Mr. Utley was my client. At no time did I: (a) ever speak to anyone at Iviewit concerning his involvement with Mr. Utley at Diamond Turf Equipment, Inc.; (b) conduct himself so as to make any misrepresentation concerning the same; or (c) believe that my friendship with Mr. Utley prior to employment by Iviewit would bear any relevance to Foley’s retention as Iviewit’s patent counsel.

⁴ Under the U.S. Patent Laws (35 U.S.C.), in order to rely on the filing date (priority date) and obtain a granted patent for the subject matter contained in a provisional patent application, the inventor/applicant must file a full, statutorily compliant nonprovisional utility patent application within one year of the provisional filing date.

25. I have recently had the opportunity to speak with Mr. Utley regarding this matter. Mr. Utley, when asked "How did Iviewit find out that you had any kind of patent dispute with Diamond Turf?", responded that he openly disclosed to Mr. Bernstein, when he was hired by Iviewit, that he had had a patent dispute with the owner of Diamond Turf Equipment, Inc. as to the ownership of certain patent rights. Despite this frankness, Mr. Utley was subsequently hired by Mr. Bernstein as Iviewit's President.

Specific Allegation

4. *DICK, knowingly, willfully, and with malice fails to list proper inventors of the technologies, resulting in the failure of the patents to include their rightful and lawful inventors thereby constituting fraud on the Company, its investors, USPTO conducted through the United States Postal Service and facsimile thus constituting mail and wire fraud;*

Response


26. I unequivocally deny this allegation.


27. I have no knowledge of the submission of any applications where the proper inventors were not listed.


28. I was not directly involved with the preparation or submission of any patent applications to the USPTO for Iviewit. As stated in Response Paragraph #6 above, the Iviewit applications were prepared and submitted by Mr. Boehm and/or Mr. Becker during the course of their patent work at Foley.

29. On information and belief, I submit that Mr. Boehm and/or Mr. Becker extensively interviewed the inventors at Iviewit, including Mr. Bernstein himself, and came to legal conclusions as to who should be properly listed on the various patent applications as inventors. All of the inventors, including Mr. Bernstein himself, were provided copies of the patent applications before filing, and they each approved those applications and their respective inventorship in writing when they executed the Declaration document for each patent application. See attached Exhibit 7: Declaration of Mr. Becker and the Declaration Exhibit attached thereto.


30. If any errors in listing the proper inventors were present, all the inventors, including Mr. Bernstein himself, were given the opportunity to correct the inventorship before the patent

 66. On information and belief, I submit that Mr. Boehm and/or Mr. Becker did not modify or negligently pursue Iviewit patent rights so as to fail to provide protection of the intellectual property.

 67. It is my considered opinion that the Iviewit intellectual property work was performed diligently, competently, and professionally by Mr. Boehm and Mr. Becker at Foley.

 V. Responses to General Allegations of Lawyer's Actions Complained of⁸


General Allegation

1(a)  knowing and willful misrepresentations to the company with regard to his past involvement in patent malfeasances with Brian C. Utley at Utley's past employer, Diamond Turf Lawnmower. Utley was a past President of the company and formerly a President of Diamond Turf Lawnmower and had referred Dick without reference to their past patent disputes at Utley's prior employer, which led to the termination of Utley and the closing of Diamond Turf Lawnmower.

Response

68. I unequivocally deny this allegation, for the reasons set forth above in my response to Specific Allegations #1 and #3.

General Allegation

1(b)  these misrepresentations and frauds have led to similar damage to the Company, as a result of the stolen inventions by Utley, aided and abetted by Dick, Boehm and Becker. Moreover, the company found patents written into Utley's name, not disclosed or assigned to the company, and that Dick was fully aware that inventors Bernstein, Schirajee, Rosario, and Friedstein had developed the inventions. Blakely Sokoloff Taylor and Zafman LLP discovered these patents, and then attempted to re-assign said falsely filed and stolen patent applications to the company.

Response

69. I unequivocally deny this allegation, for the reasons set forth above in my response to Specific Allegations #1 and #4.

⁸ This section responds to the list of nine "Lawyer's Actions Complained of" attached to the Complaint dated 9/23/03, and forwarded with the VSB cover letter regarding "VSB Docket # 04-052-1366".



70. I have no knowledge of any “stolen inventions by Utley”, or of any Iviewit patents “not disclosed or assigned” to Iviewit, or of any “falsely filed and stolen patent applications” or of any Iviewit patent applications that name Mr. Utley in his individual name and capacity.

General Allegation

2. *Perpetrating a fraud on the USPTO, by submitting applications with false information and wrong inventors.*

Response

71. I unequivocally deny this allegation, for the reasons set forth above in my response to Specific Allegations #1 and #2.

General Allegation

3. *Knowing and willful misrepresentations to the company’s investors, including Wachovia Securities, a unit of Wachovia Corp., a registered bank holding company in Charlotte, N.C., by Dick and Utley of patent applications filed and inventions covered.*

Response

72. I unequivocally deny this allegation, for the reasons set forth above in my response to Specific Allegation #10.

General Allegation



4. *Knowingly committing fraud of USPTO, company shareholders, and potential investors by switching inventors and invention disclosures.*

Response

73. I unequivocally deny this allegation, for the reasons set forth above in my response to Specific Allegations #1, #2, and #4.

General Allegation

5. *Participation in a civil and criminal conspiracy to bury patent applications and inventions.*

Response

74. I unequivocally deny this allegation, for the reasons set forth above in my response to Specific Allegation #3.

Counterclaim was not allowed due to the fact that it was not entered timely and therefore none of the issues were ever heard or tried.

Because the counterclaim was not allowed due to the time it was filed and the case never went to trial, Iviewit filed the Bar responses. The Bars then put them on hold pending outcome of Court. The issues have NEVER been investigated, heard or tried by a court or Bar organization formally. Proskauer et. al. have avoided investigation and prosecution of all charges in any of these forums using the law to Cloak themselves.

Wholly false statements of New York outcome. Tries to assert that counterclaim was heard, and led to Bar dismissals.

No investigation was done formally of any charges at the Florida Bar and therefore the Florida Bar does not tender a response in favor of Proskauer or Iviewit

were Iviewit.com Inc., Iviewit Technologies Inc., and Iviewit Holdings Inc. The suit was commenced in Palm Beach County, Florida, 15th Judicial Circuit, as (Old Case Number CA0104671AB), the Case Number being later changed to 502001CA004671XXCDAB. In early 2003, the defendants had requested leave to file a counterclaim alleging a conspiracy by the attorneys, which was substantially the same thing as they alleged in the bar complaints filed against Mr. Rubenstein and Mr. Joao (referred to above in Specific Allegation #3). This was denied. The case went to trial in November of 2003. Since the suit was brought in May of 2001, two firms representing the defendants had withdrawn and the defendants defaulted in September of 2003 causing the Court to strike their pleadings. Final judgement was ordered in November 2003 in favor of Proskauer. Since 30 days has passed since then, there can be no appeal of the final judgement. The final judgement was for \$368,975.97 plus \$75, 956.43 pre-judgement interest. The total final judgment was \$444,932.40 bearing post-judgment interest.

The case never went to trial, this is false and misleading statement. He tries to create impression that the counterclaim issues were tried in Florida Court/

As mentioned above Iviewit has filed nearly identical bar complaints against many of its former attorneys, and they have all been dismissed. Specifically, Iviewit filed the New York Bar complaints against Mr. Rubenstein (Docket Number 2003.0531) and Mr. Joao (Docket Number 2003.0532), as recited in Specific Allegation #3 above. It is my understanding that both of these complaints have been dismissed, at first without prejudice giving Iviewit the right to enter the findings of the Proskauer Court with regard to Iviewit's counterclaims, but now with prejudice since the Iviewit counterclaims have been dismissed. It is my further understanding that Iviewit filed a similar complaint in the State Bar of Florida against Mr. Chris Wheeler of the Proskauer Rose law firm. I am informed that the Florida Bar ethics committee dismissed the complaint against Mr. Wheeler, at first subject to the Proskauer Court's findings relative to the Iviewit counterclaims, but now since the court has found in favor of Proskauer and denied the counterclaims, the bar complaint should be finally dismissed.

On or about March 15, 2001, Foley & Lardner proposed a monthly payment plan to Iviewit because of Iviewit's nonpayment of approximately \$140,000 in legal fees. The proposal stated that Foley would timely and properly withdraw as Iviewit's counsel if payment was not forthcoming, although Foley was not waiving any rights to recover the amounts due. The monthly payment plan was not accepted, and Foley terminated its representation.

IVIEWIT.COM PATENT PORTFOLIO

No.	F&L Dkt. No.	Country (Type)	Appl. No.	Filing Date	Application Title
1	57103/102	U.S. (Provisional)	60/125,824	3/24/1999	Apparatus and Method for Producing Enhanced Digital Images
2	57103/103	U.S. (Provisional)	60/137,297	6/3/1999	Apparatus and Method for Producing Enhanced Video Images
3	57103/104	U.S. (Provisional)	60/137,921	6/7/1999	Apparatus and Method for Playing Video Files Across the Internet
4	57103/105	U.S. (Provisional)	60/141,440	6/29/1999	Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network
5	57103/106	U.S. (Provisional)	60/146,726	8/2/1999	Apparatus and Method for Producing Enhanced Digital Images
6	57103/107	U.S. (Provisional)	60/149,737	8/19/1999	Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files
7	57103/108	U.S. (Provisional)	60/155,404	9/22/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files
8	57103/109	U.S. (Provisional)	60/169,559	12/8/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files
9	57103/110	PCT (International)	PCT/US00/ 07772	3/23/2000	Apparatus and Method for Producing Enhanced Digital Images

IVIEWIT.COM PATENT PORTFOLIO

No.	F&L Dkt. No.	Country (Type)	Appl. No.	Filing Date	Application Title
10	57103/111	PCT (International)	PCT/US00/ 15408	6/2/2000	System and Method for Streaming an Enhanced Digital Video File
11	57103/112	PCT (International)	PCT/US00/ 15405	6/2/2000	System and Method for Providing an Enhanced Digital Video File
12	57103/113	PCT (International)	PCT/US00/ 15406	6/2/2000	System and Method for Playing a Digital Video File
13	57103/114	U.S. (Non-Provisional)	09/587,730	6/5/2000	System and Method for Streaming an Enhanced Digital Video File
14	57103/115	U.S. (Non-Provisional)	09/587,026	6/5/2000	System and Method for Playing a Digital Video File
15	57103/116	U.S. (Non-Provisional)	09/587,734	6/5/2000	System and Method for Providing an Enhanced Digital Video File
16	57103/118	PCT (International)	PCT/US00/ 15602	6/7/2000	System and Method for Video Playback Over a Network
17	57103/119	U.S.	09/522,721	3/10/2000	Apparatus and Method for Producing Enhanced Digital Images
18	57103/120	PCT (International)	PCT/US00/ 21211	8/2/2000	System and Method for Providing an Enhanced Digital Image File
19	57103/121	U.S. (Non-Provisional)	09/630,939	8/2/2000	System and Method for Providing an Enhanced Digital Image File
20	57103/122	U.S. (Provisional)	60/223344	09/18/2000	Zoom and Pan Imaging Using a Digital Camera
21	57103/123	U.S. (Provisional)	60/233341	09/18/2000	Zoom and Pan Imaging Design Tool

EXHIBIT 10

DECLARATION OF BRIAN G. UTLEY

Handwritten initials

Now comes the undersigned Declarant, Brian G. Utley, residing at 9541 Virginia Ave. S., Bloomington, Minnesota 55438, and swears that to the best of his knowledge and upon information and belief that:

1. I am the Brian G. Utley that was employed as President of Iviewit.com ("Iviewit") from August, 1999, to May, 2001, when I resigned that position.

Utley did not resign, he was terminated with cause for patent thefts and illegal transfer of loans and securities



2. I met Mr. William J. Dick ("Dick") about 1988-1989 when I was appointed Vice President & General Manager of International Business Machines Corporation's ("IBM") Boca Raton Facility. At that time, Dick was Intellectual Property Counsel for IBM's Boca Raton Facility. On October 31, 1991, I retired from IBM.

3. Subsequent to my retirement, on or about February, 1996 I took a position as President of Diamond Turf Equipment, Inc ("Diamond"). I had no agreement with Diamond to invent or to turn over any inventions which I made to Diamond.

Makes no sense

4. In late September of 1996, I contacted Dick, requesting if he was available to handle certain patent matters for him. After meeting with Dick, he agreed that he could handle the matter outlined in the meeting and thereafter, I provided documentation, including an invention disclosure relating to a hydraulic motor circuit, to Dick under my own company name of "Premier Connection". Dick was instructed that he was to act as my Counsel in the matter, and he was not Counsel for Diamond. At my direction, Dick filed a provisional patent application in the USPTO, naming me as the sole inventor.

We find out in Wheeler deposition that he set up Premiere for Utley and in Utley's Deposition we find contradictory and perjured statement that Wheeler did no prior legal work for him. Wheeler lies to Florida Bar and contradicts his statements in deposition constituting Perjury. CLICK HERE FOR WHEELER PERJURY

5. The provisional application was never perfected into a regular non-provisional utility application, so no U.S. patent rights ever matured for the invention. I refused to assign the invention to Diamond, when Diamond made the demand. As a result, I resigned from Diamond on or about June, 1999.

6. On July, 1999 I was approached by Chris Wheeler, a Partner with Proskauer Rose, LLC about taking the leadership position with Iviewit which was currently being organized. Proskauer Rose had been retained by Iviewit to assist in the organization of

Utley 1/6/2004

As President of the Company he had fiduciary obligations to company and stole patents that led to closure of business. Utley lies on his resume regarding his former employment and then in deposition admits to involvement in patent disputes.

CLICK HERE TO SEE UTLEY RESUME WHEREBY HE STATES THAT COMPANY WENT ON TO BE LEADER IN INDUSTRY WHEN IN FACT IT WAS CLOSED DUE TO THE THEFT OF PATENTS BY UTLEY,

Utley perjures himself again in no. 4 in that under deposition he swears no patent application was made. Here again we have two sworn statements in diametric opposition, constituting perjury in official proceedings and Virginia Bar is made aware of the perjury and fails to acknowledge or report false statements. CLICK HERE TO SEE UTLEY DEPOSITION STATEMENT STATING NO PATENT AT DTE WAS EVER FILED.

UTLEY STATES HE TOLD BERNSTEIN OF HIS FORMER PROBLEMS, YET WHY WOULD HE SUBMIT WITH WHEELER TO THE BOARD A BOGUS RESUME REGARDING HIS FORMER EMPLOYMENT. BERNSTEIN AND OTHER BOARD MEMBERS STATE THAT THIS WAS NEVER

the company. Prior to the offer and my acceptance of the position with Iviewit, I informed Eliot Bernstein (Founder of Iviewit) of the reasons for my leaving Diamond, including the facts set forth in #4 and #5 above. On joining Iviewit as President I signed an employment agreement granting Iviewit exclusive rights to any Intellectual Property that may be developed during my employment.

7. About March or April of 2000, I contacted Dick and asked if he could do some patent work for Iviewit. I was informed of Dick's new connection as Special Counsel for Foley & Lardner ("Foley"), and Dick told me that after a conflicts check, that Foley could accommodate his request. Because the subject matter was in a technology unfamiliar to Dick, and because of Foley's client management policy, Mr. Douglas Boehm ("Boehm"), a partner at Foley's Milwaukee Office, was placed in charge of the client. Mr. Boehm requested that Dick initially interview Iviewit. Dick met with me as well as others at the offices of Iviewit, and subsequently Boehm, on behalf of Foley, agreed to serve as Patent Counsel for Iviewit, and Iviewit and Foley both signed a letter of engagement. Boehm and an associate patent attorney at Foley, Mr. Steven Becker ("Becker"), later flew from Milwaukee to Boca Raton to meet with Iviewit. At that meeting, Dick formally introduced Boehm and Becker to me and Bernstein.

8. Thereafter, I served as the primary patent interface between Iviewit and Foley. My interaction was primarily with Boehm and Becker of that office.

9. I have read the Complaint filed by Iviewit Holdings against Dick and the allegations made in that Complaint. I find them to be without merit.

10. During the preparation of patent applications for Iviewit, Boehm and/or Becker made determinations as to the proper inventors for the patent applications after consulting with me. To the best of my knowledge, the information that I gave to them helped them to make legal determinations of proper inventorship. The inventors named had an opportunity during their review of the patent application drafts, and subsequent to the filing of the patent applications, to discuss any such inventorship disagreements with Boehm or Becker so that if errors had occurred, such errors could be corrected. To the best of my knowledge, I do not recall my, or any other employee of Iviewit, disputing an



inventorship determination made by Boehm or Becker during the course of their work for Iviewit.

11. To the best of my recollection, the patent applications that were filed by Boehm and Becker contained the technical information regarding Iviewit's inventions which were provided by me and others at Iviewit.

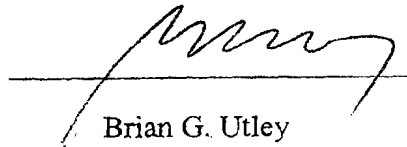
12. I am not aware of any efforts by Dick, Boehm, or Becker to fraudulently change the titles of Iviewit applications, destroy Iviewit documents so as to insert reasonable doubt as to allegations by Iviewit of fraud, or to falsify billing records so as to insert reasonable doubt as to the allegations by Iviewit of fraud.

13. I am unaware of any efforts by Dick, Boehm, or Becker to "bury" patent applications and inventions, or to transfer Iviewit applications solely into my name for my or anyone else's benefit. I do not hold any rights in any Iviewit technology. Moreover, to the best of my recollection, all inventions made by me during my employment by Iviewit were assigned to Iviewit.

14. Declarant unequivocally denies any and all allegations of any involvement in any conspiracy to deprive Iviewit of any rights to any technologies.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Dated this 6th day of January, 2004.


Brian G. Utley

This is materially false and confirmed by the patent office in US and Japan.